

OFFICIAL VISITOR AGREEMENT
Between
Mississippi State University
And

v. 11.05.2018

This Official Visitor Agreement (herein "Agreement") made and effective as of _____ (herein "Effective Date") by and between _____ ("COLLABORATING ENTITY") having its principal office at _____ and MISSISSIPPI STATE UNIVERSITY, ("MSU") having an office at 3001 Lee Hall, Mississippi State, MS 39762.

WHEREAS, the COLLABORATING ENTITY will send, _____ ("VISITOR") to MSU as a _____ to perform a Scholarly/Research Project (defined after), MSU shall accept Visitor from the COLLABORATING ENTITY and MSU shall assign a MSU Collaborator (defined after) to perform the Scholarly/Research Project, and

WHEREAS, the Scholarly/Research Project contemplated by this Agreement to be performed at MSU, is of mutual interest and benefit to MSU and to the COLLABORATING ENTITY, and will further the instructional and research objectives of MSU in a manner consistent with its mission.

NOW, THEREFORE, the parties agree as follows:

1. **SCHOLARLY/RESEARCH PROJECT.** VISITOR will perform Scholarly/Research Project entitled _____, and more fully described in Attachment A ("Project Description").

2. **UNIVERSITY APPOINTMENT.** MSU has appointed VISITOR as a _____ in the Department of _____ in the MSU College of _____ for a term beginning _____ and ending _____. Reappointment of VISITOR for additional periods, or termination of such appointment, shall be in the sole discretion of MSU.

During the period of VISITOR's appointment as a _____, MSU agrees that VISITOR shall have the privileges of a _____ at MSU and will have access to and the opportunity to use scholarly/research facilities and equipment useful for investigation in the field of _____ in the _____ Department in the College of _____, or in such other facilities as MSU may designate, for educational and research purposes consistent with the objectives of this Agreement and applicable MSU's policies and procedures.

During the period of VISITOR's appointment as a _____, VISITOR shall abide by and be subject to all applicable MSU policies, procedures and guidelines.

Unless otherwise agreed in writing by the parties or unless VISITOR is deemed VISITING FACULTY by MSU, the COLLABORATING ENTITY or VISITOR shall be responsible for all costs and expenses incurred by the VISITOR OR COLLABORATING ENTITY under this Agreement, including, but not limited to, wages, fringe benefits, medical expenses, travel and living expenses. Any taxes due to the State of Mississippi or the Government of the United States shall be the direct responsibility of the VISITOR and/or the COLLABORATING ENTITY.

