

Sample for Informational Use

MEMORANDUM OF AGREEMENT
AMONG

MISSISSIPPI STATE UNIVERSITY, BOARD OF TRUSTEES OF THE UNIVERSITY OF ARKANSAS, ACTING FOR AND ON BEHALF OF THE UNIVERSITY OF ARKANSAS, FAYETTEVILLE, OKLAHOMA STATE UNIVERSITY, AND THE BOARD OF SUPERVISORS OF LOUISIANA STATE UNIVERSITY AND AGRICULTURAL AND MECHANICAL COLLEGE, AND OTHER INSTITUTIONS WHICH SUBSEQUENTLY JOIN INTO THIS MOA PERTAINING TO COOPERATIVE AND COLLABORATIVE EFFORTS RELEVANT TO PLANT AGRICULTURAL SCIENCES

Mississippi State University, Board of Trustees of the University of Arkansas, acting for and on behalf of the University of Arkansas, Fayetteville, Oklahoma State University, and the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, each of which is a public institution of higher learning in the state in which each is located and each of which is an entity of the sovereign state in which each is located, collectively identified as the “parties”, hereby enter into this Memorandum of Agreement (MOA) on the dates shown as the date of execution of this agreement.

WHEREAS, the parties desire to cooperate and collaborate in an effort to offer graduate and undergraduate courses to students of the parties’ institutions.

WHEREAS, the parties desire through such cooperation and collaboration to provide the students of each institution access to a diverse curriculum and high quality education in plant agricultural sciences.

WHEREAS, the parties are participants in a grant project funded by the U.S. Department of Agriculture Cooperative State Research, Education and Extension Service (CSREES) which is designed to support collaboration in the provision of courses in the plant sciences via distance learning, including course development.

WHEREAS, the parties desire to permit additional institutions of higher learning to participate in the same cooperative and collaborative efforts if those additional institutions of higher learning complete and execute a copy of the Addendum (Attachment 1) attached hereto and incorporated herein by reference, each additional institution’s acceptance as a party to this MOA being subject to the approval of the institutions then participating in the MOA. Upon acceptance, then the additional party becomes an equal party to this MOA.

NOW THEREFORE, the parties agree to the following terms and conditions:

1. Courses to be Offered: Unless otherwise agreed upon by the participating institutions to this MOA, each party shall provide at least one (1) plant agricultural sciences units course per year and shall receive at least one (1) plant agricultural sciences units course per year.

2. Method of Delivery: The courses must be offered through a mutually agreed upon method of delivery of the courses through distance education.
3. Receipt of Fees: Each party shall issue payment of fees through an invoice process permissible under each party's state laws to ensure that each party receives payment of the fees to which that party is entitled.
4. Voluntary Termination: Any party may terminate its participation in this MOA by providing written notice of its intent to do so no later than January 31st of the year of the planned termination date and the termination date shall be no later than July 31st of that year.
5. Involuntary Termination: A party's participation in and inclusion as a party to this MOA, whose performance of its obligations under this MOA is in default under the terms and conditions of this MOA, may, in the sole and unfettered discretion and judgment of the remaining parties, be terminated upon thirty (30) days' written notice.
6. Cooperative Decisions: The parties shall work together to reach mutually agreed upon decisions regarding the efforts needed to fulfill the desires of the parties to this MOA.
7. Meetings: The parties shall meet at least annually and notice of such meetings shall be provided to each party in writing, via e-mail or otherwise, at least sixty (60) days in advance. Participation in such meetings may be in person or by electronic communication. Each party shall be responsible for the travel and any other expenses incurred by that party's representatives and faculty who participate in the cooperative and collaborative efforts under this MOA in accordance with that party's policies.
8. Selection of Coordinating Institution: The Coordinating Institution shall be the primary awardee of the USDA grant (University of Arkansas) for the duration of the grant period. At the expiration of the initial grant period, and no less than every 5 years thereafter, the parties shall designate, in writing, the Coordinating Institution for the subsequent term. By agreeing to serve as Coordinating Institution, the party agrees to accept the obligations of such position as set forth in this MOA.
9. Administrative Obligations of Coordinating Institution:
 - a. Consistent with the terms and conditions of any applicable grants relating to this MOA, the Coordinating Institution shall contract with an entity to provide administrative support for this MOA (the Administrative Entity). This contract shall be solely between the Coordinating Institution and the Administrative Entity; no other participating institutions shall be considered to be parties to such a contract, and the Coordinating Institution shall be solely responsible for all payments owed to the Administrative Entity, to be paid from grant funds and funds received by the Coordinating Institution pursuant to the provisions of Section 10
 - b. The Coordinating Institution, through the Administrative Entity, shall be responsible for:

