

# Exhibit 1



Desiderio is attached to NCAI's September 2, 2022 Opposed Motion To Dismiss Or, Alternatively, To Compel Arbitration (the "Motion"), as Exhibit 2.

5. At the time Mr. Desiderio's employment with NCAI began, pursuant to NCAI's employment policies then in place, Mr. Desiderio accrued paid time off ("PTO") at a rate of 4.62 hours per bi-weekly pay period.

6. In December of 2021, under Mr. Desiderio's leadership, NCAI introduced and implemented a new policy governing PTO. Under this new policy, NCAI employees were eligible to "roll over" up to 80 hours of accrued but unused PTO as of each May 31<sup>st</sup> and December 31<sup>st</sup>, annually. Any accrued but unused PTO *in excess* of 80 hours was to be paid out to employees each year at the end of May and at the end of December. A copy of the PowerPoint presented to NCAI employees regarding this new policy is attached here as Exhibit A. In addition to the changes outlined in the PowerPoint, the new policy increased annual accrual from 15 days per year to 20 days per year, for all employees.

7. Mr. Desiderio was subject to this new PTO policy, and an accounting of Mr. Desiderio's accrual of PTO is attached to here as Exhibit B.

8. As of December 18, 2021, Mr. Desiderio had accrued 73.83 hours of PTO.

9. Beginning in January 2022, Mr. Desiderio accrued leave at a rate of 6.15 hours per pay period, per the new accrual policy. As of May 21, 2022, he had accrued a total of 146.15 hours of PTO. Accordingly, on May 27, 2022, he was paid out for all accrued hours in excess of 80 – which amounted to 66.15 hours.


10. Mr. Desiderio's pay stubs are attached here as Exhibit C, and show that, on May 27, 2022, Mr. Desiderio was paid \$8,746.16 for 66.15 hours of "vacation."

11. Mr. Desiderio continued to accrue PTO at a rate of 6.15 hours per pay period. *See* Exh. B. As of the date of his separation from NCAI, he had accrued 116.92 hours of PTO. Accordingly, his last paycheck from NCAI, dated August 15, 2022, reflects that he was paid out for the entirety of his unused PTO balance: 116.92 hours, or \$15,458.17.

12. Following the issuance of his final paycheck dated August 15, 2022, Mr. Desiderio had been compensated for each and every hour of PTO that he had accrued but not used during his employment at NCAI in accordance with NCAI policy.

I declare under penalty of perjury that the foregoing is true and correct.

Done this 2<sup>nd</sup> day of September, 2022, in Washington, DC.

DocuSigned by:  
  
5B5C854B02B74E3...

Larry Wright Jr.

# Exhibit A

# New NCAI PTO Policy



## What's In It For Me?

New policy is a PTO (paid time off) policy which can be used for vacation, sick, personal, FMLA, etc.

You will accrue hours every month based on your years of service – all reset of accruals will be based on a calendar year.

On last payroll of the year, you will receive a payout of any hours over 80. January 1 you will have up to 80 hours accrual to begin the year.

You will continue to accrue each month your years of service allotment. (example: 6.15 hours per pay cycle.)

At mid-year – another payout of hours over 80 will be made in order to control the fiscal responsibility of the organization.

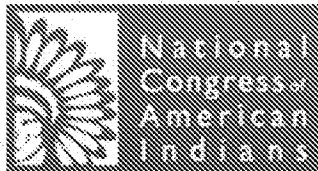
## Example of payout:

### Example of PTO Payouts on December 24<sup>th</sup> payroll and May 31<sup>st</sup>

- Assumptions:
  - Employee has a total of 95 hours in PTO bank at end of year.
  - Carryover limited to 80 hours.
  - 15 hour balance over 80 will be paid out on last payroll of the year (December 24).
  - Employee continues to accrue PTO monthly according to policy schedule.
  - By May 31<sup>st</sup> employee has taken 50 hours of the 80 hours of carryover.
  - The 30 hours carryover will be paid out effective May 31<sup>st</sup>, leaving the then current accrual intact for use during the rest of the year.
- Calculation example (employee's hourly rate based on annual salary of \$82,000):
  - December 31<sup>st</sup>: 15 hours @ \$39.42 = \$591.30 paid
  - May 31<sup>st</sup>: 30 hours @ \$39.42 = \$1,182.60 paid



If you have questions:  
email me at [pfagan@ncai.org](mailto:pfagan@ncai.org)



# Exhibit B

Vacation History

Date Range:  -

Date ^	Accrued	Granted	Adjustment	Used	Balance
05/22/2021	4.62	4.62			4.62 ▲
06/05/2021	4.62	4.62			9.23
06/19/2021	4.62	4.62			13.85
07/03/2021	4.62	4.62			18.46
07/17/2021	4.62	4.62			23.08
07/31/2021	4.62	4.62			27.69
08/14/2021	4.62	4.62			32.31 ▼

Total Records: 19

Close

Vacation History

Date Range:  -

Date ^	Accrued	Granted	Adjustment	Used	Balance
08/28/2021	4.62	4.62			36.92 ▲
09/11/2021	4.62	4.62			41.54
09/25/2021	4.62	4.62			46.15
10/09/2021	4.62	4.62			50.77
10/23/2021	4.62	4.62			55.38
11/06/2021	4.62	4.62			60.00
11/20/2021	4.62	4.62			64.61 ▼

Total Records: 19

Close

12/04/2021	4.62	4.62			69.23
12/18/2021	4.62	4.62			73.84
01/01/2022					73.84

Employee Paid Time Off History

Date Range:  -

Date ^	Accrued	Granted	Adjustment	Used	Balance
01/01/2022	6.15	6.15			6.15 ▲
01/01/2022			78.46		84.61
01/15/2022	6.15	6.15			90.77
01/29/2022	6.15	6.15			96.92
02/12/2022	6.15	6.15			103.08
02/26/2022	6.15	6.15			109.23
03/13/2022	6.15	6.15			115.38 ▼

Total Records: 19

Close

Employee Paid Time Off History

Date Range:  -

Date ^	Accrued	Granted	Adjustment	Used	Balance
03/26/2022	6.15	6.15			121.54 ▲
04/09/2022	6.15	6.15			127.69
04/23/2022	6.15	6.15			133.85
05/07/2022	6.15	6.15			140.00
05/21/2022	6.15	6.15			146.15
06/01/2022					86.60
06/04/2022	6.15	6.15			86.15 ▼

Total Records: 19

Employee Paid Time Off History

Date Range: 06/05/2022 -

Date ^	Accrued	Granted	Adjustment	Used	Balance
06/18/2022	6.15	6.15			92.31
07/02/2022	6.15	6.15			98.46
07/16/2022	6.15	6.15			104.62
07/30/2022	6.15	6.15			110.77
08/13/2022	6.15	6.15			116.92

Total Records: 5

Close

# Exhibit C

DANTE DESIDERIO  
 606 SOUTH QUINCY STREET  
 ARLINGTON VA 22204

NON-NEGOTIABLE

NON-NEGOTIABLE

**PERSONAL AND CHECK INFORMATION**

Dante Desiderio  
 606 South Quincy Street  
 Arlington, VA 22204  
**Soc Sec #:** xxx-xx-xxxx **Employee ID:** 248  
**Home Department:** 1 NCAI INC (FUND) 501C3

