



**MONTANA UNIVERSITY SYSTEM**  
**Office of the Commissioner of Higher Education**

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**AGENDA**

**Montana Board of Regents Conference Call Meeting**  
**Office of the Commissioner of Higher Education**  
**Conference Room**  
**46 North Last Chance Gulch**  
**Helena MT**  
**March 27, 2007**

8:00 A.M. FULL BOARD CONVENES (CONFERENCE CALL)

8:05 A.M. ROLL CALL

**ACTION**

8:10 A.M. Approval of America's Professor Project, The University of Montana.  
[ITEM 134-1004-R0307](#)

**CONSENT**

9:00 A.M. Remodel Testing Center – Lommasson Center; The University of  
Montana – Missoula [ITEM 134-1001-C0307](#)

**EXECUTIVE SESSION**

Consideration of Special Award

**BOARD ADJOURNS on completion of business.**

Other than the meeting starting time, the times listed are approximate. In addition, agenda items may be rearranged unless an item is listed as having a "time certain."

Action may be taken on any item listed on the Board or Committee Agendas. Public comment is welcome on all items. If you wish to participate in the conference call please contact the Office of the Commissioner of Higher Education, 444-0328 or 444-0311.

The Board of Regents will make reasonable accommodations for known disabilities that may interfere with an individual's ability to participate. Persons requiring such accommodations should make their requests to the Office of the Commissioner of Higher Education as soon as possible before the meeting to allow adequate time for special arrangements. You may call or write to: ADA Coordinator, P.O. Box 203201, Helena, MT 59620-3201, 406-444-6570, 1-800-253-4091 (TDD)

March 27, 2007

**ITEM 134-1004-R0307 Approval of Proposed University System/Employee License Agreement; The University of Montana**

**THAT:** The Board of Regents of Higher Education approves The University of Montana-Missoula ("UM" herein) to enter into a Licensing Agreement with America's Professor LLC ("AP" herein), a for-profit company in which UM faculty members Jack Morton and Jerry Furniss own all equity interests, subject to approval of the licensing agreement by the UM President and Commissioner of Higher Education. The Board of Regents further approves Professors Morton and Furniss serving as AP's directors and officers, as well as working part-time as AP employees, while the proposed Licensing Agreement is in effect, subject to all UM and Board of Regents policies in effect or as adopted or amended and further subject to the approval of faculty conflict of interest management plans in accordance with UM and Board of Regents policy.

**EXPLANATION:**

Overview

Dr. Jack Morton and Dr. Jerry Furniss are full-time faculty employees of UM. They seek approval to hold equity in, to serve on the governing board of, and to serve as part-time employees of America's Professor, a company which owns intellectual property developed and owned by Morton and Furniss, during the time AP maintains a licensing agreement with UM. AP will operate in accordance with a licensing agreement negotiated with UM. UM does not now, and will not, own an interest in the property or software developed by these employees, but the licensing agreement will provide to UM a share in the proceeds from all America's Professor courses offered, whether they are taken for UM credit or for professional certification only.

Drs. Morton and Furniss, as well as others involved in this project, have disclosed their financial and personal interests in the project and written conflict of interest management plans are in place for Drs. Morton and Furniss. Under BOR Policy 407 and MCA § 20-25-109, Montana University System (MUS) employees must have BOR approval to serve as officers, employees, or members of a board of directors or governing board of any company or other entity which has an agreement with, or shares ownership of intellectual property with, the MUS, relating to the development, licensing or commercial exploitation of that intellectual property.

Background

Dr. Morton and Dr. Furniss have been offering business professional courses in a face-to-face format for many years as UM-approved external consulting activities. These courses target business professionals preparing for professional certification exams or meeting professional continuing education requirements primarily in the real estate, insurance and securities fields. Morton

and Furniss have previously done business as the Connole-Morton Real Estate School, through which entity they taught courses in real estate certification and insurance certification alternately several times each per year. America's Professor is now developing a computer platform allowing delivery of the course content using streaming video and text downloading. The proposed arrangement will allow UM to offer these courses through the AP-owned course delivery system as UM courses.

#### Course Offerings

Some of the courses may be offered for academic credit if approved by UM. All classes taken for university credit will be subject to UM and BOR policies relating to academic classes, continuing education and distance learning.

America's Professor will also offer AP courses on a non-credit basis for certification only. For such courses the net revenue will be split as indicated above. All courses will be delivered over the internet using an AP-proprietary state-of-the art computer platform designed to deliver streaming video and text downloading. Additional business professional courses may be developed and offered in accordance with the licensing agreement and UM policy.

The training courses offered will be targeted to the business professional and not to existing UM students. UM is not now able, and has not been able for the last 30 years, to expand its business curriculum to include business professional development and training classes because the School of Business Administration's first priority for its limited faculty resources is to meet the teaching demands for its undergraduate and graduate course offerings. Thus this project contemplates bringing in new dollars from new students and is not intended to compete for UM's existing students.