- (1) receiving enrollment figures from the parties;
 - (2) providing a unified enrollment to the teaching institution;
 - (3) receiving grades and reporting those grades to the student's home institution;
 - (4) providing a summary report to each party of all courses and enrollment figures, as well as funds owed by the respective institutions, pertaining to this MOA; and,
 - (5) handling all required administrative support efforts agreed upon by the parties to the MOA, to include, but not to be limited to, such matters as arranging for and notifying all parties of meetings and events. Each party is responsible for its own administrative support with regard to its own course development.
- c. The Coordinating Institution shall also be responsible, in consultation with the other parties, for supervising and coordinating course development, and may issue subagreements to other participating institutions for course development services, as more fully provided in Section 11, below. The Coordinating Institution may likewise receive equitable compensation for course development services, subject to the same terms and conditions as the other participating institutions. The Coordinating Institution shall compile and distribute to each participating institution an annual financial report at the end of each fiscal year. In its financial report at the end of the 2012-2013 fiscal year, the Coordinating Institution shall specifically report on its administrative costs pursuant to the MOA and the Participating Institutions may discuss whether any modifications to the administrative cost provisions of the MOA are in order.

10. Payment to the Coordinating Institution:

- a. In return for participation in the educational activities provided for in this MOA and the administrative services provided by the Coordinating Institution, each institution(s), other than the institution which provided the course, whose students take each course shall issue payment to the Coordinating Institution in the amount of twenty percent (20%) of the tuition charged the students upon receipt and approval of an invoice for the services within forty-five (45) days of receipt and approval of the invoice. The invoice may be generated for the Coordinating Institution by another party but payment shall be to the Coordinating Institution or its assignee.
- b. The Coordinating Institution shall use any funds received pursuant to this MOA only in accordance with the terms of and for the purposes set forth in this MOA. All funds not paid to the Administrative Entity or retained by the Coordinating Institution pursuant to subsection 10.c below shall be used to fund course development as provided in Section 11.
- c. To the extent grant funds are not available for such purposes, the Coordinating Institution may receive equitable compensation for its administrative costs, consistent with applicable federal cost principles. Such compensation shall not exceed one-fourth (25%) of the funds received by the Coordinating Institution pursuant to section 10(a). For the avoidance of doubt, funds shall be allocated in the

following order of precedence, as necessary: 1) payments to the Administrative Entity, 2) administrative costs of Coordinating Entity, and 3) course development.

11. Course Development:

- a. Subject to the availability of any grant funds or any funds pursuant to the provisions of Section 10, above, the Coordinating Institution may issue subagreements to any participating institution, or may itself receive equitable compensation on the same terms and conditions, for course development services to be offered through the provisions of this MOA.
- b. Any participating institution may propose the new development or enhancement of a course. The parties shall cooperatively review the proposals and recommend, through a mutually-agreed upon process, which participating institutions should be issued subagreements.
- c. The Coordinating Institution shall issue subagreements or undertake its own course development activity, taking into account the recommendations made through the mutually-agreed upon process. Such subagreements shall be issued only to participating institutions. Should the Coordinating Institution not follow such recommendations, it will notify the participating institutions, in writing, of such deviation.
- d. Ownership of any intellectual property created through the use of such subagreements, or other course development services provided pursuant to this Agreement, shall be determined in accordance with the policies of the participating institution providing the course development services, provided, however, that all participating institutions shall receive an irrevocable, royalty-free license to utilize such intellectual property solely for academic purposes in order to offer a course should the course cease to be offered by the developing institution.
- e. Additional specific terms which do not conflict with the provisions of this Agreement may be recommended collectively by the Participating Institutions, and any such terms utilized shall be included in all subagreements issued by the Coordinating Institution and shall apply to the Coordinating Institution's own course development services provided pursuant to this Agreement.
- f. Any such subagreement for course development services shall be solely between the Coordinating Institution and the participating institution which receives the subagreement.

