

SPECIFIC MEMORANDUM OF AGREEMENT

Between



**MISSISSIPPI STATE
UNIVERSITY™**

**Mississippi Agricultural and Forestry Experiment Station
Box 9740, Mississippi State, MS 39762**

**Mississippi State University Extension Service
Box 9601, Mississippi State, MS 39762**

**Mississippi State University Forest and Wildlife Research Center
Box 9680, Mississippi State, MS 39762**

And

(Sponsor)

This Agreement is between _____, hereinafter referred to as "SPONSOR", 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", for and on behalf of its Mississippi Agricultural and Forestry Experiment Station, Forest and Wildlife Research Center or its Mississippi State University Extension Service with its address respectively at either P. O. Box 9740, Mississippi State, Mississippi 39762, or P.O. Box 9680, Mississippi State, Mississippi 39762, or P. O. Box 9601, Mississippi State, Mississippi 39762. SPONSOR and MSU are collectively referred to as the "parties."

WHEREAS, SPONSOR desires to obtain certain, specific (educational) (research) services from MSU.

WHEREAS, in return, MSU must obtain 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. The period of performance is from _____ to _____.

B. SPONSOR shall:

1. Pay MSU the following amounts according to the following payment schedule:

_____.

[Note to SPONSOR: The SPONSOR is requested to return a signed copy of this agreement and a check (made payable to Mississippi State University) to the appropriately identified address above.]

[MSU Employer Identification Number is 64-6000819]

2. SPONSOR shall not use the names, logos, trademarks, or any other mark or image considered by MSU to be identified with or protected by MSU, or those of any of the institution's employees or former employees, or any adaptation thereof, in any advertising, promotional or sales literature without prior written consent

being obtained from the MSU Licensing Program Office, and either the MAFES/FWRC Director or MSU/ES Director, and the Vice President for Agriculture, Forestry and Veterinary Medicine, in each case, except that SPONSOR may state that SPONSOR has employed MSU to perform services for the SPONSOR under this Agreement.

- C. MSU shall provide the following described services:
1. Conduct the research in a professional manner;
 2. Maintain an accurate accounting of the funds; and,
 3. Provide the SPONSOR with an annual report of progress and/or termination report upon completion of the below identified project.
 4. The project is, or purpose of the project is, to:

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 SPONSOR 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

SPONSOR 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, SPONSOR 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. Authority to Contract

SPONSOR 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.

E. 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.

F. 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.

G. Indemnification

SPONSOR 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 SPONSOR and its' partners, principals, officers, agents, employees and representatives related to

actions or inactions of SPONSOR, its partners, principals, officers, agents, employees and representatives. In MSU's sole discretion, SPONSOR may be allowed to control the defense of any such claim, suit, etc., but in such an event, SPONSOR shall use legal counsel acceptable to MSU. SPONSOR shall be solely responsible for all costs and/or expenses associated with such defense and MSU shall be entitled to participate in said defense. SPONSOR shall not settle any claim, suits, etc., without MSU's written concurrence, which concurrence MSU shall not unreasonably withhold.

H. 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.

I. Attorneys' Fees and Expenses

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

J. Patents and Copyrights

SPONSOR 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 SPONSOR or from the use of publications which SPONSOR 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. 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 SPONSOR, and SPONSOR shall at no time be legally responsible for any negligence or other wrongdoing by MSU, its principals, officers, agents, employees or representatives. SPONSOR 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 principals, officers, agents, employees or representatives. SPONSOR shall not provide to MSU, its 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 SPONSOR to its employees. MSU's personnel shall not be deemed in any way, directly, indirectly, expressly or by implication, to be employees of SPONSOR. 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 SPONSOR 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 SPONSOR.

L. Equal Employment Opportunity

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

M. Assignment Prohibition

SPONSOR 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.

N. 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.

O. 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.

P. 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.

Q. 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 SPONSOR:

For MSU jointly at:

Office of Sponsored Projects
P.O. Box 9564
Ms. State, MS 39762

AND

R. 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. Rights to initial publication, formal release or other disclosure of data generated from these services will be retained by MSU. Results of this investigation are not to be published by the SPONSOR or others before publication by MSU except by written permission from MSU.

S. Equipment

Title to any equipment purchased, manufactured, or otherwise acquired in the course of the work under this agreement shall vest in MSU, notwithstanding any contribution directly or indirectly from SPONSOR.

