

CONSULTANT AGREEMENT

This Consultant Agreement by and between Saginaw Valley State University ("SVSU") located at 7400 Bay Road, University Center, MI 48710 and _____ ("Consultant") with principal offices at _____, dated _____, 2006 ("Effective Date") sets forth the terms and conditions under which Consultant will provide certain consulting services to SVSU.

1. SCOPE OF SERVICES

- 1.1 Consultant agrees to provide the professional consulting services ("Services") described on separately executed assignment orders (the "Assignment Order") as may from time to time be issued hereunder. All items prepared or required to be delivered under any Assignment Order are collectively referred to herein as the "Deliverables."
- 1.2 Each Assignment Order shall be governed by the terms and conditions of this Agreement and, in the event of any conflict between this Agreement and an Assignment Order, the provisions of the Assignment Order shall prevail only with regard to the specific Services provided therein; schedule, term, rates and charges associated with the applicable Assignment Order.
- 1.3 Consultant understands and agrees that by executing this Agreement, SVSU is not committing or obligating itself to use the services of the Consultant and that no work or charges are or shall be authorized hereunder unless and until authorized in writing by an Assignment Order signed by both parties.

2. TERM

- 2.1 This Agreement shall remain in effect until terminated by either party as provided herein.
- 2.2 Each Assignment Order shall remain in effect until the work authorized thereunder is completed, as determined solely by SVSU, or is earlier terminated as provided herein.

3. PRICE AND PAYMENT

- 3.1 Invoices may be submitted by mail to SVSU at the address provided above. at All invoices must contain an SVSU Assignment Order or the invoice will be returned.
- 3.2 All proper invoices which have been timely submitted shall be paid by SVSU forty-five (45) days from receipt of Consultant's invoice.
- 3.3 Consultant shall only invoice SVSU for time in which Consultant is providing Services. Consultant shall not invoice SVSU for any other time including, but not limited to, travel, training, internal record keeping, time keeping, email, or on the job training.
- 3.4 Unless otherwise specified on an Assignment Order, Consultant shall be reimbursed for all reasonable out-of-pocket expenses, specifically authorized in writing by SVSU in advance, incurred in performance of a given Assignment Order. Consultant shall provide invoices, receipts and other supporting documentation in writing, as SVSU shall reasonably request for such expenses.
- 3.5 Consultant hereby agrees that SVSU may hold payment of Consultant's last invoice until Consultant has returned all SVSU-owned equipment (i.e. computers, computer accessories, building access cards) in Consultant's possession.

4. CONFIDENTIALITY

- 4.1 Consultant agrees to keep confidential all Deliverables and all technical, product, business, financial, and other information regarding SVSU (the "Confidential Information"), except that information which is in is, or at any time becomes a part of the public domain through no act or omission of the Consultant; is independently discovered or developed by the receiving party using individuals who have had no contact with the Confidential Information; is rightfully obtained from a third party without any obligation of confidentiality; or is already known by the Consultant without any obligation of confidentiality prior to obtaining the Confidential Information from SVSU. Consultant shall not be liable for disclosure of Confidential Information if made in response to a valid order of a court, authorized agency of government or other request under law; provided, that notice is given promptly SVSU so that SVSU may evaluate, seek to protect the Confidential Information and/or engage in other efforts to minimize the required disclosure. The parties shall cooperate in seeking the protective order and engaging in such other efforts.
- 4.2 Consultant shall at all times protect and safeguard the Confidential Information and agrees not to disclose, give, transmit or otherwise convey any Confidential Information, in whole or in part, to any other party.
- 4.3 Upon request of SVSU or upon termination of this Agreement, Consultant shall promptly deliver to SVSU any and all documents, notes, or other physical embodiments of or reflecting the Confidential Information (including copies thereof) that are in its possession or control.

5. OWNERSHIP

- 5.1 SVSU shall own all right, title and interest (including patent rights, copyrights, trade secret rights, trademark rights, *sui generis* database rights and all other rights of any sort throughout the world) relating to any and all inventions (whether or not patentable), works of authorship, designations, designs, know-how, ideas and information made or conceived or reduced to practice, in whole or in part, by Consultant in connection with Services or any Confidential Information (as defined herein) either before or after the Effective Date (collectively, "Inventions") and Consultant will promptly disclose and provide all Inventions to SVSU. All Inventions are "works made for hire" to the extent allowed by law.
- 5.2 In the event any Inventions are not deemed "works made for hire," Consultant hereby irrevocably grants, assigns and transfers all right, title and interest of any kind in the Inventions to SVSU.
- 5.3 If any part of the Services or Inventions is based on, intellectual property rights owned or licensed by Consultant and not assigned hereunder, Consultant hereby grants SVSU and its successors a perpetual, irrevocable, worldwide, royalty-free, right and license to make, use, sell, sublicense, reproduce, distribute, perform, display, prepare derivative works from and otherwise exploit all such technology and intellectual property rights as if it were the full owner thereof.

6. FACILITIES

To the extent Consultant has access to or uses the facilities or computer resources of SVSU, Consultant agrees to comply at all times with the applicable rules and regulations regarding safety, security, use, and conduct.

7. RECORDS AND REPORTS

- 7.1 Consultant shall maintain complete and accurate records of the work performed hereunder, the amounts invoiced and hours worked. Such records shall be in accordance with standard accounting practices and shall include, but not be limited to, time sheets and written receipts for reimbursable expenses.
- 7.2 Copies of the foregoing records and a status report in such detail as SVSU shall reasonably require shall be furnished to SVSU at such times and frequencies as SVSU may request.