#### Fiscal Issues

Revenue will be generated from course registration fees and the sale of supplemental online training material developed by AP. AP will bear 100% of the operating expenses up to the breakeven point, estimated to be approximately 1400 students annually. From the total revenue remaining after the deduction of operational expenses, and as a percentage of that total (after operating expenses are deleted), a 12 percent AP Content and Instructor Fee and a 4 percent AP Program Administration Fee shall be deducted, leaving net revenue.

Students taking courses for credit will pay the course charge and a tuition charge. If classes are offered for credit, UM will negotiate a license fee for credit courses which fairly compensates AP for the work required to offer courses for credit.

In exchange for AP's development and maintenance of the platform and use of the course materials, UM will contribute indirect costs

associated with the limited use of film production facilities and building space allocation in the School of Business Administration (valued at FMV) and will allow the use of the UM name and logo on the AP website, in accordance with UM policies.

Benefits to The University of Montana

This project meets the stated purposes of BOR Policy 407: to enhance student learning opportunities, to attract resources for the support of unit programs, and to promote local, regional, and national economic development.

The arrangement will be beneficial to UM. First, it will attract resources for the support of UM programs. UM will reach a wider population than currently enrolled students. Because AP's classes are targeted to the business professional, the revenue stream will be new. The potential net revenues are significant. Professors Morton and Furniss have an impressive track record in terms of attendance. Last year, the number of students taking the face-to-face classes exceeded 2,000. AP forecasts a larger online enrollment, but even the estimated net revenues from an enrollment of 2,000 would result in a positive cash flow to the university.

Second, UM will benefit from having quality professors delivering quality training to business professionals across the country, which will reflect positively on UM.

Third, student learning opportunities will be enhanced. Montana business professionals in remote locations will have ready access to high quality instruction needed for business professional licensure, certification and related needs from highly experienced UM Business School faculty without incurring the relatively high cost of leaving their homes and businesses to take the courses.

**ATTACHMENTS:** Proposed Licensing Agreement  
407 Submission Form

**THE UNIVERSITY OF MONTANA AND AMERICA'S PROFESSOR, LLC  
LICENSING AGREEMENT**

This Agreement is made and entered into this \_\_\_\_ day of April, 2007 between America's Professor, LLC ("AP" or "Licensor" herein), an Independent Contractor, of 1819 Holburn, Suite E, Missoula, Montana 59801, and The University of Montana ("UM" or "Licensee" herein), 32 Campus Drive, Missoula, MT 59812 and has as its purpose the setting forth of the terms of a partnership between the Parties for the offering of courses in real estate licensure preparation, insurance licensure preparation and securities licensure preparation.

**RECITALS**

WHEREAS, AP is a Montana Limited Liability Company equally owned by Jack Morton and Jerry Furniss, both full-time tenured professors in the School of Business Administration (SOBA) at UM; and

WHEREAS, AP is the owner of certain intellectual property defined herein and has the right to grant a license for the use of said intellectual property; and

WHEREAS, AP desires to have its intellectual property commercialized to the mutual benefit of AP and UM, and to benefit the State of Montana, the public, government, and commerce; and

WHEREAS, the Parties desire to enter into a mutually-beneficial Agreement for the offering of online courses teaching exam preparation for professional certifications and designations in the areas of real estate, insurance, and securities,

NOW THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the Parties agree as follows:

**ARTICLE 1 – INTELLECTUAL PROPERTY**

1.1. For the purposes of this Agreement, the term "intellectual property" shall mean all of the following intellectual properties:

a. All course materials for real estate exam preparation, insurance exam preparation and securities exam preparation; and continuing education classes for licensed real estate, insurance and securities professionals; a "licensed product" shall mean any on-line course or course materials or part thereof which utilizes intellectual properties.

b. The AP course delivery system including a proprietary server platform capable of delivering streaming video and text downloading;

c. The AP website with proprietary design for stream-lined inquiries and course registrations; and

d. Any non-U.S. counterparts of (a), (b) or (c).

## ARTICLE 2 – CONSIDERATION

The Parties agree that the following promises and exchanges constitute fair consideration, the exact nature of which is set forth in the terms of this Agreement:

2.1 Promises of AP. AP agrees to grant to UM a license for use of AP's intellectual property in accordance with this Agreement and to work cooperatively with UM with regard to the delivery of courses under the terms of this Agreement.

2.2 Promises of UM. UM agrees to grant to AP the use of the UM name and logo, the use of space on the UM campus, and royalties, all as set forth in this Agreement.

## ARTICLE 3 - GRANT

AP hereby grants UM an exclusive right and license for the use of the intellectual property defined herein and for the use and sale of licensed products during the term of this Agreement, consistent with any copyrights on the property. The license granted shall not be construed to confer any rights upon UM by implication, estoppel or otherwise as to any intellectual property not specifically set forth herein.

## ARTICLE 4 - SCOPE AND DESCRIPTION

4.1 Description. The activities subject to this Agreement shall be conducted jointly under the names of America's Professor and The University of Montana. The AP courses shall be offered from an AP owned and operated server.