3. **MSU COLLABORATOR.** The MSU Collaborator will be _____. If for any reason, that person is unable to continue to serve as the MSU Collaborator, MSU and the COLLABORATING ENTITY shall attempt to find a successor to that person acceptable to both parties as a new MSU Collaborator. If such successor is not available, the COLLABORATING ENTITY may terminate this Agreement under its sole discretion.
4. **PUBLICATIONS.** Each party reserves the right to publish and disclose the results of the Scholarly/Research Project conducted at MSU. Before publishing, however, each party agrees to submit copies of any manuscript proposed for publication to the other party at least sixty (60) days in advance of the submission for publication or presentation. If MSU does not ask COLLABORATING ENTITY to defer publication within thirty (30) days after receipt of the manuscript so that patent applications may be filed, the party may proceed with publication. In the event MSU asks to defer publication, COLLABORATING ENTITY will not publish or otherwise disclose to any third party any of the information contained in the manuscript until such time as a patent application has been filed or the expiration of one-hundred eighty (180) days after the date of submission of the manuscript to MSU, whichever occurs first. COLLABORATING ENTITY, having no title to any invention conceived or reduced to practice at MSU, will not have the right to request MSU to defer publication. The parties will cooperate with each other in the preparation and prosecution of any such patent applications, and will execute all papers incident thereto. The provisions of this Section 4 will survive termination of this Agreement for a period of eighteen (18) months following such termination or until such time patent prosecution of any such patent applications is complete, whichever is later.
5. **INTELLECTUAL PROPERTY.**
- 5.1 The parties agree that during the period of VISITOR's appointment as a _____, the following provisions shall govern the ownership of all inventions, discoveries and intellectual property developed or discovered by VISITOR as a result of this Agreement:
- a) "Inventions" shall mean any and all inventions, discoveries, developments, technical information, trade secrets, know-how, methods, techniques, formulae, data, processes and other proprietary ideas, whether or not patentable or copyrightable.
- b) VISITOR shall promptly disclose to MSU all Inventions that result from VISITOR's activities under this Agreement or related to the Research Project. MSU shall retain all right, title and interest to all Inventions which are first conceived, discovered or reduced to practice by VISITOR: (a) as a result of the use of MSU funds, equipment, facilities or other resources; and/or (b) as a result of the use or application of any pre-existing MSU intellectual property; and/or (c) jointly with any MSU faculty or staff member or student. VISITOR and COLLABORATING ENTITY agree to and do hereby assign the foregoing Inventions to MSU and agree to cooperate with MSU in providing information and executing all necessary documents to assist MSU in the preparation of patent or copyright applications or other intellectual property protections (collectively hereinafter referred to as "Patents" or "Patent Applications") on such Inventions.
- c) Promptly upon written disclosure of any Invention by VISITOR to MSU, MSU shall disclose such Invention to COLLABORATING ENTITY. MSU will, in a reasonable period, make an independent determination whether it wishes to proceed with the filing of a Patent Application on such Invention. If MSU chooses not to file a Patent Application MSU may, to the extent it is legally and contractually able, agree to assign such Invention to COLLABORATING ENTITY if such Invention was made solely by VISITOR, or, if such Invention was made jointly by VISITOR and MSU personnel, to the extent it is legally and contractually able, MSU agrees to negotiate in good faith with COLLABORATING ENTITY

a joint ownership management agreement to such Invention, in equal undivided portions, with COLLABORATING ENTITY.

d) MSU shall own all documents, files, reports, work papers and working documents, electronic or otherwise, created by VISITOR in connection with the Scholarly/Research Project.

- 5.2** For Inventions made by VISITOR which MSU owns pursuant to Section 5.1.b of this Agreement and to the extent it is legally and contractually able, MSU agrees to negotiate in good faith with COLLABORATING ENTITY for a license to an Invention assigned to MSU under Section 5.1.

Any license agreement negotiated pursuant to the foregoing option shall include, at a minimum, provisions for:

- 1) reimbursement of MSU expenses associated with filing and prosecuting licensed patent applications, maintaining licensed patents, and any outside expenses associated with licensing the technology;
- 2) publication rights;
- 3) reservation of government rights as required by law or by government regulations;
- 4) indemnification of MSU by COLLABORATING ENTITY;
- 5) management of infringement actions;
- 6) protection of confidential information and materials;
- 7) use of name restrictions;
- 8) royalty terms;
- 9) commercial due diligence and milestones; and
- 10) other customary license terms and conditions.

Any license granted to COLLABORATING ENTITY pursuant to this Section shall be subject to any applicable rights of the United States government reserved under Public Laws 96-517, 97-256 and 98-620, codified at 35 U.S.C. 200-212, and any regulations issued thereunder, as such statutes or regulations may be amended from time to time.

6. **CONFIDENTIALITY:** During the course of this Agreement, VISITOR may receive or be exposed to information or material which MSU considers proprietary and which it wishes to be held in confidence. For purposes of this Agreement, "Confidential Information" means nonpublic information that is identified or designated as being confidential or which, in light of the circumstances, under which it was disclosed, whether oral or written, is reasonably apparent to be considered confidential or proprietary information of MSU. "Confidential Information" includes without limitation information which may be contained in materials such as drawings, plans, programs, software, codifications, models, data, specifications, reports, compilations and may also be in the nature of unwritten knowledge and know-how. "Confidential Information" also includes, without limitation, information about potentially patentable discoveries prior to the filing and publication of patent applications relating to those discoveries. Except as required by applicable law VISITOR and COLLABORATING ENTITY will receive and hold such Confidential Information in confidence to the same degree of care that COLLABORATING ENTITY uses with its own information of like kind to prevent disclosure to third parties. This obligation will continue in effect for three years after the expiration or earlier termination of this Agreement.