8. WARRANTIES OF CONSULTANT

- 8.1 Consultant warrants that the Services shall be performed in a workmanlike and professional manner.
- 8.2 Consultant warrants that the Deliverables will not infringe, misappropriate or violate any copyrights, patents, trade secrets, or other proprietary rights of any person or entity (including, without limitation, SVSU).
- 8.3 Consultant further warrants that all Deliverables shall conform with applicable specifications and requirements as set forth in the applicable Assignment Order.

9. INDEMNITY

Consultant agrees to indemnify, defend and hold SVSU, its affiliates, subsidiaries, employees, directors, officers, and shareholders harmless from any and all claims and threatened claims by any third party, including employees of either party, arising out of, under or in connection with:

- (i) the death or bodily injury of any third party, or the damage, loss or destruction of any tangible personal or real property; or
- (ii) an act or omission of Consultant in its capacity as an employer of a person and arising out of or relating to: (a) federal, state or other laws or regulations for the protection of persons who are members of a protected class or category or persons, (b) sexual discrimination or harassment, (c) work related injury or death, (d) accrued employee benefits, (e) on a claim that a Deliverable or Invention infringes a copyright, patent, trade secret or other proprietary rights of a third party; and (f) any other aspect of the employment or contractual relationship.

10. TERMINATION

- 10.1 This Agreement or any Assignment Order hereunder may be terminated prior to expiration or completion in accordance with the following:
- (i) By SVSU without cause on five (5) days written notice.
 - (ii) (iii) By Consultant in the event SVSU has failed to perform any obligation required to be performed under this Agreement or an Assignment Order and such failure is not corrected within thirty (30) days from receipt of written notice advising of such failure from the other party.
- 10.2 Upon completion, termination, or expiration of this Agreement or a given Assignment Order, Consultant shall deliver to SVSU all copies of all Deliverables in their then current form or state, whether complete or incomplete.

11. INDEPENDENT CONTRACTOR

Nothing in this Agreement shall be deemed to make Consultant an agent, employee or partner of SVSU. Consultant shall not be entitled to any of the fringe benefits of SVSU and shall have no authority to bind, commit, contract for, or otherwise obligate SVSU in any manner whatsoever. Furthermore, Consultant shall withhold and pay Social Security, income taxes, and other employment taxes on behalf of itself and its employees.

12. LIMITATION OF LIABILITY

- 12.1 IN NO EVENT SHALL SVSU BE LIABLE ON ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT SVSU HAS PAID UNDER THE ASSIGNMENT ORDER WHICH GAVE RISE TO THE CAUSE OF ACTION.
- 12.2 IN NO EVENT SHALL SVSU BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOOD WILL EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

13. INSURANCE

Consultant shall, at its expense, procure and maintain during the term of this Agreement the following insurance: (i) worker's compensation as required by applicable worker's compensation laws; (ii) commercial general liability insurance covering all operations of Consultant, with reasonable limits given the nature of the Services performed.

14. GENERAL TERMS AND CONDITIONS

- 14.1 This Agreement and its Exhibits and Assignment Orders constitute the sole and exclusive statement of the terms and conditions hereof and supersede any prior discussions, writings, and negotiations with respect thereto.
- 14.2 The parties agree that this Agreement cannot be altered, amended or modified, except by a writing signed by an authorized representative of each party.
- 14.3 Consultant agrees to comply with all applicable laws, regulations, and ordinances relating to its performance under this Agreement.
- 14.4 The provisions set forth in Sections 4, 5, 7, 8, 9, 10.2, 12, 13, and 14 of this Agreement shall survive termination or expiration of this Agreement and any applicable Assignment Order hereunder.
- 14.5 THIS AGREEMENT SHALL BE GOVERNED AND INTERPRETED BY THE INTERNAL LAWS OF THE STATE OF MICHIGAN WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS THEREOF. ANY ACTION OR SUIT RELATED TO THIS AGREEMENT SHALL BE BROUGHT IN SAGINAW, MICHIGAN.

The parties hereto agree to the foregoing as evidenced by their signatures below.

SAGINAW VALLEY STATE UNIVERSITY

By: _____

Name: _____

Title: _____

Date: _____

CONSULTANT

By: _____

Name: _____

Title: _____

Date: _____

ASSIGNMENT ORDER #_____

This Assignment Order is entered into pursuant to the terms of the Consultant Agreement between Saginaw Valley State University ("SVSU") and _____ ("Consultant") dated _____. The term of this Assignment Order begins _____, 200__ and ends _____.

SVSU and Client agree as follows:

1. General Overview

Consultant shall provide SVSU with the following consulting services and resources:

2. Professional Services Fees

Consultant's fees will be calculated on a time and materials basis. Consultant's professional services provided under this Assignment Order shall be billed at _____ per hour, not including expenses. Consultant shall engage in a minimum/maximum of _____ hours per month of such professional services, unless otherwise agreed by the parties.

3. Payment

Consultant shall invoice SVSU for all Consultant service fees and expenses in accordance with the Consultant Agreement.

The foregoing is agreed to by:

SAGINAW VALLEY STATE UNIVERSITY

CONSULTANT

By: _____

By: _____

Typed name: _____

Typed name: _____

Date: _____

Date: _____