4.2 Independent Nature of Contractors. In the performance of this Agreement, AP's principals Morton and Furniss are acting entirely independently of their employment as UM faculty. Nothing in this Agreement contemplates or authorizes a reduction in their regular UM faculty instructional and other work assignments for Morton and Furniss. No other UM employee is authorized to provide services under this Agreement without express approval of UM and the Board of Regents.

4.3 Scope. All AP course offerings shall be subject to this Agreement. Approved courses include online courses teaching exam preparation for professional certifications and designations in the areas of real estate, insurance and securities. The development of additional AP courses is subject to the approval of the AP Committee. All AP courses offered for academic credit are subject to Article 9, Courses for Academic Credit.

4.4 In-kind Contributions of UM. UM will provide AP with in-kind contributions as indicated in Appendix A, attached hereto and made a part hereof. Such contributions will include access to office space in the SOBA building for AP operations and filming production, as well as internet access, electricity and a part-time UM graduate assistant. The fair market value of said space is valued for the first year of the agreement at \$25,191.52. It is understood that the value of these contributions will increase year to reflect annual adjustments for inflation.

## ARTICLE 5 – ADMINISTRATIVE STRUCTURE & ACTIVITIES

5.1 Management and Authority. AP shall have responsibility for managing all instructional activities subject to this Agreement. Exercise of this responsibility shall at all times be done pursuant to the terms of this Agreement and applicable UM and Board of Regents' policies and requirements. AP shall set the AP course fees and determine the prices for AP educational books and materials. Courses for academic credit shall be subject to Article 9.

5.2 Decision-making Structure. Upon execution of this Agreement, an AP Committee shall be formed, consisting of four members: (1) the SOBA Dean or designee, (2) UM Continuing Education Dean or designee, (3) a representative of UM's Office of Administration and Finance; and (4) one of the principals of AP. The Committee shall coordinate all activities subject to this Agreement, including review and payment of royalties; approval and development of new courses; and marketing and promotion activities. This committee shall submit to the UM Provost or provost's designee all recommended course listings, staffing, content, promotion and marketing, and costs. Subject to applicable UM and Montana University System course policies and requirements generally, UM shall have final approval authority over all proposed course activities subject to this Agreement. The committee shall meet at least semi-annually, and more frequently as necessary. Any committee member or the UM provost may call committee meetings. The UM legal counsel's office shall be notified of all committee meetings. The AP Committee shall make a report of student use and earnings from the AP program to the president and commissioner of higher education at least every 15 months.

## ARTICLE 6 - FINANCIAL TERMS

6.1 Revenues Subject to this Agreement. The Parties agree that UM shall have charge of all revenues accruing under this Agreement. UM, through UM's Department of Continuing Education, shall collect and account for such revenues and pay AP quarterly, with any necessary adjustments made by UM at the end of each fiscal year. Said revenues shall include all revenues from all online AP courses taught under this Agreement and from direct sales of course materials and course registration and certification fees. From said gross revenues, UM will deduct operating costs, pay instructors' fees and IT fees, and divide the remaining net revenues in accordance with this section.

6.2 Gross Revenue Less Operating Expenses Calculation: From gross revenue, the following operating expenses shall be deducted first:

1. AP Support Staff;
2. AP IT Infrastructure;
3. AP Student Payment Processing;
4. AP Course Support;
5. AP Marketing;
6. AP Processing and certification fees;
7. UM Direct Costs, if any; and
8. AP New Course Production Costs.

6.3 AP Start-Up Costs. Until paid, AP's costs of purchasing, developing and implementing the AP server shall be deleted from gross revenue as operating costs. The AP Committee will review these costs, which are allowable up to a maximum of \$180,000.

6.4 AP Cost Guarantee. For any quarter or for any fiscal year in which the operating expenses exceed gross revenue, AP shall bear all operating expenses in excess of gross revenues and shall not be entitled to reimbursement for any deficiency from UM. All operating expenses shall be reviewed and accounted for annually by the AP committee referenced in Article 5.

6.5. Instruction and IT Fees; Computation of Net Revenue. From the total amount remaining after the deduction of operational expenses, and as a percentage of that total (after operating expenses are deleted), a 12 percent AP Content and Instructor Fee and a 4 percent AP Program Administration Fee shall be deducted, leaving Net Revenue. The 16% total fees shall be paid to AP for payment to AP's instructors and technology consultant. AP shall be responsible for all payments to AP principals and employees.

6.6 Division of Net Revenues: The net revenue derived pursuant to this article, calculated quarterly and adjusted at the end of each fiscal year, shall be divided among the Parties as follows: AP shall receive seventy-five percent (75%) of net revenue as its royalty payment and UM shall retain twenty-five percent (25%) of net revenue.

