

Intellectual Property Administration Agreement
Between
The Mississippi State University Research and Technology Corporation
And
Mississippi State University
Version 10.14.05

WHEREAS: The Mississippi State University Research and Technology Corporation (herein after referred to as RTC) is organized exclusively for scientific, literary, charitable, and educational purposes and is to facilitate the development or incubation of companies and /or expansion of companies that will improve the economic development of the region, providing facilities, resources and support necessary for initiation of a new business or industry; and

WHEREAS: MISSISSIPPI STATE UNIVERSITY is a state public institution of higher learning, organized and existing under the laws of the State of Mississippi and having its principal office at Allen Hall, Mississippi State, MS 39762, U.S.A. (hereinafter referred to as MSU); and

WHEREAS: RTC income derived from licensure of MSU-developed and MSU-owned intellectual properties and the resulting royalty payments shall in all instances be utilized for the express purpose of furthering the research and education mission of MSU.

WHEREAS: MSU may utilize either its Office of Intellectual Property and Technology Licensing or the Mississippi State University Research and Technology Corporation, as its Intellectual Property administration organization; and

WHEREAS: MSU will assign certain Intellectual Property, as hereinafter defined, to RTC in exchange for promotion, management and/or other services RTC shall provide MSU; and

WHEREAS: In consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. **Definitions**

- a. **“Intellectual Property”** shall mean any patentable materials, copyrighted materials, trademarks, software, art and creative endeavors, know-how, and trade secrets, whether or not formal protection is sought.
- b. **“IP Policy”** shall mean the *“Policy and Procedure Statement on Intellectual Property at Mississippi State University”* which is in effect at the time of a license signed by RTC.
- c. **“Assigned Intellectual Property”** shall mean Intellectual Property assigned to RTC by MSU pursuant to this Agreement.
- d. **“Equity”** shall mean shares of stock or securities, including but not limited to stock options, warrants, or any other rights to purchase stock or securities.

- e. **“IP Costs”** means all out-of-pocket expenses incurred by MSU or RTC, as appropriate, to protect and commercialize Intellectual Property. Such expense shall be limited to documented incremental costs for: (a) protecting (e.g. patent prosecution and/or copyright registration, patent/copyright maintenance); (b) defending; (c) marketing; (d) licensing the IP. Such expenses shall also include costs for (e) enhancing the marketability or any other aspect of the IP; (f) dealing with RTC equity interest associated with the IP; and (g) Advance Royalty Payments as defined in the IP Policy. Specifically excluded costs associated with generating the IP (i.e. research costs).
 - f. **“Inventors”** shall mean University faculty, employees or third parties who individually or jointly make an invention and are subject to the IP Policy. (Inventorship shall be determined under US Patent Law.)
 - g. **“Prevailing Price”** shall be either of two values described below:
 - (1) In cases in which the Equity would otherwise be sold in an IPO, the “Prevailing Price” will be the IPO price.
 - (2) In cases in which the company is acquired and its stock is converted into unrestricted stock in a publicly traded company, the “Prevailing Price” will be the price at the close of trading on the relevant date.
2. **MSU Alignment.** The Office of Intellectual Property and Technology Licensing, upon instruction from the appropriate vice president, shall transfer responsibility for the administration of the MSU-owned Intellectual Property to the RTC. Such transfer shall become effective upon execution of an Assignment in the form attached hereto as Appendix A.
3. **Equity Interest.** RTC may acquire equity interests (hereinafter “Equity Interest”) in a private business entity licensing Assigned Intellectual Property when traditional sources of licensing are not available.
4. **Distribution of Funds.**
- a. Unless otherwise agreed at the time of a license, all consideration including income resulting royalties, dividends, and funds from the sale of RTC’s Equity interest, shall be distributed at the close of the Fiscal Year in which the sale occurred. At that time, RTC shall:
 - i) Reimburse IP Costs, if any
 - ii) After all IP Costs are reimbursed, RTC shall retain 5% of the balance as an administrative fee; and
 - iii) Distribute the remaining balance as income received from the license in accord with the Mississippi State University IP Policy. RTC may utilize MSU’s office of Intellectual Property and Technology Licensing for this purpose. Notwithstanding the above, RTC, at its sole discretion, may limit distributions to a maximum of one million dollars per year or 1/10 of the value of the amount to be distributed, whichever is greater.

5. Sale of Equity.

- a. Equity received by RTC under a license agreement shall be held in trust by RTC until the earlier of: i) the earliest date on or following the initial public offering (IPO) date in which the trading of Equity is not restricted by law or underwriting agreement; or ii) the date that the company is acquired and its stock is converted into unrestricted stock in a publicly traded company.
- b. At such time that the Equity becomes liquid through one of these events, the Equity shall be sold in an orderly fashion and the proceeds shall be distributed in accordance with paragraph 5; or,
- c. The Equity may be retained by RTC as an investment opportunity when and if the RTC determines that the Equity represents an attractive investment opportunity. This determination will be based solely on economic and investment considerations, and RTC will likely consult with external specialists in assessing the Equity's prospects. In such case, RTC shall value the equity at the Prevailing Price and distribute the cash equivalent (or equivalent Equity) in accordance with Paragraph 5.