**Pay Period:** 07/31/22 to 08/13/22  
**Check Date:** 08/15/22 **Check #:** 6255

**NET PAY ALLOCATIONS**

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	0.00
Chkg 015	<u>16273.99</u>	<u>131667.35</u>
<b>NET PAY</b>	<b>16273.99</b>	<b>131667.35</b>

EARNINGS	BASIS OF DESCRIPTION	HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS	YTD (\$)
<b>PAY</b>					
	Salary		10576.92		179807.64
	Vacation	<u>M116.92</u>	<u>15458.17</u>	<u>M183.07</u>	<u>24204.33</u>
	<b>Total Hours</b>	116.92		183.07	
	<b>Gross Earnings</b>		26035.09		204011.97
	<b>Total Hrs Worked</b>				
<b>OTHER</b>					
<i>Do not increase Net Pay</i>					
	SAFE HARBOR 4		781.05		6120.39
<b>WITHHOLDINGS</b>					
<i>GS</i>					
	Social Security				9114.00
	Medicare		413.62		2994.28
	Fed Income Tax	H	7874.43		48913.18
	DC Income Tax	H 0 No Withholding			
	VA Income Tax	2 0	1473.05		11323.16
	<b>TOTAL</b>		<u>9761.10</u>		<u>72344.62</u>

NET PAY

THIS PERIOD (\$)  
**16273.99**

YTD (\$)  
**131667.35**

DANTE DESIDERIO  
 606 SOUTH QUINCY STREET  
 ARLINGTON VA 22204

NON-NEGOTIABLE

NON-NEGOTIABLE

**PERSONAL AND CHECK INFORMATION**

Dante Desiderio  
 606 South Quincy Street  
 Arlington, VA 22204  
**Soc Sec #:** xxx-xx-xxxx **Employee ID:** 248

**Home Department:** 1 NCAI INC (FUND) 501C3

**Pay Period:** 05/08/22 to 05/21/22  
**Check Date:** 05/27/22 **Check #:** 6029

**NET PAY ALLOCATIONS**

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	0.00
Chkg 015	<u>11323.00</u>	<u>79422.86</u>
<b>NET PAY</b>	<b>11323.00</b>	<b>79422.86</b>

EARNINGS	BASIS OF DESCRIPTION	HRS/UNITS	RATE THIS PERIOD (\$)	YTD HOURS	YTD (\$)
	PAY				
	Salary		10576.92		116346.12
	Vacation	<u>M66.15</u>	<u>8746.16</u>	<u>M66.15</u>	<u>8746.16</u>
	<b>Total Hours</b>	66.15		66.15	
	<b>Gross Earnings</b>		19323.08		125092.28
	<b>Total Hrs Worked</b>				

OTHER	DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Do not increase Net Pay	SAFE HARBOR 4	579.69	3752.79

WITHHOLDIN	DESCRIPTION	FILING STATUS	THIS PERIOD (\$)	YTD (\$)
GS	Social Security		1198.03	7755.72
	Medicare		280.19	1813.84
	Fed Income Tax	H	5434.75	29170.75
	DC Income Tax	H 0 No Withholding		
	VA Income Tax	2 0	1087.11	6929.11
	<b>TOTAL</b>		<u>8000.08</u>	<u>45669.42</u>

<b>NET PAY</b>	<b>THIS PERIOD (\$)</b> <b>11323.00</b>	<b>YTD (\$)</b> <b>79422.86</b>
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# Exhibit 2



## Executive Director Employment Agreement

This Employment Agreement ("Agreement") between the National Congress of American Indians, a 501(c)(4) nonprofit organization, headquartered in Washington, D.C., (and sole owner of the National Congress of American Indians Fund), and the National Congress of American Indians Fund, a trust governed under the laws of the District of Columbia (hereafter "NCAI"), with its principal office located at 1516 P St. NW, Washington, D.C. 20005, and Dante Desiderio, residing at 606 Quincy Street, Arlington, Virginia, an individual ("Desiderio"), is made as of April 12, 2021, with reference to the following facts:

### RECITALS

1. NCAI is engaged in the provision of services to American Indian and Alaska Native People(s) throughout the United States to: (1) protect Indian and Native traditional, cultural and religious rights; (2) seek appropriate, equitable and beneficial services and programs for Indian and Native governments and people; (3) secure and preserve Indian and Native rights under treaties and agreements with the United States, as well as under federal statutes, case laws and administrative decisions and rulings; (4) promote the common welfare and enhance the quality of life of Indian and Native people; and (5) promote a better understanding among the general public regarding Indian and Native governments, people and rights; and
2. NCAI has been delegated constitutional and management powers by the NCAI Congress and the NCAI Fund, Inc. and maintains an administrative office in Washington, D.C.; and
3. The Parties desire to enter into this Agreement to create an employment relationship on the terms and conditions in this Agreement; and
4. Desiderio has direct, current and materially important knowledge of NCAI's financial and operational workings having been a successful management employee of the organization in past years, having consistently over the course of many years worked with NCAI in advocating for federal Indian policies with federal agencies, Congressional staff, members of Congress, and various relevant lobbyists and policy influencers; has national stature as a major federal Indian policy influencer; and, notably, has provided invaluable guidance on various financial and operational matters as a consultant to NCAI; and
5. Desiderio would be leaving a respected, economically meaningful, and secure career position with the Native American Finance Officers Association (NAFOA) in accepting the Executive Director position with NCAI; and
6. NCAI considers the continued viability of NAFOA subsequent to Desiderio leaving NAFOA's employ to be in the best interests of Indian Country generally, and important to NCAI's mission

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

INITIALS: DD  NCAI

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of engaging in activities vital to the economic, educational, and operational health of Tribes and individual Indians. NCAI expressly recognizes that past and ongoing mutual efforts by NAFOA and NCAI in various policy and other matters effecting Indian country have served to amplify and materially enhance and strengthen the fulfillment of their respective missions; and that the loss of each other's support would be meaningfully detrimental to their respective interests.

**NOW, THEREFORE**, in consideration of the mutual and individual promises, representations, and undertakings of the Parties set out in this Agreement, including its Recitals, the Parties agree as follows:

### **TERM**

Notwithstanding any at-will policy set out in NCAI's employee handbook, memoranda, or similar documents, including but not limited to those sections of the NCAI employee handbook titled "At-Will Statement" and "Categories of Employment INTRODUCTORY PERIOD" which are hereby superseded by this Agreement, the term of this Agreement shall be from May 11, 2021 to May 11, 2024 ("Employment Term"), unless terminated earlier as provided in this Agreement. Employer has no obligation to extend or renew this Agreement for succeeding terms or to provide any reason why the Agreement was not extended or renewed; provided, however, the Parties agree their intent is to renew this Agreement for additional terms.

In the event of any conflict or inconsistency between the terms and conditions of this Agreement and any terms or conditions set forth in any NCAI policy, the terms and conditions set forth in this Agreement shall prevail. Notwithstanding, Desiderio agrees to make a good faith effort to abide by all employee conduct requirements established by NCAI's employee handbook or other relevant NCAI policies.