#### ARTICLE 7 - USE OF UNIVERSITY NAME AND LOGO

7.1 Grant of Use of Name and Logo. AP is granted the limited right to use the UM name and logo in the furtherance of this Agreement. AP agrees to comply with all UM requirements and policies in any promotion or marketing of activities subject to this Agreement.

7.2. Restrictions on Use. Neither party shall use the names or trademarks of the other party, nor any adaptation thereof, nor the names of any of their employees, in any advertising, promotional or sales literature without prior written consent obtained from such other party, in each case. Neither Party is authorized to assign, sell, lease or otherwise transfer any right to the use of the other's name and logo for any purpose without express approval.

#### ARTICLE 8 - ROYALTIES

For the rights, privileges and license, UM shall pay royalties to AP during the term of the Agreement. Royalties will be calculated only from course enrollment and direct sales of course materials for exam preparation courses and continuing education classes. For the exclusive access to AP's intellectual properties and other AP resources, for each commercial application or use of licensed products, UM will pay AP royalties at a rate of seventy-five percent (75%) of net revenue, as provided for in this Agreement.

#### ARTICLE 9 - COURSES FOR ACADEMIC CREDIT

AP courses may be offered for academic credit upon recommendation of the AP Committee and approval of UM. In such case, it is anticipated that the student will be charged the AP course fee set by AP as well as a tuition charge set by UM. The academic credit charges, operating expenses and revenue distribution shall be governed by UM and Montana University



System policies applicable to online education for academic credit activities. At the time of approval of such courses for academic credit, the Parties will negotiate a license fee for credit courses which fairly compensates AP for the work required to offer courses for credit. Said agreement shall be attached to this Agreement as an addendum. Owners and employees of AP shall not be entitled to payment of course fees under this Agreement as well as payment as UM employees for the same development and instructional activities.

#### ARTICLE 10 - REPORTS AND RECORDS

10.1 Financial Records. UM shall keep full, true and accurate books of account containing all particulars that may be necessary for the purpose of showing the amounts payable to AP hereunder. Said books of account shall be kept at UM 's principal place of business or the principal place of business of the appropriate division of UM to which this Agreement relates. Said books and the supporting data shall be open for review, upon notice to UM and during UM's regular business hours, for five years following the end of the calendar year to which they pertain, to the inspection of AP or its agents for the purpose of verifying UM 's royalty statement or compliance in other respects with this Agreement. Should such inspection lead to the discovery of a greater than ten percent discrepancy to AP's detriment in payment of royalties owing hereunder, UM agrees to pay the full cost of such inspection.

10.2 Course Records. AP agrees to maintain records on all courses taken and certificates granted. UM shall have the right to review and utilize such records for its purposes. AP agrees not to destroy such records and, in the event of termination of this Agreement, shall provide such records to UM in a form to be mutually agreed upon. AP agrees that it is bound by state and federal laws protecting student privacy for the purposes of this Agreement.

#### ARTICLE 11 – COPYRIGHT COSTS

11.1 In lieu of up-front licensing fees, UM shall reimburse AP during the term of this Agreement for any reasonable costs of copyright registration or licensing; such costs shall be treated as operating costs and paid from gross revenues prior to the distribution of revenues, in accordance with Article 6. The reimbursement of the filing and registration costs of copyrights that may subsequently fall under this Agreement shall be negotiated between AP and UM.

11.2 Payment of all fees and costs relating to the registration and maintenance of the Intellectual Properties covered by this Agreement shall be the responsibility of AP, whether such fees and costs were incurred before or after the date of this Agreement.

#### ARTICLE 12 –COPYRIGHT PROTECTION

12.1 UM shall inform AP promptly in writing of any alleged infringement of the intellectual property by a third party and of any available evidence thereof. Likewise AP shall inform UM promptly in writing of any alleged infringement of intellectual property by a third party.

12.2 During the term of this Agreement, UM shall have the right, but shall not be obligated, to prosecute at its own expense all infringements of the intellectual property and, in furtherance of such right, AP hereby agrees that UM may include AP as a party plaintiff in any such suit, without expense to AP. The total cost of any such infringement action commenced or

defended solely by UM shall be borne by UM and UM shall keep any recovery or damages for past infringement derived therefrom.

12.3 If within three months after having been notified of any alleged infringement, UM shall have been unsuccessful in persuading the alleged infringer to desist and shall not have brought and shall not be diligently prosecuting an infringement action, or if UM shall notify AP at any time prior thereto of its intention not to bring suit against any alleged infringer, then, and in those events only, AP shall have the right, but shall not be obligated, to prosecute at its own expense any infringement of the intellectual property, and AP may, for such purposes, use the name of UM as party plaintiff; provided, however, that such right to bring such an infringement action shall remain in effect only for so long as the license granted herein remains exclusive. No settlement, consent judgment or other voluntary final disposition of the suit may be entered into without the consent of UM, which consent shall not unreasonably be withheld. Any recovery of damages by AP for each such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of AP relating to such suit. The balance remaining from any such recovery shall be divided equally between UM and AP.