Confidential Information shall not include information which: (1) is now public knowledge or subsequently becomes such through no breach of this Agreement; (2) is rightfully in the other party's possession prior to disclosure; (3) is rightfully disclosed to the receiving party by a third party; (4) is independently developed by or for the receipt without use of Confidential Information from the disclosing party; or (5) is required to be disclosed by applicable law.

7. **INDEMNIFICATION/WARRANTIES.** COLLABORATING ENTITY shall indemnify, defend and hold MSU harmless from any loss, expense (including attorney's fees), cost liability, damage or claim (hereinafter collectively "Losses") for bodily injuries, death or for damage to property arising out of the negligence, gross negligence or other wrongful acts or omissions of their respective employees and agents, including VISITOR.

MSU MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED, TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR FOR THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER DISCOVERABLE OR NOT DISCOVERABLE. IN NO EVENT SHALL THE MISSISSIPPI BOARD OF TRUSTEES OF STATE INSTITUTIONS OF HIGHER LEARNING, MSU, THE TRUSTEES, OR ANY OFFICERS, AGENTS OR EMPLOYEES THEREOF BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING ECONOMIC DAMAGE OR INJURY TO PROPERTY AND LOSS OF PROFITS, REGARDLESS OF WHETHER MSU SHALL BE ADVISED OF, SHALL OTHERWISE HAVE REASON TO KNOW, OR IN FACT SHALL KNOW OF THE POSSIBILITY THEREOF.

8. **TERMINATION:** MSU may, when the interests of MSU so require, terminate this agreement in whole or in part at the convenience of MSU. Written notice of the same is required to be provided by MSU and shall allow no less than ten (10) days' notice prior to the effective date of the termination. Either party may terminate this agreement immediately 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.
9. **IMPLIED LICENSE.** Except as expressly provided in this Agreement, nothing contained herein shall be implied to grant either Party any license with respect to the other Party's Intellectual Property or Tangible Property. It is mutually understood and agreed by the Parties that title to all COLLABORATING ENTITY Intellectual Property and Tangible Property shall remain solely with COLLABORATING ENTITY. It is mutually understood and agreed by the Parties that title to all University Intellectual Property and Tangible Property shall remain solely with University.
10. **WAIVER.** No waiver of or any breach of any provision of this Agreement will constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver will be effective unless made in writing signed by both Parties.
11. **SEVERABILITY.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term hereof, such provision will be fully severable; this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof, and the remaining provisions of this Agreement will remain in full force and effect.
12. **USE OF NAMES.** Neither party shall use the names, logos, trademarks, or any other mark or image of the other in any advertising or other form of publicity without the written permission of the other.
13. **NOTICES.** Any notices required to be given or which shall be given under this Agreement shall be in writing delivered by first class or certified mail or overnight courier addressed to the parties as follows with such notice being deemed to have been given on the date so mailed:

MISSISSIPPI STATE UNIVERSITY

COLLABORATING ENTITY

Office of Research and Economic Development
Vice President
PO Box 6343
Mississippi State, MS 39762