### **GENERAL RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR**

Employer agrees to employ Desiderio and Desiderio agrees to be employed by Employer in the role of "Executive Director," as defined by Employer's governing documents, and shall hold and use the job title "Chief Executive Officer." In this capacity, Desiderio reports to the President of the NCAI Executive Committee, as defined at Article IV of NCAI's Constitution ("Executive Committee"). Desiderio shall perform services as directed by the Executive Committee according to appropriate program jurisdiction, and shall direct and coordinate the various activities of the NCAI Congress and Fund organizations through the authority delegated by the Executive Committee.

Consistent with the NCAI Constitution and Bylaws, Desiderio is the administrative operating head

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

INITIALS: DD  NCAI \_\_\_\_\_

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of the organization and has the responsibilities and authority that are typically associated with Desiderio's position as Chief Executive Officer. Desiderio has responsibility for leading and managing all strategic and operational aspects of the organization and creating a vision for the long-term success for NCAI and the NCAI Fund. Desiderio has responsibility for ensuring that goals and objectives are established and met, regulatory requirements are complied with, resources are utilized efficiently and effectively, and the needs and priorities of the tribal governments are being met and advanced. These objectives are achieved through the work staff, strong tribal government relationships, tribal and non-tribal organizational partnerships. The location of the work will be primarily in Washington, D.C., with travel as necessary to accomplish the work. Desiderio shall also represent the NCAI Fund's business interests. In recognition and support of the annual performance criteria by which Desiderio will be evaluated, all other C-Suite level employees, by whatever title, will report to the Desiderio.

During the Employment Term, but excluding the Transition Period described below and any periods of vacation, sick leave, and other leaves, Desiderio agrees to devote full business time to the affairs of Employer and to use best efforts to perform Employee's responsibilities faithfully, diligently, effectively, and efficiently. Outside employment, full or part-time, must be disclosed prior to and during this term.

#### **ANNUAL EVALUATION**

Desiderio shall be reviewed annually by the Executive Committee or a Committee thereof. The annual evaluation will consider Desiderio's performance in the following categories:

- Organization and reporting performance and abilities;
- Fiscal and budgeting practices and performance;
- Financial control and oversight;
- Program control and oversight;
- Fundraising;
- Employee management; and
- Any other reasonable performance metrics the Executive Committee deems appropriate.

Six months after the beginning of the Employment Term, Desiderio shall be reviewed consistent with the evaluation criteria above. Nothing in this provision is intended to restrict the Executive Committee from providing on-going performance feedback, or conducting more regular formal evaluations.

#### **AUTHORITY**

Desiderio is authorized to act on behalf of NCAI as required to carry out the normal financial, administrative, personnel management functions (including, but not limited to, recruitment,

screening, hiring, onboarding, ongoing supervision, and discipline); legal matters; and other business of NCAI and/or to protect the interests of NCAI. Desiderio will follow NCAI's Bylaws and policies, including adherence to its Conflicts of Interest Policy.

### **TRANSITIONAL PERIOD**

The Parties recognize that it is in their respective best interests that Desiderio be allowed to assist NAFOA in (i) concluding in an orderly manner any current matter in which his personal involvement is an integral part, and (ii) recruiting, interviewing, hiring, and onboarding a new NAFOA Executive Director; provided Desiderio places the interests of NCAI ahead of any other conflicting considerations.

If Desiderio receives any compensation from NAFOA for his assistance in its securing a new Executive Director or concluding the matters identified above, the receipt of any such compensation shall not be deemed to be a violation of any NCAI conflict of interest or similar policy.

Subsequent to his separation from NAFOA, Desiderio shall make clear to all parties that he is representing the policies, viewpoints, and efforts of NCAI and not NAFOA, except as may be required while concluding any current matter of which his personal involvement is an integral part.

### **COMPENSATION AND BENEFITS**

The compensation and benefits payable under this Agreement are outlined in Attachment A, which is initialed by the parties and made a part of this Agreement. Termination of the employment relationship while the Agreement is in effect by NCAI shall result in the payment of the sums outlined in the Termination clause of this Agreement.

### **TERMINATION**

If the Agreement is terminated by Desiderio, there shall be no termination compensation other than accrued compensation earned prior to the effective date of termination minus payments due and owing to NCAI, if any. Desiderio agrees that he will make a good faith effort to provide NCAI with at least three months' notice should he terminate this Agreement.

In the event that the Agreement is terminated by NCAI for cause reasonably defined as (i) grossly negligent, (ii) repeated failure to perform the essential requirements of the position, (iii) unethical, illegal, or fraudulent conduct, or (iv) conduct that constitutes unlawful discrimination or harassment, including sexual harassment as prescribed by NCAI's policies, ("For Cause") there shall be no severance pay or termination compensation other than the payment of compensation

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

INITIALS: DD  NCAI \_\_\_\_\_

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remaining after deduction of amounts due and owing to NCAI, if any.

If the decision is made by NCAI to terminate the Agreement for reasons other than For Cause, and in exchange for executing a standard severance agreement including a release of claims, Desiderio shall be paid his full compensation for the twelve calendar month period following the date of termination, as well as the cost of acquiring health benefits for that same time period equivalent to those being provided as part of his compensation as set out in Attachment A. The amount of this severance is expressly stated to be reasonable given that Desiderio will have left a respected, economically meaningful, and secure career position with NAFOA in accepting the Executive Director position with NCAI, as well as the recognition that it would be very difficult, if not impossible as a practical matter, for Desiderio to secure an equivalent position in Indian country to those he would then have had with either NCAI or NAFOA. If Desiderio obtains subsequent employment within the twelve-month period, he will notify NCAI of that employment and provide documentation of his compensation, and he agrees to forfeit the remaining severance payments equal to the compensation he will receive from the subsequent employer. That is, NCAI will only be obligated to issue severance payments for the portion of the twelve-month severance period during which Desiderio has obtained subsequent employment equal to the difference between his salary with NCAI at the time of his separation and his salary received from subsequent employer.

#### **DEATH / TOTAL DISABILITY**

If Desiderio dies during the term of this Agreement, his employment and all obligations of NCAI under this Agreement shall cease except those related to any insurance or retirement programs, unpaid salary obligations, or reimbursable expenses.

In the event Desiderio becomes permanently disabled and unable to perform the essential functions of his job as "essential functions" are defined under applicable federal/state laws, his employment and all obligations of NCAI under this Agreement shall cease except those related to any insurance or retirement programs, unpaid salary obligations, or reimbursable expenses, and he may be replaced as required to carry on the functions of NCAI.

Desiderio's permanent disability means that Desiderio, by reason of his physical or mental disability, is incapable of performing the duties of his customary position with NCAI, and such disability has continued for a period of at least one hundred twenty (120) consecutive days in any 12-month period and is expected to be of a long duration or to result in death. Permanent disability shall be established by a majority of three physicians, one selected by Desiderio (or his/her spouse, child or children, parent or legal representative in the event of his inability to select a physician), one by NCAI, and the third by the two physicians selected by Desiderio (or his/her spouse, child or children, parent or legal representative in the event of his inability to select a

physician) and NCAI.

## RESOLUTION OF DISPUTES

Arbitration. In the event of any Dispute (as defined below) between Desiderio and NCAI, including all Disputes regarding Desiderio's rights under this Agreement or termination of this Agreement, or any extension or renewal thereof, and if the Dispute is not resolved informally by the Parties, Desiderio shall submit the Dispute to binding arbitration, excluding Disputes regarding claims based on the Fair Labor Standards Act and/or any applicable state wage and hour act. Desiderio shall initiate the arbitration by notifying the President of NCAI in writing of the nature of the Dispute and Desiderio's request for arbitration within one hundred twenty (120) days from the last time the alleged violative action occurred.