6. Termination:

- a. MSU may terminate this Agreement for convenience at any time upon issuing written notice of the same to RTC. The termination shall be effective upon issuance of the notice by MSU.
- b. RTC may terminate this Agreement for convenience at any time subject to having paid in full any and all royalties due under this Agreement and subject to the terms of any license agreement or related agreement in effect at the time of termination.

7. Term: This Agreement shall become effective upon the dated shown below as having been executed by the second party to sign. Unless terminated sooner as provided in this Agreement, this Agreement shall remain in effect for the life of any patents assigned to RTC by MSU.

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

RTC

MSU

By: (s) Vance H. Watson
President

By: (s) J. Charles Lee
President

Date: 1-20-06

Date: 1/24/06

ASSIGNMENT FROM MISSISSIPPI STATE UNIVERSITY
TO THE
Mississippi State University
RESEARCH AND TECHNOLOGY CORPORATION

In consideration of one dollar (\$1.00) and other good and valuable consideration, MISSISSIPPI STATE UNIVERSITY (MSU), existing by virtue of the laws of the State of Mississippi, and having an office at 610 Allen Hall, Mississippi State, MS 39762, sells and assigns to the MISSISSIPPI STATE UNIVERSITY RESEARCH AND TECHNOLOGY CORPORATION (RTC), a Mississippi not for profit corporation, having its office at 513 Allen Hall, Mississippi State, MS 39762, its successors and assigns, the entire right, title and interest throughout the world in and to the improvement in:

_____ U.S. Serial No. _____ (or: For which an application for
United States Letters Patent was signed on _____)
(Or other description of intellectual property being transferred)
created by _____

in and to said application and all (*fill in the type: patents, copyrights, marks or trade secrets*) (foreign and domestic) which may be granted therefor and thereon, and all divisions, reissues, continuations and extensions thereof (foreign and domestic), subject to performance or substantially equivalent performance over time by the RTC of the obligations of MSU under MSU's Intellectual Property Policy with regard to distribution of proceeds from the above described invention *after payment to RTC for its Administrative Fee (or other appropriate term)*, and subject to the requirement that RTC shall require any LICENSEE of the patents, copyrights or trade secrets described above to indemnify, defend and hold RTC, the State of Mississippi, the Board of Trustees of Institutions of Higher Learning, the trustees of the Board of Trustees of Institutes of Higher Learning, MSU, and each and all of their officers, employees and affiliates, both in their official and personal capacities, harmless against all claims and expenses, including legal expenses and reasonable attorney's fees, whether arising from a third party claim, whether resulting from RTC or MSU's enforcing this indemnification clause against LICENSEE, or whether arising out of the death of or injury to any person or persons or out of any damage to property, and further against any other claim, proceeding, demand, expense and liability of any kind whatsoever resulting from the production, manufacture, sale, use, lease, consumption or advertisement of the licensed patents, copyrights or trade secrets or arising from any obligation of RTC, MSU or LICENSEE hereunder.

RTC shall require that such LICENSEE obtain and carry in full force and effect liability insurance which shall protect LICENSEE, RTC, and MSU (including the other persons and entities identified above) in regard to said events covered above. Such insurance shall: (a) be written by an insurance company authorized to do business in the State of Mississippi; (b) be endorsed to also include product liability coverage; (c) provide and require thirty (30) days written notice to be given to MSU prior to any cancellation or material change of the coverage; and (d) include limits of coverage necessary to provide adequate protection.

MSU covenants that it has all right to so sell and assign; and it authorizes and requests the Commissioner of Patents and Trademarks to issue all patents (*or equivalent reference to copyright office as is appropriate*) on said improvements or resulting therefrom to said RTC, as assignee of the entire interest; and it agrees that it will communicate to said RTC or its representatives any facts known to it

respecting said improvements, and testify in any legal proceedings, sign all lawful papers, execute all divisional, continuing and reissue applications, make all rightful oaths and make a reasonable effort to aid said RTC, its successors, assigns and nominees, to obtain and enforce proper protection for said improvements in all countries

MSU retains the right to practice under the Patent Rights for research and educational purposes and to publish the results thereof, anything to the contrary herein notwithstanding.

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, VALIDITY OF PATENT RIGHTS CLAIMS, ISSUED OR PENDING, OR FOR THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER DISCOVERABLE OR NOT DISCOVERABLE, NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A REPRESENTATION MADE OR WARRANTY GIVEN BY MSU THAT THE PRACTICE BY LICENSEE OR SUBLICENSEES OF THE LICENSE GRANTED HEREUNDER SHALL NOT INFRINGE THE PATENT RIGHTS OF THIRD PARTIES. 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.

Executed this ___ day of _____, 2____.

MISSISSIPPI STATE UNIVERSITY

By: _____
President

OKITBBEHA COUNTY
MISSISSIPPI

Personally appeared before me _____, President of Mississippi State University, personally known to me, who acknowledged that he executed the foregoing instrument for and on behalf of Mississippi State University after first being authorized so to do.

(Seal)

My Commission Expires

Notary Public

Accepted by the MSU Research & Technology Corp., by _____, President.

Date: _____