T. Intellectual Property

- i. Definitions As used herein, "Intellectual Property" means individually and collectively all inventions, improvements, or discoveries and all works of authorship, excluding articles, dissertations, theses, and books, which are generated in the performance of the research during the Period. Invention, (the "Invention") means any invention conceived or reduced to practice in the performance of the research agreement during the Contract Period.
- ii. Title Each party shall retain title to Inventions and other Intellectual Property developed by their respective employees. In the event that employees of more than one party make an Invention, the Invention shall be jointly owned by the parties employing the inventors. Any question of Inventorship shall be determined in accordance with U.S. Patent law.
- iii. Disclosure The parties agree to disclose to each other, in writing, each and every Invention, which may be patentable or otherwise protectable under the United States patent laws in Title 35, United States Code. The parties acknowledge that they will disclose Invention(s) to each other within 3 months after their respective inventor(s) first disclose the Invention in writing to person(s) responsible for patent

matters of the disclosing Party. All written disclosures of such Inventions shall contain sufficient detail of the Invention, identification of any statutory bars and shall be marked confidential.

- iv. Patent Prosecution - Inventions Each party, at its cost and expense, may apply for, acquire and maintain in the United States and in other countries as necessary forms of patents or protection registrations, or other intellectual property rights covering Inventions developed solely by their respective employees.
- v. Patent Prosecution – Joint Inventions The parties shall consult regarding preparation and filing of United States and foreign patent applications for jointly owned Inventions. The party designated to file an application will provide the other, on a confidential basis, a copy of any such application filed and any documents received or filed during prosecution thereof with the opportunity to comment thereon. The parties will cooperate in obtaining execution of any necessary documents by their employees.
- vi. License Rights – University Inventions. In recognition of Sponsor's contribution to this project, Sponsor shall be entitled to negotiate a royalty-bearing exclusive license to University owned Inventions. Sponsor's right to such license is subject to the negotiation of reasonable terms and conditions with Sponsor within one (1) year following the expiration of the Period of Performance or Termination of this Agreement, whichever comes first.
- vii. License Rights – Joint Inventions. Both Sponsor and University shall be entitled to license, assign, sublicense and exploit jointly owned Inventions with no accounting to each other or any third party provided, however that Sponsor shall be entitled to negotiate a royalty-bearing exclusive license to University's interest in Joint Inventions. Sponsor's right to such license is subject to the negotiation of reasonable terms and conditions with Sponsor within one (1) year following the expiration of the Period of Performance or Termination of this Agreement, whichever comes first
- viii. Background Intellectual Property "Background Intellectual Property" means Intellectual Property and the legal right therein of either or both parties developed before or independent of this Agreement including inventions, patent applications, patents, copyrights, trademarks, mask works, trade secrets and any information embodying proprietary data such as technical data and computer software. This Agreement shall not be construed as implying that either party hereto shall have the right to use Background Intellectual Property of the other in connection with this research except as otherwise provided by mutual agreement.
- ix. Software Where the deliverable, scope or purpose of this agreement is to develop computer software, anything in this agreement to the contrary notwithstanding, the deliverable shall be an executable format of the software and does not include source code.
- x. Other Scholarly Products Other than Computer Software the Sponsor acknowledges that this contract in no way constitutes a work made for hire as described in the Copyright Act of 1976, 17 USC 101, and as such understands that all written materials, reports, and articles that may result from conduct under this project shall be copyrighted by the University. Sponsor shall have an unlimited, royalty-free license to use, reproduce, translate or publish such material when submitted to Sponsor as a deliverable under this Agreement; and, to grant this license to any sublicensee. The University shall in no way limit the dissemination and/or utilization of such material and data as shall arise from the work performed under the contract.
- xi. Government Rights. Intellectual Property developed by University is subject to all applicable laws and regulations, including Public Laws 96-517 and 98-620 and implementing regulations including 35 USC §§200-211. When required by such laws, University shall include a statement in any patent application fully identifying such government right; and University acknowledges that the United States Government has the right to a worldwide, non-exclusive, royalty-free license to practice any patent arising from University owned Intellectual Property, notwithstanding anything in this Agreement to the contrary. In addition, Inventions that are subject to a non-exclusive royalty-free license to the United States government shall be manufactured substantially in the United States.

U. 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.

V. 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 60 days' notice prior to the effective date of the termination.

W. 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.

X. Applicable Law

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

**MISSISSIPPI STATE UNIVERSITY
CONCURRENCE:**

Name of SPONSOR (Printed or Typed)

Name of Scientist (Printed or Typed) *Date*

Name of Authorized Official of SPONSOR

Signature of Scientist *Date*

Title (printed or typed)

Department Head Signature *Date*

Signature *Date*

Director, MAFES/FWRC/Extension Service *Date*

APPROVED:

Director, Office of Sponsored Projects *Date*