The arbitration shall be governed by the Model Employment Arbitration Procedures of the American Arbitration Association (the "AAA"), which are incorporated herein by this reference, and by the provisions of Attachment B, which the Parties have initialed and is made part of this Agreement. In case of any conflict between the AAA Model Employment Arbitration Procedures and this Agreement, the terms of this Agreement shall prevail. Both parties agree to be bound by any final decision of the arbitrator rendered pursuant to this Agreement, subject to appeal rights as provided in any applicable federal or state law. This arbitration provision shall survive termination of this Agreement.

Any such arbitration must be initiated by Desiderio not more than one hundred twenty (120) days after termination of this Agreement or termination of any extension or renewal thereof, or the dispute will be considered forever waived and time barred.

Disputes. As used herein, "Dispute" means any and all demands, claims, or causes of action, whether related to or arising out of this Agreement, any applicable federal or state statute, regulation or executive order, or the common law, including demands, claims or causes of action for:

- Breach of contract, wrongful termination, breach of the implied covenant of good faith and fair dealing, violation of public policy, retaliatory discharge, malfeasance, misfeasance, breach of trust, equitable or promissory estoppel, misrepresentation, defamation, invasion of privacy, tortious interference with contract or contractual expectancy, etc.;
- Employment discrimination, including claims based on Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, any applicable state law against discrimination, and all other applicable federal, state and local antidiscrimination laws, regulations and executive orders; and
- Damages for pain and suffering, emotional distress, liquidated damages, punitive damages, taxable costs, interest and reasonable attorneys' fees.

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

INITIALS: DD  NCAI \_\_\_\_\_

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## GENERAL TERMS

Desiderio represents and warrants to NCAI that he is free to enter into this Agreement and that he has no commitment, arrangement or understanding to or with any party which restrains or conflicts with his performance of the covenants, services and duties provided for in this Agreement.

During Desiderio's employment hereunder, this Agreement may not be assigned by either party without the written consent of the other; provided, however, that NCAI may assign its rights and obligations under this Agreement to a successor by merger or affiliation if such successor carries on NCAI's work substantially in the form in which it is being conducted at the time of the merger or affiliation. Except as otherwise provided by applicable law, no interest of Desiderio or any beneficiary or representative of Desiderio may be directly or indirectly transferred, encumbered, seized by legal process, or in any other way subjected to the claims of a creditor. This Agreement shall be binding upon Desiderio, his heirs, personal representatives and permitted assigns; and on NCAI, its successors and assigns.

This Agreement and Attachments represent the entire agreement between the parties and supersede any prior oral or written agreements between the parties. Any modification of this Agreement must be in writing and signed by the Parties. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

When this Agreement requires that a party give notice to the other Party or other communication that materially impacts the rights of the Parties, including specifically notices of breach, default, termination, or arbitration, the notice must be provided to the following via any delivery method that can be confirmed (e.g., Federal Express or confirmed delivery email):

*If to Employer, to:*


Sadina Montani  
Partner, Crowell & Moring LLP  
1001 Pennsylvania Ave. NW  
Washington, DC 20004  
smontani@crowell.com

*If to Employee, to:*

Dante Desiderio  
606 Quincy Street  
Arlington, VA 22204  
nahyssa@gmail.com

This Agreement shall be interpreted under the laws of Washington, District of Columbia.

IN WITNESS THEREOF, the parties have executed this Agreement.

By:  Date: April 12, 2021  
Dante Desigero

By: \_\_\_\_\_ Date: April \_\_\_\_\_, 2021  
Fawn Sharp President, NCAI

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**ATTACHMENT A**  
**Compensation/Benefits/Leave**

**SALARY AND BENEFITS**

**Salary.**

- Desiderio's annual salary will be \$275,000 during the Employment Term and will be paid according to Employer's customary payroll practices.
- Desiderio is eligible for a five percent (5%) annual salary increase based on meeting the goals, metrics and milestones of the organization, effective one year after the Employment Term begins and on the anniversary of the Employment Term every year thereafter.
- All payments of salary, bonuses, or other compensation will be reduced by applicable withholdings and deductions.
- The parties agree the Desiderio is exempt under the Fair Labor Standards Act and applicable state law pursuant to, among other things, the executive and/or administrative exemptions.

**Bonus.** In addition to his annual salary, Desiderio is not guaranteed a bonus, but Desiderio is eligible for an annual bonus at the Executive Committee's discretion based on Desiderio's performance towards meeting the goals, metrics and milestones of the organization.

**Salary Adjustments.** When appropriate, and at the sole discretion of the Executive Committee, a merit salary increase in addition to the guaranteed salary increase described above may be authorized based on Desiderio's performance. The Parties upon mutual agreement may at any time approve an addendum to this Contract that identifies defined annual salary adjustments upon the successful achievement of specifically identified performance-based criteria. To the extent that the Executive Committee authorizes cost of living adjustments for all staff members, Desiderio will be eligible to automatically receive a consistent cost of living adjustment.

**Vacation.** Desiderio is eligible to receive paid vacation leave consistent with the paid vacation leave available to other full-time Employer employees as provided for in the Employment Handbook.

**Employment Benefits.** During the Employment Term, Desiderio and Desiderio's family are eligible to receive all benefits to the extent generally available to other full-time Employer employees and their families. These benefits currently include medical, prescription, dental, disability, group life, accidental death, and retirement plans. In addition, Desiderio is entitled to paid sick leave or other leaves and benefits in accordance with Employer's policies and procedures. Employer reserves the right to modify, amend, or discontinue any of the benefits at any time. Desiderio reserves the right to voluntarily decline participation in any of the benefits at any time. Any such declination shall be in accordance with Employer policies and procedures.

**EXPENSE REIMBURSEMENT**

Business Expenses. Employer will reimburse Desiderio for reasonable and actual expenses incurred during the Employment Term as required in discharging Desiderio's responsibility, including lodging, travel, mileage, meals, and any approved costs incurred in connection with attendance at an approved conference or other program. Desiderio must maintain records of the expenses and timely submit the records to Employer with an explanation of the expense for which Desiderio seeks reimbursement in accordance with Employer's policies.

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**ATTACHMENT B**  
**Additional Arbitration Terms**

**Neutral Arbitrator.** The parties shall select a neutral and unbiased arbitrator according to the procedures established by the AAA for that purpose.

**Expenses of Arbitration.** Under the AAA Employment/Workplace Fee Schedule, the employee's fee is capped at \$300. NCAI (the employer) pays the arbitrator's compensation unless the employee or individual, post dispute, voluntarily elects to pay a portion of the arbitrator's compensation. Arbitrator compensation and administrative fees are not subject to reallocation by the arbitrator except upon the arbitrator's determination that a claim or counterclaim was filed for purposes of harassment or is patently frivolous.

Each party shall bear its own witness fees, costs and attorneys' fees unless the arbitrator otherwise orders one or the other party to bear such fees and costs.