12.4 In the event that UM shall undertake the enforcement and/or defense of the intellectual property by litigation, UM may withhold up to one hundred percent (100%) of the payments otherwise thereafter due AP under Article 3 hereunder and apply the same toward reimbursement of up to half of UM 's actual documented expenses, including reasonable attorneys' fees, in connection therewith. Any recovery of damages by UM for each such suit shall be applied first in satisfaction of any unreimbursed expenses and legal fees of UM relating to such suit, and next toward reimbursement of AP for any payments under Article 3 past due or withheld and applied pursuant to this Article 9.

12.5 In the event that a declaratory judgment action alleging invalidity or noninfringement of any of the intellectual property shall be brought against UM, AP, at its option, shall have the right, within thirty (30) days after commencement of such action, to intervene and take over the sole defense of the action at its own expense.

12.6 In any infringement suit as either Party may institute to enforce the intellectual property pursuant to this Agreement, the other Party shall, at the request and expense of the Party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

12.7 UM, during the exclusive period of this Agreement, shall have the sole right in accordance with the terms and conditions herein to sublicense any alleged infringer for future use of the intellectual property; royalties under such sublicenses shall be treated per Article 8.

### ARTICLE 13 - TERM AND TERMINATION

13.1 The term of this Agreement shall be five years from its effective date, April 1, 2007. It shall be renewable for up to two years, pursuant to mutually acceptable terms and conditions. This Agreement shall in no event be in force longer than a period of seven years.

13.2 The Agreement may be terminated for (a) material breach of any terms of this Agreement that remain uncured after notice of such material breach and a 60-day cure period; or

(b) if operating costs materially exceed gross revenues over a significant time period. (The Parties contemplate this to mean if operating costs are 20 to 25 percent higher than gross revenues over an 18 to 24 month time period).

13.3 Either party may withdraw from this Agreement for convenience, without cause, by giving the other party at least 60 days' written notice of intent to terminate the contract, however, AP may not terminate in the first three years of this Agreement unless UM has received payments hereunder equal to or exceeding the amount of UM's in-kind contributions as adjusted for inflation.

13.4 Upon termination, AP shall immediately cease using UM premises and UM's identity in any course activity subject to this Agreement except for courses approved and in progress prior to termination. All revenue allocation obligations subject to this Agreement shall remain in force with regard to any course or other activity initiated by any particular student registrants prior to termination.

#### ARTICLE 14 - ASSIGNMENTS AND TRANSFERS

Neither party shall assign or transfer any rights, obligations or responsibilities subject to this Agreement without the prior written consent of the other party. Any transfer or assignment made without such consent shall not relieve the transferor or assignor of any obligation or responsibility subject to this Agreement.

#### ARTICLE 15 - DISPUTE RESOLUTION

Any dispute arising under this Agreement which cannot be resolved informally shall be resolved by mediation if possible. If not resolvable by mediation, the Parties shall recourse to such remedies as are allowed by Montana law.

#### ARTICLE 16 - HOLD HARMLESS/INDEMNIFICATION

AP agrees to protect, defend, and hold harmless UM and the State of Montana, and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of AP's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts, omissions, or negligent or tortious acts of AP and/or its agents, employees, representatives, or assigns under this Agreement, except as is the result of the sole negligence of UM or the State.

#### ARTICLE 17 - REQUIRED INSURANCE

17.1 General Requirements. AP shall maintain, at its cost and expense, insurance against claims and liabilities of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of the death or injury to persons or out of any damage to property, including contractual liability, which may arise from or in connection with the performance of the work by

AP, agents, employees, representatives or assigns. This insurance shall cover such claims as may be caused by any negligent act or omission.

17.2 Primary Insurance. AP's insurance coverage shall be primary insurance as respect to UM, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by UM, its officers, officials, employees or volunteers shall be excess of AP's insurance and shall not contribute with it.

17.3 Specific Requirements for Commercial General Liability. AP shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$300,000 per occurrence and \$600,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of AP or its officers, agents, representatives, assigns or subcontractors. UM, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds; for liability arising out of activities performed by or on behalf of AP, including the insured's general supervision of AP; products and completed operations; premises owned, leased, occupied, or used.

17.4 Specific Requirements for Professional Liability. AP shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of \$500,000 per occurrence and \$1,000,000 aggregate per year to cover such claims as may be caused by any act, omission, negligence of AP or its officers, agents, representatives, or assigns. Note: if "occurrence" coverage is unavailable or cost prohibitive, AP may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of the contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

17.5 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by UM. AP must notify UM immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. UM reserves the right to require complete copies of insurance policies at all times.