12. Independent Contractors: Each party shall at all times be regarded as and shall be legally considered an independent contractor and no other party or its employees shall, under any circumstances, be considered servants, agents or employees of another party, and no party shall at any time be legally responsible for any negligence or other wrongdoing by another party, its partners, principals, officers, agents, employees or representatives. No party shall 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 another party

or any of its partners, principals, officers, agents, employees or representatives. No party shall provide to another party, its partners, 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 a party to its employees. No party's personnel shall be deemed in any way, directly, indirectly, expressly or by implication, to be employees of another party. 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 or among the parties. At no time is a party authorized to act as an agent for another party and at no time shall a party act as an agent for another party.

13. Student Registration: Students shall register for courses at and through their respective home institutions. The Administrative Entity shall "pool" student registrations for participating institutions and provide a "unified" enrollment to the teaching institution.
14. Course Numbering: Students shall register for a given course under an appropriate number as determined by and assigned to the class by the home institution. The home institution shall determine whether its students may earn undergraduate and/or graduate student credit for a particular class.
15. Course Offerings: Each party in conjunction with the instructor, shall determine the frequency (i.e., each semester, yearly) with which courses are offered. This decision shall be based upon class demand and curriculum needs. The Administrative Entity shall work with the parties and instructors to reconcile issues related to course starting and ending dates and grade reporting dates.
16. Student Credit: The student's home institution and the teaching institution may recognize the student for internal class enrollment purposes. For state and federal reporting purposes, students shall be counted by their respective home institutions.
17. Student and Faculty Policies: Policies related to withdrawal, plus/minus grading, appeals, and academic misconduct shall be those of the student's home institution. Policies related to faculty issues shall be that of the faculty member's home institution.
18. Tuition:
 - a. Tuition shall be that of the student's home institution.
 - b. At institutions where tuition is not assessed solely by the credit hour (for example, where an institution charges a flat rate of tuition to all full time students regardless of the number of hours taken), the amount of tuition for the course being provided pursuant to this MOA shall be such pro rata amount as is reasonably determined by the student's home institution.
 - c. Each student shall submit payment of tuition directly to the student's home institution in accordance with its normal processes.
 - d. In return for the service of the course being provided to a home institution for use by its student in the home institution's educational effort to provide educational opportunities for

the student, the home institution shall then submit payment to the institution which provided the course based upon receipt and approval of an invoice from the institution which provided the course or a third party which submits an invoice on behalf of the institution.

- e. Final enrollment figures for each home institution shall be obtained by the Administrative Entity and reported to course-providing institutions within twenty (20) business days of the last day designated by the respective home institution for students to withdraw from courses with no refund.
 - f. Invoices shall be submitted by course-providing institutions to home institutions within twenty (20) business days of receiving an enrollment report from the Administrative Entity.
 - g. Payment shall be in the amount of sixty-five percent (65%) of the tuition charged the students by the home institution, payable within forty-five (45) days of receipt and approval of the invoice. Participating institutions shall annually report their respective tuition rates to the Coordinating Institution, through the Administrative Entity, and shall review the tuition payment process.
19. Course Approvals: Each institution shall be responsible for having courses approved by its curriculum committees and including the courses in its course catalogs.
20. Delivery Methods and Course Content: Each participating institution shall have the ability to determine course content and delivery methods. The other parties shall have no control over such course content and delivery methods other than its right to determine whether or not to offer that course to its students.
21. Party Representative: Each party shall designate in writing an official to serve as the primary representative of that party for purposes of coordinating and communicating with the other parties to this MOA.
22. No Additional Tuition or Special Fees: The parties agree that no party shall impose, or permit to be imposed, upon a student or another institution an additional amount of tuition or special fee for courses received from another party to this MOA without the express, prior written permission of the other party. A fee that an institution charges for all distance learning course shall not be considered a special fee for purposes of this MOA.
23. No Indemnification: No party to this MOA agrees to indemnify or hold harmless another party to this MOA for any reason.
24. No Warranties: No party to this MOA makes any representation or extends any warranties of any kind, either express or implied, including, but not limited, to warranties of merchantability and fitness for a particular purpose.
25. No authorization to use protected identifiers: No party shall use the names, logos, trademarks or any other mark or image considered by another party to be identified with or protected by that second party, or those of any of the institution's employees or former

employees, or any adaptation thereof, in any advertising, promotional or sales literature except that a party may state that the other party is a participant in the efforts being pursued under this MOA.