**Discovery.** Both parties may make discovery prior to the arbitration hearing as provided for in the AAA, and as the arbitrator may determine is necessary for each party to adequately arbitrate the claims asserted in the arbitration, including access to essential documents and witnesses.

**Attorneys.** Either party may, but need not, be represented by an attorney of his or its choice at any time during the arbitration process.

**Remedies.** The arbitrator shall not be limited in awarding remedies provided by this Agreement or by any applicable federal, state or local statute, regulation, or executive order, or the common law, so long as the arbitrator finds facts and makes conclusions based on the evidence presented adequate for the award of such remedies.

**Limitation of Arbitrator's Power.** The arbitrator shall have no power to alter, amend or repeal any provision of this Agreement.

**Written Decision and Award.** Within thirty (30) days of the close of the arbitration hearing, or as otherwise agreed to by the parties, the arbitrator shall render a written decision and award. The decision and award shall be based on the facts presented by the parties, this Agreement and applicable law, and shall contain findings of fact and conclusions sufficient for judicial review to the extent required by applicable law.

\*\*\*

# Exhibit 3

## CONSULTING AGREEMENT

**This Consulting Agreement** (“Agreement”) between the National Congress of American Indians, a nonprofit organization, headquartered in Washington, D.C., (and sole owner of the National Congress of American Indians Fund), and the National Congress of American Indians Fund, a trust governed under the laws of the District of Columbia (hereafter “NCAI”), with its principal office located at 1516 P St. NW, Washington, D.C. 20005, and Max Muller & Associates, LLC, a Kansas limited liability company (“Consultant”), with its principal office at 16144 Linden Street, Overland Park, Kansas 66085, is made as of July 1, 2021.

**WHEREAS**, Consultant is a nationally known organization offering consulting and training services to the public related to legal and business matters; and

**WHEREAS**, Consultant employs Max Muller (“Muller”), a natural person, with expertise in legal, Tribal and business matters; and

**WHEREAS**, NCAI desires that Consultant specifically and directly assign Muller, as an employee of Consultant, to provide advice and assistance to NCAI under the terms and conditions of this Agreement; and

**WHEREAS**, the Consultant will specifically and directly assign Muller to provide consulting advice and assistance to NCAI under the terms and conditions of this Agreement; and

**WHEREAS**, the Parties expressly acknowledge their understanding and acceptance that (i) Muller is an attorney licensed to practice law in Missouri, (ii) that Muller is not an attorney licensed to practice law in any other state or US territory, (iii) that Muller does not maintain an office or other physical presence in the District of Columbia, (iv) that Muller has not and will not represent NCAI before any court within the District of Columbia; but as per the American Bar Association's (ABA) Model Rule 5.5, the ABA's (December 16, 2020) Formal Ethics Opinion 495, and District of Columbia Court of Appeals Rule 49, Muller may provide legal information to District of Columbia clients as allowed by the jurisdiction in which he is licensed; and

**WHEREAS**, the Parties expressly acknowledge that much of Muller's consulting advice will arise from his legal background and his knowledge as being a certified Tribal Human Resource Professional (THRP) and extensive business background in structuring and transitioning businesses.

**NOW, THEREFORE**, NCAI and the Consultant hereby agree as follows:

**1. Consulting Services**

- a. Subject to the terms and conditions of this Agreement, Consultant will provide the consulting services set out in Attachment A to this Agreement.
- b. Consultant hereby assigns Muller to provide consulting services and guidance to NCAI in accordance with the terms of this Agreement.

**2. Compensation, Invoicing, Consulting Hours Carryover, Agreement Extensions, and Reimbursement**

- A. Compensation. In exchange for a discounted hourly rate for the Services, NCAI agrees to engage Max Muller, through Max Muller & Associates, LLC (Consultant) at the rate of \$10,500.00 per month over a 12-month period effective July 1, 2021.
- B. Consultant will provide NCAI an invoice monthly for hours worked, which invoice shall detail the days and number of hours worked, and the matters worked on.
- C. Consultant is an independent contractor and will be responsible for all of its own expenses of every nature and type. However, NCAI will reimburse Consultant for reasonable preapproved travel and other expenses Consultant incurs in connection with performing the Services. Preapproval will be given or withheld by NCAI's Chief Executive Officer or his designee. To obtain reimbursement, Consultant will submit to NCAI's Chief Executive Officer or his designee, an invoice describing services rendered and expenses incurred.
- D. Invoices for Services and/or expense reimbursements may be submitted by email to an email provided to Consultant by NCAI.
- E. Invoices will be due and payable no later than the 15th business day of any month.

**3. Independent Contractor Status**

The parties expressly agree that this Agreement creates an independent contractor relationship, not an employment relationship. In its capacity as an independent contractor, Consultant agrees and represents, and NCAI agrees, as follows:

- (a) Neither Consultant nor Muller shall be deemed an NCAI employee.
- (b) Consultant and Muller have the right to perform services for others during the term of this Agreement subject to the confidentiality provisions of this Agreement.
- (c) Consultant has the sole right to control and direct the means, manner, and method by which the Services required by this Agreement will be performed; provided, however, Consultant acknowledges and agrees neither it nor Muller has authority to obligate NCAI to any action or commitment, financial or otherwise, without first obtaining such authority on a case-by-case basis from NCAI 's Chief of Staff or his designee(s). NCAI shall not be considered to be a joint employer of Muller.

#### **4. Business Licenses, Permits, and Certificates**

Consultant represents and warrants that Consultant will comply with all applicable federal, state, local, and Tribal laws, regulations, codes, and/or ordinances in its performance of the Services to be performed under this Agreement.

#### **5. State and Federal Taxes**

NCAI will not:

- withhold FICA (Social Security and Medicare taxes) from Consultant's or Muller's (if any) payments or make FICA payments on Consultant's behalf,
- make state or federal unemployment compensation contributions or payments on behalf of Consultant or Muller, and Consultant and/or Muller will not be entitled to these benefits in connection with work performed under this Agreement; or
- withhold state or federal income tax from Consultant's payments.

Consultant shall pay all applicable taxes incurred while performing any services under this Agreement, including all applicable income taxes and, if Consultant is not or ceases to be a corporation, self-employment (Social Security) taxes.

#### **6. Fringe Benefits**

Consultant understands that neither it nor Muller are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan(s) of NCAI.

## 7. **Workers' Compensation**

NCAI shall not obtain workers' compensation insurance on behalf of Consultant or any of its employees.

## 8. **Insurance**

NCAI shall not provide insurance coverage of any kind for Consultant or its employees.

## 9. **Confidential and Proprietary Information**

Consultant acknowledges that it will be necessary for NCAI to disclose certain confidential and proprietary information to Consultant in order for Consultant to perform duties under this Agreement. Consultant acknowledges that disclosure to a third party or misuse of this proprietary or confidential information would irreparably harm NCAI. Accordingly, Consultant will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of NCAI without NCAI 's prior written permission except to the extent necessary to perform Services on NCAI 's behalf.

