

THE BILL OF SALE OF SOUTHERN UNIVERSITY CAMPUSES

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Diola Bagayoko, Ph.D.
Southern University System Distinguished Professor of Physics
Director, the Timbuktu Academy

PREAMBLE

This document is for any person from any ethnic, gender, or religious affiliations who has a legal, human or moral (including equity) responsibility for the existence of the Southern University System and of any specific campus therein. Immediate action appears to be needed for the very survival of these public campuses in service to the state and to the nation. The writer had a professional and moral obligation to produce this document **to inform those it may concern** of “the sale of Southern University down the road” to a private entity, using funds from its campuses! The author leaves it to the reader to determine what he/she should do for the present and future generations, in general, and of African Americans, in particular. **Any failure to read this document thoroughly and to act accordingly will be a calamity.**

SUMMARY

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The Illegal Status of the “Contract on Southern University Campuses”

At its meeting of October 28, 2011, the Southern University Board of Supervisors (the Board) approved a “master services and licensing agreement,” i.e., a contract, between Southern University System and Education Online Services Corporation (EOServe). The referenced October meeting is the same one where Financial Exigency for SUBR was declared by the Board, for fall 2011 to June 2012. Additionally, the Board approved a Tobacco Free policy proposed by the Southern University System President, Attorney Ronald Mason, Jr. (Dr. Mason). Comments and discussions about these last two items unwittingly or by design, possibly led to the approval of the above contract without any discussion which indicates that it has NOT been read carefully. The contract in question, if not attached, is available from Thomas_Miller@subr.edu, President, SUBR Faculty Senate, or Diola_Bagayoko@subr.edu

In the following paragraphs, we spell out some major features and clauses of the above agreement or contract. Whenever applicable, we will note the direct and unavoidable consequences for the campuses in the Southern University System.

The contract in question involved amounts of funds far beyond \$20,000. Hence, the contract should be reviewed and approved (or rejected) by the Office of Contractual Review (OCR), in the Division of Administration, in the Office of the Governor. *More specifically, the 2 pages of Executive Summary preceding the contract in the October 28, 2011 SU Board package listed projected revenue for the SU System to be \$560,000, \$2.3 Million, \$ 4.4 Million, \$8.1 Million, and \$14.3 Million for years 1, 2, 3, 4, and 5,*

*respectively. This summary, **a part of the public records**, clearly shows that the amount of funds involved absolutely demanded that OCR review the contract – particularly in light of the fact that EOServe is to receive **2.33 times the above amounts for SU System, for each of the listed years.** The EOServe contract, up to the time this line is written, was not formally submitted to or reviewed and acted upon by OCR, unlike the contract between LSU and another online service provider that was approved by OCR.*

Some individuals well versed in subterfuges claim that the contract does not have to be reviewed by OCR as it does not specify an amount of funds to be paid to EOServe! This contract should be reviewed not only due to the hundreds of thousands and Millions of dollars to be potentially paid to EOServe, but also because of the huge amount of funds it prevents Southern University campuses from making.

By delegating purchasing, representation, etc., by a public institution to a private entity, the contract is illegally circumventing both open record and bidding laws.

The contract is also illegal by virtue of its violation of Article VIII Section 12 of the Louisiana Constitution – as it allows funds appropriated by the Legislature solely for campus operations to be used for outside purposes.

Further, the contract and the System takeover of the financial, information technology, etc., operations of the campuses place these campuses in jeopardy vis à vis Standards of Accreditation by the Commission on College of the Southern Association of College and Schools (SACS). **This takeover, started in 2011 and formally approved by the SU Board in October 2012, is the needed tool for the System Office to consummate the illegal sale, shackling, and crippling of SU campuses! Let us connect the dots! It also violates Article VIII, Section 12 of the Louisiana Constitution relative to appropriated funds being “used solely as provided by law.”**

We note below some salient features or clauses of the EOServe contract, clauses that make it a **“bill” of sale of Southern University (SoS) campuses** and a **“contract on Southern (CoS) campuses.”**

Inordinately Long Duration of the Contract for 10 years (See Article VI, Sections 6.1-6.2 of the Contract)