## ARTICLE 18 - COMPLIANCE WITH MONTANA LAWS

Pursuant to § 49-3-207, MCA, AP must, in performance of work under this contract, fully comply with all applicable federal, state, and local laws, rules and regulations, including, but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Subcontractors of AP must be subject to the same provision. AP agrees that the hiring of persons to perform the contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing the contract. In addition, all AP principals and personnel, shall comply with all Montana state, university and Board of Regents' conflict of interest and ethics laws and requirements

ARTICLE 19 - COMPLIANCE WITH WORKERS' COMPENSATION ACT

AP is an independent contractor subject to the provisions of the Montana Workers' Compensation Act, including but not limited to, §§ 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of WC insurance, an independent contractor's exemption, or documentation of corporate officer status. This insurance or exemption must be valid for the entire term of the Agreement. Renewal documents must be supplied to UM. Any UM employee who is employed by AP in any capacity related to this Agreement must be covered by the AP policy of WC coverage and excluded from the UM WC policy.

ARTICLE 20 - PAYMENTS, NOTICES  
AND OTHER COMMUNICATIONS

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:

For The University of Montana:	For America's Processors, LLC
Claudia Denker, Associate Legal Counsel The University of Montana Office of Legal Counsel 32 Campus Drive Missoula, MT 59812 Telephone: 406-243-4755	Jerry Furniss, Managing Member America's Professor, LLC 1819 Holburn, Suite E Missoula, MT 59801 Telephone: 406-549-8515

ARTICLE 21 – RIGHT OF FIRST REFUSAL

In the event AP receives a bona fide offer to purchase the company, which offer AP intends to accept, UM shall have a right of first refusal to purchase the company. UM shall be provided ninety days from the date of written notice of the offer to purchase to notify AP that it will exercise its right of first refusal.

ARTICLE 22 - MISCELLANEOUS PROVISIONS

22.1 This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the state of Montana. Venue for any action under this Agreement shall be in Montana state district court, Fourth Judicial District, Missoula County, Montana.

22.2 The Parties acknowledge that this Agreement sets forth the entire Agreement and understanding of the Parties as to the subject matter hereof and shall not be subject to any change or modification except by the execution of a written document signed by the Parties.

22.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

22.4 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.

22.5 The parties agree that confidential information delivered or disclosed by either party to the other party in connection with the review and transactions contemplated in this Agreement shall not be disclosed or used except for the purposes contemplated in this Agreement, without the consent of the other party. Information shall not in any event be deemed to be confidential information if it is (i) in the public domain without violation of the terms of this Article; (ii) known by the party receiving it before receipt hereunder; (iii) received from a third party without violation of a nondisclosure obligation of that third party to the party delivering or disclosing the information; (iv) independently developed by or for the party receiving the information and not directly or indirectly derived from or based upon information delivered or disclosed hereunder; or (v) a disclosure required by law. The obligations of confidentiality shall survive termination of this Agreement for a period of five (5) years.

IN WITNESS OF THE ABOVE, the parties have executed this Agreement at Missoula, Montana the day and year first above written.

**LICENSOR:**  
**AMERICA'S PROFESSOR, LLC**

**LICENSEE:**  
**THE UNIVERSITY OF MONTANA**

By: \_\_\_\_\_  
Dr. Jack Morton, Principal

By: \_\_\_\_\_  
George M. Dennison, President

By: \_\_\_\_\_  
Dr. Jerry Furniss, Principal

Approved: \_\_\_\_\_  
Sheila M. Stearns  
Commissioner of Higher Education

## APPENDIX A

America's Professor Proposal  
Basis for University of Montana (SOBA) Annual Indirect Costs

Item	Annual Unit Cost	#of units	Extension
Internet Access	\$ 240.00	2 lines	\$ 480.00
Telephone line	\$ 282.00	4 lines	\$ 1,128.00
Electricity	\$ 1,200.00	1 o/h charge	\$ 1,200.00
Printing	\$ 151.75	8 colors/yr	\$ 1,214.00
Paper	\$ 3.11	32 reams/yr	\$ 99.52
Room 108	\$ 47.00	30 days	\$ 1,410.00
Room 345-2	\$ 64.00	30 days	\$ 1,920.00
Board Room	\$ 302.00	20 days	\$ 6,040.00
Clerical cubical space	\$ 20.00	250 days	\$ 5,000.00
Clerical wages**	\$ 5,000.00	0 250-day yr	\$ -
Grad Assistant	\$ 6,700.00	1 school yr	\$ 6,700.00
<b>TOTAL</b>			<b>\$25,191.52</b>

\*\* These costs will be paid by America's Professor, LLC and not The University of Montana

## SUBMISSION FORM

### University System/Employee Intellectual Property Joint Participation MUSP 407

This form is to be submitted with any Board of Regents item whereby a campus seeks the approval of an agreement with or arrangement regarding an employee pursuant to 20-25-109 MCA and Regents Policy 407.

When the submission concerns matters of trade secrets or confidential business information, or any other matter entitled to privacy under state or federal law (e.g., the federal statute known as Bayh/Dole) the submitting campus may request consideration of the submission, in whole or in part, in executive session.

The submitting campus should also provide the Commissioner a copy of the contract(s) that form the basis for the cooperative arrangement for which approval is sought. Submission of the contract does not indicate a conclusion that all or part of the contract is a public document and the question of whether it is in whole or in part protected from public disclosure will be evaluated on a case by case basis.