### *(a) Proprietary or Confidential information*

Proprietary or confidential information includes, but is not limited to:

- written, printed, graphic, or electronically recorded materials furnished by NCAI for Consultant to use;
- notes, memoranda, and other hard copy or electronic memorialization of in-person, telephonic, text messaging, email or other discussions reasonably understood to be for internal NCAI use;
- any written or tangible information stamped "confidential," "proprietary," or with a similar legend, or any information that NCAI makes reasonable efforts to maintain the secrecy of;
- legislative, business, marketing, and/or publishing plans or strategies;
- customer lists;
- NCAI operating procedures, trade secrets as defined by federal statute and case law, design formulas, know-how and processes, computer programs and inventories, discoveries, and improvements of any kind, sales projections, and pricing information; and



- information belonging to NCAI members, clients, customers and/or suppliers about whom Consultant gained knowledge as a result of Consultant's services to NCAI.

Upon termination of Consultant's services to NCAI, or at NCAI 's request, Consultant shall deliver to NCAI all materials in Consultant's possession relating to NCAI's and/or its clients and/or customers' data.

(b) *Work Product*

- 1) The product of all work performed under this Agreement ("Work Product"), including without limitation all notes, reports, documentation, drawings, computer programs, inventions, creations, works, devices, models, work-in-progress, and deliverables will be the sole property of NCAI; and Consultant hereby transfers and assigns to NCAI all right, title and interest therein, including but not limited to all audiovisual, literary, moral rights, and other copyrights, patent rights, trade secret rights, and other proprietary rights therein, Consultant now has or may have in the future; and quitclaims to NCAI all right, title and interest to the Work Product it now has or may hereafter acquire in any manner. Consultant expressly represents that all work done for it by Muller is work made for hire by which Consultant acquires all ownership rights of any nature and type in such work product. Consultant retains no right to use the Work Product and agrees not to challenge the validity of NCAI 's ownership in the Work Product.
- 2) Consultant hereby assigns to NCAI all right, title, and interest in any and all photographic images and videos or audio recordings made by or for NCAI during Consultant's work for it, including, but not limited to, any royalties, proceeds, or other benefits derived from such photographs or recordings.
- 3) NCAI is entitled to use Consultant's name and/or likeness in advertising and other materials. Consultant may divulge its relationship with NCAI.

(c) *Exclusions from Confidential or Proprietary Information*

Obligations set out in this Paragraph 9 shall not apply to any portion of NCAI Confidential or Proprietary Information which:

- 1) was at the time of disclosure to Consultant part of the public domain by publication or otherwise; or

- 2) became part of the public domain after disclosure to Consultant by publication or otherwise, except by breach of this Agreement; or
- 3) was already properly and lawfully in Consultant's possession at the time it was received from NCAI; or
- 4) was or is lawfully received by Consultant from a third party who was under no obligation of confidentiality with respect thereto; or
- 5) was or is independently developed by Consultant without reference to NCAI Confidential or Proprietary Information; or
- 6) is required to be disclosed by law, regulation or judicial or administrative process.

Consultant acknowledges that any breach or threatened breach of this Confidentiality clause will result in irreparable harm to NCAI for which damages would be an inadequate remedy. Therefore, NCAI shall be entitled to equitable relief, including an injunction, in the event of such breach or threatened breach of the Confidentiality clause of this Agreement.

## 10. **General Terms**

- (a) This Agreement may not be terminated by NCAI during the first 183 days of the Initial time Period except for malfeasance or gross misconduct on the part of Consultant or Muller; and thereafter only for just cause. Should NCAI terminate this Agreement, NCAI shall, within seven (7) calendar days of the notice of cancellation, pay over to Consultant any and all then outstanding payments and expense reimbursements due Consultant, which outstanding payments shall include a pro rata amount for any days within a calendar month for which Services have been provided.
- (b) If Consultant terminates this Agreement by providing no less than 30 days' written notice to NCAI, Consultant shall nevertheless wind up in an orderly fashion assignments for NCAI which Consultant began prior to the date of notice of termination hereunder.
- (c) No alteration or modification of this Agreement shall be valid unless made in writing and executed by Consultant and NCAI's President.
- (d) This Agreement shall be construed and interpreted pursuant to the laws of the District of Columbia applicable to contracts wholly entered into and performed in the District of Columbia.
- (f) Any notice or other communication by one party to the other hereunder shall be in writing and shall be given, and be deemed to have been given, if either hand delivered or mailed, postage prepaid, certified mail (return receipt requested), addressed as follows:

If to Consultant: 16144 Linden Street, Overland Park, Kansas 66085

If to NCAI: 1516 P St. NW, Washington, D.C. 20005

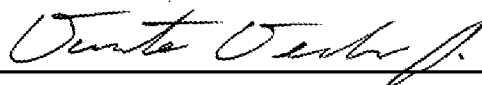
- (g) *Survival* - The duty of Consultant to be bound by its obligation of confidentiality under this Agreement shall survive the termination of this Agreement.
- (h) *Assignment* - This Agreement is not assignable by either party. Any attempt by either Party to assign any of the obligations of this Agreement is void. This Agreement can only be modified by a written agreement signed by both Parties.
- (i) *Partial Invalidity* - If any provision(s) of this Agreement are held invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (j) *Complete Agreement; Counterparts* - This Agreement is the complete and exclusive agreement between NCAI and Consultant regarding the subject matter hereof, which supersedes all proposals or prior agreements, oral or written, and all other communications between NCAI and Consultant relating to the subject matter of this Agreement. This Agreement may be executed in separate counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first written above.

**Max Muller & Associates, LLC**

**National Congress of American Indians  
National Congress of Americans Indians Fund**

By:   
\_\_\_\_\_  
**Max Muller, Principal**

By:   
\_\_\_\_\_  
**Dante Desiderio  
Chief Executive Officer**

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## **ATTACHMENT A - SCOPE OF WORK**

### **SERVICES TO BE PERFORMED**

#### ***Contracts:***

- Craft, evaluate, negotiate and execute a wide variety of different contracts covering a range of transactions.
- Create and maintain relationships with suppliers and serve as the singular point of contact for matters concerning contracts.
- Maintain records for correspondence and documentation in relation to established contracts and those in progress.
- Communicate and present information to stakeholders about all contract-related matters.
- Monitor contracts and move forward with close-out, extension or renewal according to what's best for the organization.
- Solve any contract-related problems that may arise with other parties and internally within the organization itself.
- Assist and guide NCAI staff in negotiating, writing and executing agreements and contracts,
- Research the impacts of current and previous service provider agreements with a view to preventing future contract abuse and waste,

#### ***Human Resources:***

- Review all current HR policies, and draft, revise or delete policies and procedures as needed, with the concurrence and approval of the Chief Executive Officer or his/her designee.
- Act as the organization's equal employment opportunity officer.
- Handle, as necessary and appropriate, personnel disciplinary matters, including investigations of misfeasance and/or malfeasance.
- Assist appropriate staff members in identifying, reviewing, and negotiating employee benefit programs.

#### ***General Legal Matters:***

- Draft or assist with drafting documents of any nature and type, as needed or properly requested.
- Offer counsel on a variety of legal, human resource and general business issues.
- Consulting with advisors on general liability, benefits, stop loss, and other forms of insurance coverage.
- Advise executives within the organization, as requested.
- Work directly with various departments within the organization, as needed or requested.
- Advise on legal risks and legal liabilities associated with different deals.
- Anticipate unique legal issues that could impact the organization.
- Provide guidance to NCAI staff on the legal impacts of various past and future decisions.
- Handle potential litigation and complaints; working with outside counsel or experts as necessary and appropriate.

