

**CONTRACT TO OBTAIN SERVICES
FROM
MISSISSIPPI STATE UNIVERSITY**

[September 2005 Edition]

This Agreement is between _____, hereinafter referred to as “_____”, a corporation organized and existing under the laws of the State of _____ with its corporate address being _____, and Mississippi State University, a governmental entity of the State of Mississippi, hereinafter referred to as “MSU”, with its address at P. O. Box _____, Mississippi State, Mississippi 39762 for and on behalf of its _____ (hereinafter _____). _____ and MSU are collectively referred to as the “parties.” _____ desires to obtain certain, specific (educational) (research) services from MSU. In return, MSU desires to obtain adequate and market value consideration and compensation for providing the educational/research services.

I.
TERMS

A. Term of Contract

This agreement shall not be effective unless and until both parties have executed this agreement, with MSU executing the agreement last, and the effective date of this agreement shall be the date this agreement is executed by MSU. The term of this agreement shall be for [one (1) year] from the effective date of this agreement at which time this agreement shall automatically expire. However, upon a separate, mutual written agreement executed by the parties not less than thirty (30) days prior to the expiration of this agreement, a renewal agreement may be entered under terms mutually agreeable to the parties at that time.

B. _____ shall:

1. Pay MSU according to the following payment schedule:

2. Refrain from using MSU’s name, work mark, or other university identifier without first obtaining written authorization to do so from the MSU Licensing & Trademark Manager.
3. Refrain from using the name or title of any MSU official without first obtaining written authorization to do so from the MSU Licensing & Trademark Manager.
4. Refrain from projecting the product, or the work entailed therewith, as being approved by or otherwise endorsed by MSU, its entities or officials without the express written advance authorization of the authorized MSU official.
5. Hold the State of Mississippi, MSU and its related entities, as well as their agents, officials, employees, and servants harmless and indemnify the same from any and all claims or other demands resulting from or otherwise created by and resting on the creation, transfer and/or sale of the educational/research materials, and/or the action of MSU with regard to the performance of the educational and/or research activities.

C. MSU shall:

1. _____.
2. _____.

II. CONDITIONS

A. Availability of Funds

It is expressly understood and agreed that the obligation of MSU to proceed under this agreement is conditioned upon the availability and receipt of funds by MSU to specifically perform the obligations set forth for MSU under this agreement.

B. No MSU Funding

It is expressly understood and agreed that the obligation of MSU to proceed under this agreement is conditioned upon the receipt by MSU of funds or other mutually agreed upon consideration from _____ to specifically perform the obligations set forth for MSU under this agreement. No MSU funds are obligated for payment or disbursement or envisioned as being encumbered under this agreement to any party at any time.

C. Representation Regarding Contingent Fees and Gratuities

_____ represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. Further, _____ represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in state law.

D. MSU Responsibility

MSU shall be responsible for liability resulting from the actions/inactions of its officers, agents, and employees acting within the course and scope of their official duties with MSU to the degree and within the parameters permitted under §§11-46-1, *et seq.*, Mississippi Code Annotated of 1972.

E. Attorneys' Fees and Expenses

_____ agrees that in the event _____ defaults in any obligations under this agreement that _____ shall pay to MSU all costs and expenses, including, but not limited to, attorneys' fees incurred by MSU in enforcing this agreement.

F. Authority to Contract

_____ warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and is in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind, and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings or prospective legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

G. Disputes

The parties agree that any and all disputes between the parties to this agreement may, if mutually agreeable to both parties, be subjected to voluntary mediation and that such disputes are subject to final resolution if said voluntary mediation efforts result in a written resolution agreement executed by both parties.

H. Failure to Enforce

The failure by either party at any time to enforce the provisions of this agreement shall not be construed as a waiver of any such provision. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of either party to enforce the provision at any time in accordance with its terms.

I. Indemnification

_____ and its officers shall indemnify, defend, save and hold harmless, protect, and exonerate the State of Mississippi, the Board of Trustees of State Institutions of Higher Learning, MSU, and each of their officers, agents, employees, and representatives, both in their official and in their individual capacities from and against all claims, demands, liabilities, suits, actions, damages, losses and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, attorneys' fees, arising out of or caused by _____ and its' partners, principals, officers, agents, employees and representatives related to actions or inactions of _____, its partners, principals, officers, agents, employees and representatives. In MSU's sole discretion, _____ may be allowed to control the defense of any such claim, suit, etc., but in such an event, _____ shall use legal counsel acceptable to MSU. _____ shall be solely responsible for all costs and/or expenses associated with such defense and MSU shall be entitled to participate in said defense. _____ shall not settle any claim, suits, etc., without MSU's written concurrence, which concurrence MSU shall not unreasonably withhold.

J. Patents and Copyrights

() covenants to save, defend, keep harmless, and indemnify the State of Mississippi, the Board of Trustees of State Institutions of Higher Learning, MSU, and each of their officers, agents, employees, and representatives, both in their official and in their individual capacities, from and against all claims, losses, damages, injury, fines, penalties, and costs, including court costs and attorneys' fees, charges, and any other liability and exposure however caused for or on account of any copyright or patent infringement that may result from the activities related to this agreement and the actions/inactions thereunder by the parties that derive from submissions provided to MSU by () or from the use of publications which () may otherwise request MSU to utilize. This indemnification is not separate from that set forth elsewhere in this agreement and is not a limitation thereon, but instead is in conjunction therewith and is recited to ensure that the full breadth of the indemnification provisions contained elsewhere in this agreement are understood by the parties.