26. No Assignment: This Agreement is not assignable and any attempt to do so shall be void.

27. Payments, Notice or other Communication: Any payment, notice or other communication pursuant to this Agreement shall be sufficiently made or given on the date of mailing if sent to such party by certified, first class mail, postage prepaid, addressed to it at its address below or as it shall designate by written notice given to the other party:

Mississippi State University
Associate Dean
College of Agriculture and Life Sciences
Mississippi State, MS 39762

Oklahoma State University
Associate Dean for Academic Programs
136 Ag Hall
Oklahoma State University
Stillwater, OK 74078

**Board of Trustees of the
University of Arkansas, acting for
on behalf of the University
of Arkansas, Fayetteville**
Associate Dean
University of Arkansas
AFLS, E-108
Fayetteville, AR 72701

**Board of Supervisors of Louisiana State University
and Agricultural and Mechanical College**
Vice Provost for Academic Affairs
Louisiana State University
Baton Rouge, LA 70803

28. Miscellaneous Provisions:

28.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the United States. The parties acknowledge that the public universities, as entities of their various sovereign states, are without authority to agree to the laws and jurisdictions of the other states. Further, no public party to this MOA waives or otherwise through agreeing to the terms and conditions of this MOA agrees to denigrate the sovereign immunities, including, but not limited to, Eleventh Amendment immunity which each enjoys.

28.2 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 shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

28.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

28.4 The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

28.5 The parties agree that should a factual dispute arise which is not resolved between or among the parties within thirty (30) calendar days of the first discussions regarding the matter that the parties may enter into voluntary mediation in an effort to resolve the dispute. The parties shall share equally the cost of the mediator but each party shall be responsible for its own separate expenses and costs of whatever nature incurred in preparing for and participating in the mediation. The parties must mutually agree to a mediator and the mediation shall be conducted at a mutually convenient location. However, the location of the mediation shall not in any way or manner serve as a basis for determining the law applicable to the dispute at that time or later. The mediation must be held within sixty (60) calendar days of the date that the party desiring to enter into mediation notifies the other parties in writing of the desire for mediation. Unless the mediation effort results in a signed resolution of the dispute within ninety (90) calendar days from the date that the party desiring to enter into mediation notified the other party in writing of the desire for mediation, then whatever legal or equitable remedies are available to the parties may then be pursued. This provision does not preclude a party from pursuing legal remedies before or during the mediation that are otherwise required by law.

28.6 This Agreement may be executed concurrently in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

28.7 This Agreement may be reviewed annually by the representatives of the participating institutions. Any revisions must be agreed to in writing and signed by authorized representatives of the parties. The parties may execute the Agreement via facsimile, provided that executed originals are exchanged within a reasonable time thereafter.

28.8 In the event of termination by all participating parties, then at that time, or within sixty (60) days thereafter, following payment of any outstanding amounts owed under this MOA or any subcontracts, the Coordinating Institution shall refund any and all funds then being held by the Coordinating Institution for administrative support and

course development. The refunds shall be made by the Coordinating Institution to each party participating at the time of termination in proportion to those funds received from each such party under this agreement for administrative support and course development, proportionally retaining any funds provided by the Coordinating Institution.

28.9 The term of this Agreement shall begin upon the date of execution by the last party of the four parties to sign this Agreement and shall terminate no later than July 31, 2014, subject to extension of up to four years by mutual agreement of the parties in writing through a formal amendment to this Agreement.

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

MISSISSIPPI STATE UNIVERSITY

BOARD OF TRUSTEES OF THE
UNIVERSITY OF ARKANSAS,
acting for and on behalf of the
UNIVERSITY OF ARKANSAS

President

Chancellor

BOARD OF SUPERVISORS OF
LOUISIANA STATE UNIVERSITY
AND AGRICULTURAL AND
MECHANICAL COLLEGE

OKLAHOMA STATE UNIVERSITY

Vice Provost Academic Affairs

Vice President and Provost

ATTACHMENT 1
TO
MEMORANDUM OF AGREEMENT

ADDENDUM

_____ , an institution of higher learning located in the state of _____ , through its authorized official, hereby executes this Addendum for the purpose of being permitted to participate in the cooperative and collaborative efforts with the other parties to the Memorandum of Agreement to which this Addendum shall be attached pertaining to the desire to cooperate and collaborate in an effort to offer graduate and undergraduate courses to students of the parties' institutions and additional institutions which agree to be bound by the terms and conditions of the Memorandum of Agreement in order to provide the students of each institution access to a diverse curriculum and high quality education in plant agricultural sciences.

[INSERT NAME OF INSTITUTION]

By: _____
Name _____
Title _____
Date _____