

## CONSULTANT/INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between Ferris State University ("the University"), a constitutional body corporate of the State of Michigan, located at \_\_\_\_\_, Big Rapids, Michigan 49307 and \_\_\_\_\_ located at \_\_\_\_\_, a corporation organized and existing under the laws of the State of \_\_\_\_\_, with authority to do business in the State of Michigan ("Consultant").

*Whereas*, the University desires to obtain the services of Consultant; and

*Whereas*, Consultant claims to have expertise and experience to provide such services for the University.

*Now, Therefore*, the parties have agreed to the following terms and conditions:

### TERMS

Consultant agrees to perform such professional services, with the standard of professional care and skill customarily provided in the performance of such services as are set forth in this Agreement, and the University agrees to pay Consultant such amounts as are specified in this Agreement, all upon the following terms and conditions:

#### 1. Scope of Service.

- A. Consultant agrees to provide the services described as follows: \_\_\_\_\_  
\_\_\_\_\_  
("Consulting Services").
- B. Consultant agrees to perform the Consulting Services to the satisfaction of the University from time to time during the term of this Agreement.
- C. The University's liaison overseeing the Consulting Services provided under this Agreement is \_\_\_\_\_, who is located at \_\_\_\_\_.

#### 2. Fees and Expenses.

- A. In consideration for the services to be provided by Consultant under this Agreement, the University agrees to pay Consultant a fee of \_\_\_\_\_ dollars (\$\_\_\_\_) for Consulting Services.
- B. The total fee, and incidentals if any, shall be payable as follows: \_\_\_\_\_.
- C. Consultant agrees that Consultant is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities, and that the University will not deduct such taxes from any payments to Consultant hereunder.

- D. The University shall reimburse the following incidental out-of-pocket expenses to an amount reasonable and necessary for the performance of the Consulting Services: [limits/caps]
- E. Consultant shall submit an invoice and adequate receipts and documentation as requested by University to support reimbursement of all reimbursable out-of-pocket expenses.

**3. Term.**

The Consulting Services to be rendered by Consultant under this Agreement shall commence not later than \_\_\_\_\_ and be completed by \_\_\_\_\_. Time is of the essence in this Agreement. This term may be extended beyond such completion date if the University agrees to the extension in writing.

**4. Contractor's Capacity and Responsibilities.**

- A. It is expressly understood that Consultant is an independent contractor and not the agent, partner, or employee of the University. Consultant and Consultant's workers, if any, are not employees of the University and are not entitled to tax withholdings, Workers' Compensation, unemployment compensation, or any employee benefits, statutory or otherwise by the University.
- B. Consultant shall not have the authority to enter into any contract or agreement to bind the University and shall not represent to anyone that Consultant has such authority.
- C. Consultant represents and warrants to the University that in performing the Consulting Services, Consultant will not be in breach of any agreement with a third party.
- D. Consultant declares that he/she is not a Legislator, elected or appointed officer, or that his/her firm is not owned or controlled by any Legislator, elected or appointed officer, compensated or uncompensated, member of a State board or commission, or other employee of the State of Michigan (including an employee, officer, or official of Ferris State University).
- E. Consultant agrees that they are subject to the University's regulations, laws of the United States, and the laws of the State of Michigan and that in the event of violation of these, or behavior which is considered to be detrimental to students or the University, the University shall have the right to dismiss Consultant without prior notice.

**5. Confidentiality of Information**

Consultant agrees to keep confidential and not to disclose to third parties any information provided by the University pursuant to this Agreement unless Consultant has received prior written consent of the University to make such disclosure. This obligation of confidentiality does not extend to any information that:

- A. Was in the possession of Consultant at the time of disclosure by the University, directly or indirectly;
- B. Is or shall become, through no fault of Consultant, available to the general public; or

- C. Is independently developed and hereafter supplied to Consultant by a third party without restriction or disclosure.

This provision shall survive expiration and termination of this Agreement.

## **6. Property Rights and Reports.**

- A. Consultant agrees that any computer programs, software, documentation, copyrightable work, discoveries, inventions, or improvements developed by Consultant solely, or with others, resulting from the performance of Consulting Services pursuant to this Agreement are the property of the University and Consultant agrees to assign all rights therein to the University. Consultant further agrees to provide the University with any assistance which the University may require to obtain patents or copyright registrations, including the execution of any documents submitted by the University.
- B. Consultant shall provide \_\_\_\_ copies of a written report within \_\_\_\_ days after the completion of the Consulting Services required by this Agreement; also the parties agree that the report was specifically ordered and commissioned by the University, and is a work for hire as such term is used and defined the Copyright act. Accordingly, the University shall be considered the author thereof, and the sole and exclusive owner throughout the world forever of all rights existing therein, including all manuscripts, reports, sketches, drafts, notes, maps, memoranda, etc., relating to the work, and all revisions, editions, and version thereof in all languages, forms, and media now or hereafter known and developed.

This provision shall survive the expiration and termination of this Agreement.

## **7. Suspension or Termination of Contract.**

The University reserves the right to suspend indefinitely or terminate the contract and the Consulting Services to be rendered by Consultant upon oral or written notice to Consultant for any reason upon \_\_\_\_ days' notice. In the event of termination prior to completion of all stop work described in Section 1.0, the amount of the total fee to be paid Consultant shall be determined by the University on the basis of the portion of the total work actually completed up to the time of such termination.

## **8. Insurance.**

Consultant shall at its own expense obtain and maintain public liability insurance against personal bodily injury in the sum of not less than \_\_\_\_\_ dollars (\$\_\_\_\_\_) and against property damage in the amount of not less than \_\_\_\_\_ dollars (\$\_\_\_\_\_) with bodily injury and property damage liability insurance in the amount of not less than \_\_\_\_ dollars (\$\_\_\_\_\_) for each person for bodily liability and \_\_\_\_\_ dollars (\$\_\_\_\_\_) each occurrence for property damage liability to cover such liability caused by, or arising out of, activities of Consultant and its agents, and/or employees while engaged in preparing for, the Consulting work, or such other insurance that is required by the University, and shall furnish certificates of insurance evidencing that such insurance has been procured prior to commencement of such work.

## **9. Indemnification and Hold Harmless.**

- A. Consultant agrees that any personal injury to Consultant or third parties or any property damage incurred in the course of performance of the Consulting Services shall be the responsibility of Consultant.
- B. Consultant agrees to indemnify the University, its governing board, officers, employees, agents, and students from and against any and all costs, losses, damages, liabilities, expenses, demands, and judgments, including court costs and attorney's fees, which may arise out of Consultant's performance of the Consulting Services, except to the extent such are caused by the sole fault or negligence of the University.

**10. Notice.**

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be served either personally or by registered or certified mail addressed as follows:

To the University:

To Consultant:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

**11. Entire Agreement; Modification.**

This Agreement (and its attachments, if any) constitutes the entire understanding between the parties with respect to the subject matter hereof and may not be amended except by an agreement signed by Consultant and an authorized representative of the University.

**12. Severability.**

The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable.

**13. Governing Law; Forum.**

This Agreement shall be governed by and construed under the laws of the State of Michigan, which shall be the forum for any lawsuits arising from or incident to this Agreement.

**14. Compliance with Laws.**

Each party will be individually responsible for compliance with all laws, including anti-discrimination laws, which may be applicable to their respective activities under this Agreement.

**15. Non-Waiver.**

The delay or failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

**16. Assignment.**

Consultant may not assign the rights or obligations under this Agreement with the University's prior written consent.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on this \_\_\_ day of \_\_\_\_\_, 2009.

FOR THE UNIVERSITY:

FOR CONSULTANT:

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_