The contract between SUS and EOServe is for five (5) years with an automatic extension for five (5) additional years for a total of ten (10) years. The language in Sections 6.1 and 6.2 is such that Southern University does not have the option of terminating the contract after the first five years – unless (a) Southern University loses accreditation (or is on probation) or (b) the state refuses to fund the University (i.e., non-appropriation). A careful reading shows that budget cuts like the huge ones we have seen in the last five (5) years at SUBR do not qualify as “non-appropriations.” *In contrast, the contract between LSU Baton Rouge and Academic Partnerships, LLC, is for three years only.*

To understand *the deleterious nature of this shackling of SU campuses by the above contract*, one has to see the unrelenting trends of innovations in information technology, in general, and in internet and cloud based interactivity and instruction, in particular. Further, the explosion of open sources (that are freely available to everyone), in general, and of massive, open online courses (MOOCs), in particular, clearly point to the stagnation of SU campuses, under this contract, while all their peers could be potentially blossoming. [See the Special Report of Time Magazine on “Reinventing College,” Vol. 180, No. 18, 2012, October 29; also see the Sunday Advocate of January 27, 2012, Page 14A.] MOOCs are huge and growing courses entirely available online and that are totally free. ***The EOServe “contract on” Southern prevents SU campuses from developing their own online infrastructure and from taking advantage of the MOOCs and other enormous resources. Please see Attachment I for more illustrations.***

Confidentiality Clause [Secrecy of public records - See Article 10, Section 11 of the Contract]

The confidentiality and non-disclosure clause, Section 10.11, basically allows Southern University System (*not to be confused with the campuses*) to withhold from the public any information related to its dealings with EOServe pursuant to this contract. The Southern System's takeover of all the financial operations of the campuses and this clause in the contract totally shield records relative to financial transactions of online programs and related payments to EOServe. Indeed, the term "non-public information" in this Section, after all, is as determined by the SU System and its agents. ***If "plans, Programs, processes, products, costs, equipment, finances, operations or customers" from either party are considered confidential, then one cannot, in any way, even verify whether or not EOServe renders any services, let alone the scope, depth, and quality of these services and the commensurate nature of the compensation it receives!***

The "Sale," Shackling, and Crippling of Southern University Campuses

The contract between EOServe and the SUS definitively cripples Southern University and A&M College in Baton Rouge as far as the building of its instructional infrastructure, resources, and delivery capacity are concerned. The same is true for other SU campuses. Perhaps this crippling is the most damning damage being inflicted upon the SU campuses. *We leave it to the reader to determine the extent to which other campuses in the SUS system have their future sold out to EOServe, with EOServe using funds from SU campuses to buy them!* This fact is apparent in the clauses discussed below, among others.

In the definitions (See Page 5), the contract states that *"In the event that EOServe Corp. Compensates Southern University's subject matter experts and instructional designers to create a particular and individual course content and/or Course Media, said course shall remain the property of EOServe Corp."*

This statement may look benign on its face, until the following is realized.

(a) The few thousand dollars paid by EOServe to SU faculty or personnel are minuscule compared to the costs (paid by SU campuses) for the actual time faculty members or personnel devote to such "creation" of course content and/or Course Media.

(b) The above payment is a corrupting incentive that is already leading some SUBR faculty and other personnel to help (unwittingly or otherwise) sell the future of the institution – given that these developments will belong to EOServe and not SUBR whose peers are building their future; and

(c) The fact that the SU System that is implementing the contract in **secrecy** has so far seen to it that EOServe is the one paying a few thousands (i.e., generally between \$1,500 to \$7,500, depending on some parameters unknown to us) to build its library of course content/media while SUBR is not building anything. The "giveaway" of funds by SU campuses, as dictated by the contract in its distribution of revenues, shows that the above few thousand dollars are actually from SU campuses. *This situation is the first one known to us where a private entity uses funds given to it by a public institution to buy that same public institution!*

See the first paragraph of Section 3.17 of the contract for the above ownership of courses (and related contents/Media) by EOServe, following the payment of an amount that is relatively tiny as compared to the real, total cost of said "creation" Section 4.1 is to be read carefully: Items contributed by EOServe Corp., that is to be paid heftily by SUBR, remain the property of EOServe and as do the **derivatives** of these items. At the end of the contract, **SUBR will not be able to operate any online course** as EOServe can either choose to forbid outright or charge exorbitant fees for the utilization of any and all materials (and derivatives) that it contributed to the recruitment, advertisement, Learning Management System (LMS), etc.