- Provide such other services as requested or directed by the Chief Executive Officer or his/her designee.

# Exhibit 4

## CONSULTING AGREEMENT

**This Consulting Agreement** ("Agreement") between the National Congress of American Indians, a nonprofit organization, headquartered in Washington, D.C., (and sole owner of the National Congress of American Indians Fund), and the National Congress of American Indians Fund, a trust governed under the laws of the District of Columbia (hereafter "NCAI"), with its principal office located at 1516 P St. NW, Washington, D.C. 20005, and Audit Business Services, Inc., a Missouri corporation, ("Consultant"), with its principal office at 6766 SW Holstein Road, Polo, MO 64671, is made as of July 1, 2021.

**WHEREAS**, Consultant is a nationally known organization offering financial, human resources and general business consulting and training services to the public; and

**WHEREAS**, Consultant employs Pamela Fagan ("Fagan"), a natural person, with significant expertise in financial, legal, Tribal and general business matters; and

**WHEREAS**, NCAI desires that Consultant specifically and directly assign Fagan, as an employee of Consultant, to provide advice and assistance to NCAI under the terms and conditions of this Agreement; and

**WHEREAS**, the Consultant will specifically and directly assign Fagan to provide consulting advice and assistance to NCAI under the terms and conditions of this Agreement; and

**NOW, THEREFORE**, NCAI and the Consultant hereby agree as follows:

1. **NOW, THEREFORE**, NCAI and the Consultant hereby agree as follows:

1. **Consulting Services**

- a. Subject to the terms and conditions of this Agreement, Consultant will provide the consulting services set out in Attachment A to this Agreement.
- b. Consultant hereby assigns Fagan to provide consulting services and guidance to NCAI in accordance with the terms of this Agreement.

2. **Compensation, Invoicing, Consulting Hours Carryover, Agreement Extensions, and Reimbursement**

- A. **Compensation.** In exchange for a discounted hourly rate for the Services, NCAI agrees to engage Pamela Fagan, through Audit Business Services, Inc. (Consultant) at the rate of \$11,000.00 per month over a 12-month period effective July 1, 2021.

- B. Consultant will provide NCAI an invoice monthly for hours worked, which invoice shall detail the days and number of hours worked, and the matters worked on.
- C. Consultant is an independent contractor and will be responsible for all of its own expenses of every nature and type. However, NCAI will reimburse Consultant for reasonable preapproved travel and other expenses Consultant incurs in connection with performing the Services. Preapproval will be given or withheld by NCAI's Chief Executive Officer or his designee. To obtain reimbursement, Consultant will submit to NCAI's Chief Executive Officer or his designee, an invoice describing services rendered and expenses incurred.
- D. Invoices for Services and/or expense reimbursements may be submitted by email to an email provided to Consultant by NCAI.
- E. Invoices will be due and payable no later than the 15th business day of any month or if on a weekend, the next available business day following the 15th.

### **3. Independent Contractor Status**

The parties expressly agree that this Agreement creates an independent contractor relationship, not an employment relationship. In its capacity as an independent contractor, Consultant agrees and represents, and NCAI agrees, as follows:

- (a) Neither Consultant nor Fagan shall be deemed an NCAI employee.
- (b) Consultant and Fagan have the right to perform services for others during the term of this Agreement subject to the confidentiality provisions of this Agreement.
- (c) Consultant has the sole right to control and direct the means, manner, and method by which the Services required by this Agreement will be performed; provided, however, Consultant acknowledges and agrees neither it nor Fagan has authority to obligate NCAI to any action or commitment, financial or otherwise, without first obtaining such authority on a case-by-case basis from NCAI's Chief of Staff or his designee(s). NCAI shall not be considered to be a joint employer of Fagan.

### **4. Business Licenses, Permits, and Certificates**



Consultant represents and warrants that Consultant will comply with all applicable federal, state, local, and Tribal laws, regulations, codes, and/or ordinances in its performance of the Services to be performed under this Agreement.

## **5. State and Federal Taxes**

NCAI will not:

- withhold FICA (Social Security and Medicare taxes) from Consultant's or Fagan's (if any) payments or make FICA payments on Consultant's behalf,
- make state or federal unemployment compensation contributions or payments on behalf of Consultant or Fagan, and Consultant and/or Fagan will not be entitled to these benefits in connection with work performed under this Agreement; or
- withhold state or federal income tax from Consultant's payments.

Consultant shall pay all applicable taxes incurred while performing any services under this Agreement, including all applicable income taxes and, if Consultant is not or ceases to be a corporation, self-employment (Social Security) taxes.

## **6. Fringe Benefits**

Consultant understands that neither it nor Fagan are eligible to participate in any employee pension, health, vacation pay, sick pay, or other fringe benefit plan(s) of NCAI.

## **7. Workers' Compensation**

NCAI shall not obtain workers' compensation insurance on behalf of Consultant or any of its employees.

## **8. Insurance**

NCAI shall not provide insurance coverage of any kind for Consultant or its employees.

## **9. Confidential and Proprietary Information**

Consultant acknowledges that it will be necessary for NCAI to disclose certain confidential and proprietary information to Consultant in order for Consultant to perform duties under this Agreement. Consultant acknowledges that disclosure to a third party or misuse of this proprietary or confidential information would irreparably harm NCAI. Accordingly, Consultant will not disclose or use, either during or after the term of this Agreement, any proprietary or confidential information of NCAI without NCAI 's prior written permission except to the extent necessary to perform Services on NCAI 's behalf.

(a) *Proprietary or Confidential information*

Proprietary or confidential information includes, but is not limited to:

- written, printed, graphic, or electronically recorded materials furnished by NCAI for Consultant to use;
- notes, memoranda, and other hard copy or electronic memorialization of in-person, telephonic, text messaging, email or other discussions reasonably understood to be for internal NCAI use;
- any written or tangible information stamped "confidential," "proprietary," or with a similar legend, or any information that NCAI makes reasonable efforts to maintain the secrecy of;
- legislative, business, marketing, and/or publishing plans or strategies;
- customer lists;
- NCAI operating procedures, trade secrets as defined by federal statute and case law, design formulas, know-how and processes, computer programs and inventories, discoveries, and improvements of any kind, sales projections, and pricing information; and
- information belonging to NCAI members, clients, customers and/or suppliers about whom Consultant gained knowledge as a result of Consultant's services to NCAI.

Upon termination of Consultant's services to NCAI, or at NCAI 's request, Consultant shall deliver to NCAI all materials in Consultant's possession relating to NCAI's and/or its clients and/or customers' data.

(b) *Work Product*

- 1) The product of all work performed under this Agreement ("Work Product"), including without limitation all notes, reports, documentation, drawings, computer programs, inventions, creations, works, devices, models, work-in-progress, and deliverables will be the sole property of NCAI; and Consultant hereby transfers and assigns to NCAI all right, title and interest therein, including but not limited to all audiovisual, literary, moral rights, and other copyrights, patent rights, trade secret rights, and other proprietary rights therein, Consultant now has or may have in the future; and quitclaims to NCAI all right, title and interest to the Work Product it now has or may hereafter acquire in any manner. Consultant expressly represents that all work done for it by Fagan is work made for hire by which Consultant

acquires all ownership rights of any nature and type in such work product. Consultant retains no right to use the Work Product and agrees not to challenge the validity of NCAI 's ownership in the Work Product.