14. **ASSIGNMENT.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and the successors to substantially the entire business and assets of the respective parties hereto. This Agreement shall not be assignable by either party without the prior written consent of the other party.
15. **GOVERNING LAW.** This Agreement shall be construed, governed, interpreted, and applied in accordance with the laws of the State of Mississippi, U.S.A. and the laws of the United States without regard to its choice of law or conflicts of law rules or principles,
16. **GOVERNING LANGUAGE.** In the event that a translation of this agreement is prepared and signed by the parties for the convenience of the COLLABORATING ENTITY, this English language version shall be the official version and shall govern if there is a conflict between the two.
17. **EXPORT CONTROLS AND RESTRICTED PARTY SCREENING.** It is understood that MSU is subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes, and other commodities, and that its obligations hereunder are contingent on compliance with applicable U.S. export laws and regulations (including the Arms Export Control Act, as amended, and the Export Administration Regulation 1996). The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurance by the COLLABORATING ENTITY that the COLLABORATING ENTITY will not re-export data or commodities to certain foreign countries without prior approval of the cognizant government agency. While MSU agrees to cooperate in securing any license which the cognizant agency deems necessary in connection with this Agreement, MSU cannot guarantee that such licenses will be granted. It is also understood that the United States Government prohibits U.S. Persons, including educational institutions, from conducting business with persons and entities designated as restricted parties (Specially Designated Nationals and Blocked Persons - SDNs) on any federal restricted party listings. These restricted party lists are administered and enforced by multiple U.S. Government Agencies, including the Department of Commerce, Department of State, the Department of the Treasury, the Federal Bureau of Investigations, Department of Homeland Security, and others. The process of checking all required lists is referred to as Restricted Party Screening (RPS). Prior to any transaction including involving visiting personnel in any capacity, whether compensated or not, the COLLABORATING ENTITY AND VISITOR will be screened via the RPS to ensure the university is not conducting business with a denied person or entity.
18. **INDEPENDENT CONTRACTOR:** COLLABORATING ENTITY AND VISITOR shall at all times be regarded as and shall be legally considered an independent contractor and neither VISITOR nor any other employees of COLLABORATING ENTITY 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 VISITOR, COLLABORATING ENTITY, 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 VISITOR, COLLABORATING ENTITY or any of its partners, principals, officers, agents, employees or representatives. MSU shall not provide VISITOR, COLLABORATING ENTITY or its partners, principals, officers, agents, employees or representatives any insurance coverage or other benefits, including without limitation Workers' Compensation coverage. VISITOR OR COLLABORATING ENTITY'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 ventures, or any similar relationship between MSU and COLLABORATING ENTITY OR VISITOR. At no time shall COLLABORATING ENTITY or VISITOR be authorized to do so and at no time shall COLLABORATING ENTITY or VISITOR act as an agent for or of MSU. For purpose of this Section 17 only, the term "VISITOR" shall not apply to "Visiting Faculty" as defined by MSU policy.

19. **REPRESENTATIONS.** The parties to this Agreement represent and certify that: (i) they have the full power and authority to make and perform this Agreement and it will comply with all applicable laws, regulations and policies; (ii) the making and/or performance of this Agreement does not violate any agreement of the party with any third party; and (iii) it will do nothing to interfere with or impair any other party's rights under this Agreement.
20. **ENTIRE AGREEMENT.** The parties hereto acknowledge that this Agreement together with any exhibits, schedules or other attachments specified herein, sets forth the entire Agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto. Accordingly, it supersedes all prior agreements or understandings, written or oral, among the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals and duly executed this Agreement the day and year set forth below.

MISSISSIPPI STATE UNIVERSITY

COLLABORATING ENTITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CONCURRENCE (where applicable):

By: _____

Name: Gregory A. Bohach

Title: Vice President for Agriculture, Forestry and
Veterinary Medicine

Date: _____

I, VISITOR, have read this Official Visitor Agreement. I hereby acknowledge and agree to my obligations as described herein. I also acknowledge that I have read MSU's privacy statement located at <https://www.msstate.edu/privacy/> and the MSU General Data Protection Regulation Notice at <https://www.oci.msstate.edu/focus-areas/odpr/>.

Stephen Shaw [signature]
Printed Name of Visitor: _____

ATTACHMENT A

Project Description

(to be supplied by MSU Collaborator requesting Visitor)