In order to appreciate the scope and depth of the crippling of SU campuses, one first has to read Section 1.1 and 3.4. A highly misleading statement, like several others in this contract, is in Section 1.1. Indeed, it alludes to the choice of a learning management system (LMS) to be selected, after noting that it could be the current LMS of Southern University (Blackboard for SUBR). However, in Section 3.4, not only the LMS of EOServe is imposed, but also all online materials, delivery, etc., are required to be on the LMS of EOServe. Hence, as stated in the preceding paragraph, SUBR and other SU campuses will not be able to operate any online courses in the future – without paying what EOServe will demand. This arrangement is another way of ensuring that SU campuses cannot get out of the shackles put on them by this (so far illegal) contract.

Paragraph (d) of Section 3.6 also prevents SU campuses from “*web application development and graphic design to include creatives, splash pages, websites and multimedia production,*” etc., for online programs as those functions, including that of “*Agency of Record*”, are reserved for EOServe. The same paragraph, incredibly, states: “*EOServe is hereby authorized to purchase media and outside services on Southern University’s behalf as Southern University’s agent.*” Such purchases of media and particularly of “*outside services*” are **basically illegal as they circumvent (a) the state bidding laws, (b) the conflicts of interest laws (as only God knows which outside services will be bought), among others.** The statement that EOServe will obtain Southern University’s approval before purchases is a perfunctory one as such approval, from Attorney Mason and his agents, will be obtained and kept secret (see Confidentiality Clause).

Sections 3.8 and 3.9-3.10 further reinforce the crippling of SU campuses by removing them from crucial activities germane to the operation of a program and assigning the same activities to EOServe. These activities include recruitment, admission, and advisement. This situation may appear normal, until one envisions any SU campus operating its own online program after EOServe is gone. Section 3.16 states: “*EOServe Corp. shall establish the pricing for, and arrange for the availability of, all instructional materials, texts, software and access to technology.*” If a reader does not know that the “access to technology” fees will not go to SU campuses, but most assuredly to EOServe, and could be as high as the tuition fees – then he will miss something here. The “contract on” Southern leaves it entirely to EOServe to set these fees.

Sections 3.11 , 3.13, 3.20, and 3.21 make it clear that EOServe will have access to sensitive information pertaining to SU students, all of them, given that BANNER does not compartmentalize and that “view access” to information for Online students comes with the same for the others. The contract with the SU campuses does not allow Online students to apply for federal student financial aid without passing through EOServe. Specifically, Exhibit 5 of the contract reads “*EOServe Corp. uploads every needed document for the prospective student’s Financial AID package to ERx.*” And ERx is an EOServe property different from the SU campuses’ information system. **The reader should understand that by having EOServe usurp critical recruitment, admission, and related functions, the SU campuses are bring eviscerated so that they become non-functional without EOServe.** The burden is on SU campuses, and not EOServe to protect the confidentiality of students’ information, including that on the FAFSA form for Financial AID, in accordance with Family Educational Rights and Privacy Act (FERPA). Student Financial Aid FAFSA forms (and required attachments) contain several pieces of sensitive, personal information, including those related to federal taxes for students and, often, for their parents.

The crippling of SUBR is guaranteed in part by the **exclusivity clause** in Section 4.2. Indeed, this section forbids SU campuses not only from engaging in partnership with any other organization for Online or distance delivery, but also from developing the capacity (by themselves) for online or distance education! **In contrast, no exclusivity applies to EOServe Corp. that is presently engaged in online operations with other entities and is developing its capacity for online and distance education!** In particular, Section 3.21 states that “EOServe Corp. shall be permitted to use contact information obtained from prospective

students by EOServe Corp. to solicit prospective students or registered students for other educational programs, including non-Southern University programs, unless the prospective student or student notifies EOServe Corp. that he or she does not wish to be contacted.” **Basically, this clause is stating that EOServe is allowed to recruit students away from online and other programs of SU campuses for others, including EOServe’s own ones! We should note the fact that SU campuses have paid hefty for the contact information of those same prospective students.** It seems treasonous for anyone presiding over or working for a public entity to promote and to implement such a “contract on” that entity to shackle it into servitude for private interests and concomitantly to jeopardize its existence and future viability.