1. Summarize the nature of the intellectual property that was developed by the employee seeking approval. Indicate the sources of funding for the research that resulted in this invention.

**The intellectual properties developed by The University of Montana School of Business Administration (SOBA) Professors Morton and Furniss are professional educational courses in the fields of real estate, insurance, and securities, and others to be developed, for professional licensure exam preparation, professional certifications and designations, and continuing professional education. Additional intellectual property includes a state-of-the-art online computer delivery system.**

**No research funds were used to develop this intellectual property. The professors have, with University of Montana permission, operated an approved, private, external consulting for-profit business offering face-to-face exam preparation courses for professional certifications for many years. They are currently developing the proprietary course delivery system.**

2. a. Names of the university employees involved.

**Jack Morton  
Jerry Furniss**

- 
- b. Name of business entity involved.

**America's Professors, LLC – a Montana limited liability company**



3. The university and employees are seeking approval for:
  - a. The employee to be awarded equity interest in the business entity.
  - b. The employee to serve as a member of the board of directors or other governing board of the business entity.
  - c. The employee to accept employment from the business entity.
  - d. Other. Please explain. **Royalty payments pursuant to the proposed Licensing Agreement.**
4. a. Summarize the nature of the relationship between the university and the business entity (e.g., the entity is licensing the intellectual property from the university, the entity is co-owning the intellectual property with the university).

**The University of Montana and America's Professors will be collaborating on offering these exam preparation classes and continuing professional education classes on-line. America's Professors shall retain full ownership of the intellectual properties, but license the intellectual properties to UM to offer for UM credit. AP will offer the courses for certification only, or non-credit, in collaboration with UM. Access to the online courses shall be through AP's proprietary computer platform with the approved use of the UM logo on the AP website. A 4-member committee comprised of Professor Morton or Furniss, the UM Business School Dean, the UM Continuing Education Dean, and an Associate Vice President for Administration and Finance, will prepare a comprehensive annual plan of proposed courses, proposed staffing for those courses, and a proposed AP program budget, which will be submitted to the UM Provost for approval. The UM Legal Counsel's office will assist the committee to ensure compliance with all applicable laws. UM will handle all fee collections for these courses. Professors Morton and Furniss will work pursuant to individual conflict of interest management plans, and as stipulated in the proposed Licensing Agreement, will not reduce their regular faculty workload obligations as set forth in the UM faculty collective bargaining agreement.**

- b. The proposed duration of the agreement or arrangement.

**An initial 5 year term – with a 2-year renewable option.**

- c. The conditions under which the agreement may be terminated or dissolved:

**Material breach of the Agreement or operating costs significantly in excess of gross revenues over an 18 – 24 month time period. Or by 60-day termination notice given by either party to the other party; however AP may not terminate in the first three years of the Agreement unless UM has received payments under the Agreement equal to or exceeding the amount of UM's annual in-kind contribution.**

5. Explain specifically how the University System or the State of Montana will likely benefit from the agreement or arrangement.
  - a. **The University of Montana will benefit from having quality professors delivering quality training to professionals across the United States which will reflect the quality of this institution.**

b. The University will receive 25 percent of all net revenues from non-credit certification course fees; and additional revenues from academic credit course fees as determined by the licensing agreement and applicable Montana University System policies. The potential net revenues derived from this arrangement are significant.

c. Montana business professionals in remote locations will have ready access to high quality instruction needed or desired for business professional licensure, certification, and related needs from highly experienced UM Business School faculty without incurring the relatively high cost of leaving their homes and businesses to take the courses. In addition, those training courses approved for academic credit will enable a large number of Montanans to use these credits in pursuit of first or additional baccalaureate degrees.

d. UM will receive the benefit of valuable intellectual property created from the content of courses which have successfully been delivered, and will continue to be delivered, for many years. The reputation of these courses in Montana and nationally is high, and UM will benefit directly by having these courses identified as University courses.

6. Summarize the financial terms of the agreement or arrangement. Include:

a. The value, nature and source of the University's contribution.

**The University of Montana School of Business Administration shall contribute office space, telephone lines, and film production facilities to this arrangement. The estimated value of the in-kind contribution is \$25,191.52 annually, before inflation.**

b. The value and nature of the employee's contribution.

**AP's two principals (Morton and Furniss) are investing approximately \$178,000 to design the electronic course delivery system. This amount will be recouped by AP from the gross revenue generated by the activities contemplated in this Agreement. In addition, AP will cover any and all revenue deficits in the unlikely event annual enrollment does not reach the estimated breakeven point of 1400 students.**

c. The anticipated revenue to be generated by the project and the time line for generating such revenue.