- 2) Consultant hereby assigns to NCAI all right, title, and interest in any and all photographic images and videos or audio recordings made by or for NCAI during Consultant's work for it, including, but not limited to, any royalties, proceeds, or other benefits derived from such photographs or recordings.
- 3) NCAI is entitled to use Consultant's name and/or likeness in advertising and other materials. Consultant may divulge its relationship with NCAI.

*(c) Exclusions from Confidential or Proprietary Information*

Obligations set out in this Paragraph 9 shall not apply to any portion of NCAI Confidential or Proprietary Information which:

- 1) was at the time of disclosure to Consultant part of the public domain by publication or otherwise; or
- 2) became part of the public domain after disclosure to Consultant by publication or otherwise, except by breach of this Agreement; or
- 3) was already properly and lawfully in Consultant's possession at the time it was received from NCAI; or
- 4) was or is lawfully received by Consultant from a third party who was under no obligation of confidentiality with respect thereto; or
- 5) was or is independently developed by Consultant without reference to NCAI Confidential or Proprietary Information; or
- 6) is required to be disclosed by law, regulation or judicial or administrative process.

Consultant acknowledges that any breach or threatened breach of this Confidentiality clause will result in irreparable harm to NCAI for which damages would be an inadequate remedy. Therefore, NCAI shall be entitled to equitable relief, including an injunction, in the event of such breach or threatened breach of the Confidentiality clause of this Agreement.

## **10. General Terms**

- (a) This Agreement may be terminated by either party providing that the terminating party provide no less than 30 days' written notice.

- (b) If Consultant terminates this Agreement by providing no less than 30 days' written notice to NCAI, Consultant shall nevertheless wind up in an orderly fashion assignments for NCAI which Consultant began prior to the date of notice of termination hereunder.
- (c) No alteration or modification of this Agreement shall be valid unless made in writing and executed by Consultant and NCAI's President.
- (d) This Agreement shall be construed and interpreted pursuant to the laws of the District of Columbia applicable to contracts wholly entered into and performed in the District of Columbia.
- (f) Any notice or other communication by one party to the other hereunder shall be in writing and shall be given, and be deemed to have been given, if either hand delivered or mailed, postage prepaid, certified mail (return receipt requested), addressed as follows:

If to Consultant: 6766 SW Holstein Road, Polo, MO 64671


If to NCAI: 1516 P St. NW, Washington, D.C. 20005

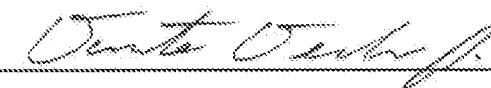
- (g) *Survival* - The duty of Consultant to be bound by its obligation of confidentiality under this Agreement shall survive the termination of this Agreement.
- (h) *Assignment* - This Agreement is not assignable by either party. Any attempt by either Party to assign any of the obligations of this Agreement is void. This Agreement can only be modified by a written agreement signed by both Parties.
- (i) *Partial Invalidity* - If any provision(s) of this Agreement are held invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- (j) *Complete Agreement; Counterparts* - This Agreement is the complete and exclusive agreement between NCAI and Consultant regarding the subject matter hereof, which supersedes all proposals or prior agreements, oral or written, and all other communications between NCAI and Consultant relating to the subject matter of this Agreement. This Agreement may be executed in separate counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first written above.

**AUDIT BUSINESS SERVICES, INC.**

**National Congress of American Indians  
National Congress of Americans Indians Fund**

By: 

By: 

## APPENDIX A – SCOPE OF WORK

The scope of services is intended to not only ensure proper operations of NCAI but also work with leadership in providing an efficient and supportive work environment. The work is anticipated to include, but not be limited to the following:

### 1. Operations Services

- Conduct an assessment of each of the Operations Department team's needs and provide solutions to help streamline processes, grow efficiency, and support team members in their service to Indian Country. Use integration of systems to build a cohesive team environment.
  - Teams include; administration, finance, grants management, and human resources.  
Note: Information technology and Finance are part of the Operations Department however will be undergoing separate assessments in conjunction with the Operations Department.
  - Assessment could include solutions to looking at new or restructuring of positions to support the organization of this size.
  - Provide recommendations on trainings, software, or other best practices for the Department.
- Recommend an optimal organizational model for the Operations team.
- Develop strategies to shift Operations into a stronger and cohesive team environment.
- Review the organizational structure and distribution of NCAI policy and procedures.
- Rewrite NCAI policy and procedures as needed for newly formed systems as a result of assessment.

### 2. Human Resources (HR) Services

- Develop and implement HR strategies that will support the following:
  - HR Reporting
  - Personnel Management
  - Compensation Management
  - Performance Evaluations
- Research an effective HRIS/Payroll (HCM – Human Capital Management) system to implement to support the growing organization.
- Incorporate tools for HR staff to create and evaluate trainings that will allow the organization to stay compliant with federal and state laws, while also supporting the professional development of the NCAI staff.
- Review and rewrite where necessary all current job descriptions and identify performance measures based on industry standards.

- Work to develop an organizational chart that will create a cohesive team environment in all aspects of NCAI operations.
- Assess and review current employee handbook for recommended updates to policies.

### 3. Finance Services

- Develop timelines and processes for regular financial reporting to include P&L, cash flow statements, balance sheets, Form 990 preparation and review.
- Work with grants management team and outside consultant to create a cohesive reporting and review program to account for all grant direct and indirect costs for compliance.
- Introduce resources for thorough audit procedures to measure compliance of grant requirements.
- Work with outside auditors to ensure all areas of compliance are in place to secure a positive annual certified audit report.
- Update and rewrite accounting policies and procedures for internal control purposes that align with newest procedures developed under re-organization of NCAI structure.
- Develop strategy to develop stronger compliance guidelines for grants management and other developmental departments (e.g. membership, sponsorship, etc.)
- Audit and review current billing codes and help establish codes more aligned with function and effort.
- Assess and determine needs analysis for accounting software. Work with IT consulting to determine the best integration of all systems (ERP, CRM, HCM) to accomplish organizational goals.
- Develop strategy and recommendation for upgrade or change in accounting financial system to align with organizational goals.
- Develop strategy to further the team's effort to move to use of cloud technology for financial documentation.
- Evaluate processes to identify areas where automation may assist with time management and accuracy.

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

DANTE DESIDERIO,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2022 CA 2830 B
	)	Judge Juliet J. McKenna
NATIONAL CONGRESS OF AMERICAN	)	
INDIANS, <i>et al.</i>	)	
	)	
Defendants.	)	Next Event: Initial Hearing
	)	Sept. 23, 2022

**[PROPOSED] ORDER GRANTING  
DEFENDANTS’ MOTION TO DISMISS OR,  
ALTERNATIVELY, TO COMPEL ARBITRATION**

Upon consideration of the Motion to Dismiss Or, Alternatively, To Compel Arbitration filed on September 2, 2022, by Defendant National Congress of American Indians (the “Motion”), and its Memorandum of Points and Authorities, as well as Plaintiff’s Opposition thereto, if any, it is:

**ORDERED** that the Motion is **GRANTED**, and that Plaintiff’s Complaint is dismissed, with prejudice, in its entirety.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Associate Judge

Copies to all counsel of record:

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