The Giveaway of (Appropriated and Self-Generated) Funds of SU Campuses

SU Campuses do the work, EOServe gets 70% of the revenues while the SU System Office receives the remaining 30%, so says Sub Section 5.3 (e) i. Even though the contract on SU campuses does not have any performance metrics for EOServe and only assigns advertisement and recruitment as its duties, formally speaking, it awards 70% of revenues to EOServe and 30% to SU System Office (not the campuses). The degree programs are on the campuses. The instructors are regular, temporary, and adjunct faculty members on the campuses. Teaching the online courses [including assignments, tests, grading, feedback, etc.], academic advisement, mentoring in the chosen field, etc., are all functions executed by faculty members on the campuses. Yet, even the 30% that is to be paid to the System Office is not necessarily for the campuses. It is up to Attorney Mason to dispose of it as he pleases.

Daylight robbery: For a student who starts out with the online program and decides, after one semester, to enroll in the regular degree program on an SU Campus, 40% of the revenue generated pursuant to his/her enrollment for the remain seven (7) semesters or more will still go to EOServe that will not be doing anything whatsoever for that student. The remaining 60% will go the President’s Office (i.e., SUS and not the affected campus). This fact is stated clearly in Sub Section 5.3(d). Additionally, the 70/30 sharing arrangement will apply to revenues accrued pursuant to any regular student enrolling in online courses.

Outright Heist of Intellectual Properties (IP) of SU Campuses: The Executive Summary that preceded the Contract in the October 28, 2011 meeting package of the SU Board of Supervisors reads in part: “Copyright and initial property rights on all course media provided by Southern University shall be owned by SUS.” Individuals familiar with IP laws understand the huge implications of “initial.” Indeed, anything initially provided by an SU campus can become EOServe property following some tweaking and a change of medium (i.e., from paper to CD or to Online media). Yes, tweaking and a change of medium lead to a new copyright different from whatever applied to the original material in another medium!

EPILOGUE

Public authorities (i.e., oversight agencies or public executives) must not be absolved of harms inflicted on the people by those they appoint or who are under their oversight - irrespective of the Goebbelsian bullying and peddling of platitudes, perverse misrepresentations of facts and of actions.

The illegal contract between EOServe and SUS, one that gives away public resources and cripples Southern University campuses has to be totally abrogated – i.e., terminated – as the facts above dictate. The persons who promoted or implemented this illegal contract (i.e., President Mason and others) violated state laws and the State Constitution and should be dealt with swiftly.

Attachment I: National Trends in Online Education

The reader is urged to consult the special report of Time Magazine on “Reinventing College,” Vol. 180, No. 18, 2012, October 29. It points to the transformative nature of technology in education, with emphasis on online courses. Three major sources of online courses noted are Udacity, Coursera, and edX (<https://www.edx.org/>). The first two are for-profit while the last one is a non-profit entity that involves MIT, Harvard, the University of California at Berkeley, and the University of Texas System, among others.

The January 15 Issue of the Chronicle of Higher Education reported on efforts by San Jose State University in the area of online education. Specifically, it noted the agreement San Jose State University signed with Udacity, one of the major sources of online course offerings (<http://chronicle.com/article/California-State-U-Will/136677/>). *Interestingly, in this agreement, after costs are paid, San Jose State gets 51% of the net revenues while Udacity receives 4 9%. The faculty at San Jose State University will retain the intellectual property rights to the pilot courses they develop and will each be paid \$15,000 for that work.*

The January 16, 2013 Issue of Inside Higher Education contains an extensive discussion of the diverse online efforts in California (<http://www.insidehighered.com/news/2013/01/16/california-looks-moocs-online-push>). In this article, supportive role of Governor Brown was recognized. According to the article, “Both the California State University and University of California systems would receive \$10 million under the budget proposal to expand online courses. California’s community college system would receive \$16.9 million.”

Incidentally, the approximate 90% drop out rate for online courses was not missed by the above report. It underscores the fact that wholesale online recklessness, without the appropriate support system for the learners, could be a calamity for low-income and minority students who are likely to be preyed upon. **In fact, many of them are likely to spoil their federal student financial aid eligibility during their online excursion and find themselves unable to attend a university.**