K. Independent Contractor

_____ shall at all times be regarded as and shall be legally considered an independent contractor and neither _____ nor its employees shall, under any circumstances, be considered servants, agents or employees of MSU, and MSU shall at no time be legally responsible for any negligence or other wrongdoing by _____, its partners, principals, officers, agents, employees or representatives. MSU shall not be responsible for any federal or state unemployment tax, federal or state income taxes, Social Security taxes, or any other amounts for the benefit of _____ or any of its partners, principals, officers, agents, employees or representatives. MSU shall not provide to _____, its partners, principals, officers, agents, employees or representatives any insurance coverage or other benefits, including, but not limited to, Workers' Compensation, which are normally provided by MSU to its employees. _____'s personnel shall not be deemed in any way, directly, indirectly, expressly or by implication, to be employees of MSU. Nothing contained in this agreement or otherwise shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any similar relationship between MSU and _____.

At no time shall ____ be authorized to do so and at no time shall ____ act as an agent for or of MSU.

L. MSU - Independent Contractor

MSU shall at all times be regarded as and shall be legally considered an independent contractor and neither MSU nor its employees shall, under any circumstances, be considered servants, agents or employees of (), and () shall at no time be legally responsible for any negligence or other wrongdoing by MSU, its partners, principals, officers, agents, employees or representatives. () shall not be responsible for any federal or state unemployment tax, federal or state income taxes, Social Security taxes, or any other amounts for the benefit of MSU or any of its partners, principals, officers, agents, employees or representatives. () shall not provide to MSU, its partners, principals, officers, agents, employees or representatives any employee insurance coverage or other benefits, including, but not limited to, Workers' Compensation, which are normally provided by () to its employees. MSU's personnel shall not be deemed in any way, directly, indirectly, expressly or by implication, to be employees of (). Nothing contained in this agreement or otherwise shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturers, or any similar relationship between () and MSU. At no time shall MSU be authorized to do so and at no time shall MSU act as an agent for or of ().

M. Equal Employment Opportunity

____ represents and understands that MSU is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination. ____ agrees that during the term of this agreement that ____ will strictly adhere to this policy in its employment practices and the provision of its services.

N. Assignment Prohibition

____ agrees that it shall not attempt to nor shall it assign this agreement to any party and that any attempt to do so shall be void.

O. No Third Parties

There are no other parties to this agreement. No obligations to third parties are provided herein, whether by the express or implied terms and conditions. Neither party shall be liable to any third party based upon this agreement, its terms and conditions, or a party's actions taken hereunder.

P. No Other Terms, Conditions, or Understandings

The parties hereto acknowledge that this Agreement sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof and constitutes the full and complete Agreement in this matter by and between the parties hereto, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

Q. Modifications to Agreement

This agreement may be modified only by a written amendment authorized by and executed by the parties. No oral statements of any person shall modify or otherwise affect the terms, conditions or specifications stated in this agreement.

R. Notices

All notices required or permitted to be given under this agreement must be in writing and personally delivered or sent by certified U.S. Mail, postage prepaid, return receipt

requested, to the persons at the addresses shown below. The parties agree to notify the other in writing of any change of address.

For _____:

For MSU jointly at:

AND

S. Ownership of Documents and Work Papers

MSU shall own all documents, files, reports, work papers and working documents, electronic or otherwise, created by MSU in connection with this agreement.

T. Severability

If any part of this agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the agreement, and to that end the provisions hereof are severable. In such an event, the parties shall amend the agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

U. Termination for Convenience

MSU may, when the interests of MSU so require, terminate this agreement in whole or in part for the convenience of MSU. Written notice of the same is required to be provided by MSU and shall allow no less than six months notice prior to the effective date of the termination.

V. Termination for Cause

Either party may terminate this agreement upon issuance of written notice if the other party fails to perform the obligations to the other party under this agreement. The party issuing such a termination notice may allow 30 days within which the other party may attempt to cure the failure to fulfill its obligations, but such 30 day cure time is not required.

W. Obligations Surviving Termination or Expiration of Agreement

All obligations of _____ under this agreement shall remain in effect after termination of or expiration of the agreement except those in subsections _____ of Section _____. MSU's obligations under this agreement shall cease upon issuance of notice of termination, except that upon issuance of a notice of termination for convenience, MSU shall continue to perform the education service required by subsections _____ of Section ___ for six months from the date of the issuance by MSU of the termination for convenience notice.

X. Inspection of Books and Records

MSU shall have the right to inspect and audit the books and records of _____ at reasonable times and places. Such books and records shall be retained and maintained by _____ for a minimum of three years following the termination of or the expiration of this agreement.

Y. Applicable Law

This contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of this state. ____ shall comply with applicable federal, state, and local laws and regulations.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT ON THE DATES SHOWN BELOW.

_____, INC.

BY: _____ / _____
Date

STATE OF MISSISSIPPI
COUNTY OF OKTIBBEHA

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, _____, who acknowledged himself/herself to be the [President] of _____, Inc., a corporation, and that he/she, as such officer, being authorized so to do, executed and delivered the foregoing instrument for the purposes therein contained, by signing the name of the corporation by himself/herself as such officer.

In witness whereof, I hereunto set my hand and official seal on this the _____ day of _____, 2005.

NOTARY PUBLIC

(SEAL) My commission expires: _____

MISSISSIPPI STATE UNIVERSITY

BY: _____ / _____
Date

STATE OF MISSISSIPPI
COUNTY OF OKTIBBEHA

Personally appeared before me, the undersigned authority in and for the jurisdiction aforesaid, _____, who acknowledged himself to be the [_____] of MISSISSIPPI STATE UNIVERSITY, an institution of higher learning in the State of Mississippi, and that he, as such officer, being authorized so to do, executed and delivered the foregoing instrument for the purposes therein contained, by signing as such officer.

In witness whereof, I hereunto set my hand and official seal on this the _____ day of _____, 2005.

NOTARY PUBLIC

(SEAL) My commission expires: _____