**If 2000 students enroll for non-credit online training in the first year, the estimated gross revenue is approximately \$498,000. From this amount, operating expenses of \$207,360 are subtracted, leaving \$290,640 net revenue. The net revenue would go directly to reimbursing AP for the intellectual property development costs estimated at \$178,000 (up to a \$180,000 cap), leaving in the first year, net revenue of \$112,640 available to distribute to the parties. UM's 25 percent share would be \$28,160. Assuming a second year enrollment of 2000 students, the net revenue available to split would increase to \$290,640. UM's 25 percent share in the second year would be \$72,660.**

**Academic credit expenses and revenues will be governed by UM and Montana University System policies applicable to online education for academic credit activities. At the time of approval of such courses for academic credit, UM and AP will negotiate a license fee for credit courses which fairly compensates AP for the work required to offer courses for credit.**

d. The manner in which revenue and expenses will be shared by the parties.

**With regard to courses not offered for academic credit, net revenue will be split 75 percent to AP and 25 percent to UM. The net revenue is calculated by total revenue less operating costs (including a 12% AP Content and Instructor fee plus a 4% AP Program Administration fee). AP will be responsible for all non-UM operating costs.**

**With regard to courses offered for academic credit, revenue and expenses will be calculated and negotiated pursuant to The University of Montana and Montana University System policies applicable to online academic credit activities. At the time of approval of such courses for academic credit, UM and AP will negotiate a license fee for credit courses which fairly compensates AP for the work required to offer courses for credit.**

e. The nature of each party's equity interest in the project. If none, so indicate.

**AP owns the intellectual property and the rights to 75 percent of net revenue for non-credit course fees plus an academic credit course license fee which fairly compensates AP for the work required to offer courses for credit in an amount to be negotiated.**

**The University of Montana has no ownership rights but has the right to 25 percent of net revenue from noncredit courses plus UM tuition collected for academic credit courses, less a negotiated license fee for AP's work in delivering such credit classes.**

March 27, 2007

ITEM 134-1001-C0307

**Remodel Testing Center – Lommasson Center; The University of Montana - Missoula**

**THAT:**

Consistent with the provisions of MCA 18-2-102, the Board of Regents of the Montana University System authorizes The University of Montana to implement steps necessary to remodel the Testing Center in the Lommasson Building. The cost for this facility will not exceed \$220,000. Auxiliary and campus unrestricted funds will wholly fund this project.

**EXPLANATION:**

UM Testing Services and its associated testing offerings have been evolving and growing in the past several years. Through the addition of additional testing stations in the existing facility and the expansion of hours of operation, we have been able to accommodate all the changes and growth occurring to date. However, the operation has reached a point, with respect to volume, testing station availability and changes in delivery methodology that necessitates expansion of the current facility.

First and foremost, the largest area of change is occurring with respect to the Graduate Record Exam (GRE). As the most widely accepted test for application and admission to Graduate School programs of study, the impending changes in the delivery of the GRE will, unless UM responds accordingly, have a negative impact on Graduate School application and admission numbers at The University of Montana.

In the past, the GRE was offered on an “on-demand basis” at the convenience of the testing applicant. Beginning in September of 2007, the revised GRE will be offered simultaneously worldwide at various fixed dates and times in order to guarantee the integrity of the exam. The change in how the GRE will be administered creates logistical and space issue concerns for The University of Montana Testing Services.

In anticipation of the upcoming changes to administering the GRE, we have been informed by Educational Testing Service (ETS) that there will be 29 annual fixed

administrations available. Our current test station availability is such that we will not have enough seats available to accommodate the number of GREs that we have historically given annually. Projections show that we will only be able to deliver 174 GRE exams annually compared to our historical average of 559 GRE exams per year for the past 3 years.

Our needs assessment indicates that UM Testing Services will need to add additional testing stations in a proprietary lab as spelled out in the expansion floor plan. This will allow UM to meet the historical GRE volume and thus ameliorate any potential negative impact on UM Graduate School application/admission numbers. Additionally, this expansion will allow the university to add additional licensing and certification exams for various campus academic programs, e.g.: CPA, Pharmacy, Social Work, etc. The changeover date for fixed date administrations of the GRE will occur on September 1, 2007. This dictates that the expansion project be undertaken as soon as possible to insure completion of construction over the summer to allow Testing Services to come back online by September 1, 2007.

This authority request is for an amount greater than \$150,000, which requires the following additional information:

(a) Project Description:

The work performed under this authority encompasses the remodeling/expansion of the Testing Center in the Lommasson Building.

(b) Cost Estimate and Funding Sources:

Construction	180,000
Architectural Fees	16,000
Non-Contracted Labor	5,000
Utilities	0
Administration	7,500
Testing	500
Contingency	11,000
Equipment	

<b>PROJECT TOTAL</b>	<b>\$220,000</b>
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This project will be financed with auxiliary and campus unrestricted funds.

(c) Programs Served, Enrollment Data, Projected Enrollments:  
N/A

(d) Space Utilization Data:  
N/A

(e) Projected Use for Available Residual Space:  
N/A

(f) Projected O&M Costs and Proposed Funding Sources:  
N/A