

## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING entered into this 16 day of October, 2009 by and between the Board of Regents of the University System of Georgia ("Board of Regents") by and on behalf of Kennesaw State University ("University") and the Kennesaw State University Research and Service Foundation, Inc. ("Research & Service Foundation") shall become effective on the date above written.

### WITNESSETH

**WHEREAS**, the Research & Service Foundation intends to contribute to the educational, research, and service functions of the University in securing gifts, contributions and grants from individuals, corporations or other private organizations, government or other public agencies and in obtaining contracts with such individuals or entities for the performance of sponsored research, educational services, or other programs by the various colleges, schools; departments or other units of the University;

**WHEREAS**, the Research and Service Foundation was established as a non-profit corporation under the laws of the State of Georgia in 2005;

**WHEREAS**, it has been determined that it would be advisable and to the material benefit of all concerned to establish certain understandings by and between the Board of Regents, the University and the Research & Service Foundation; and

**WHEREAS**, the Research and Service Foundation is a legal entity separate from the University that is designated as Cooperative Organization by the President of the University;

Now, therefore, for and in consideration of the mutual benefits for and to the Board of Regents, the University, the Research & Service Foundation, and the people of Georgia, through the efforts and cooperation of the foregoing parties,

**BE IT COVENANTED AND AGREED** as follows:

1. The work of the Research & Service Foundation in contributing to the better functioning of the University in its educational, research, and service missions shall include the securing of gifts, contributions and grants from individuals, corporations, private organizations, governmental agencies, and other public agencies, and the obtaining of, and entering into, contracts with such individuals or entities for the performance of sponsored research, educational services, or other programs to be performed under subcontract by the University.

2. The University shall perform the research, educational services, or other programs or projects secured by the Research & Service Foundation, and approved by the University, under the terms of the contracts between the Research & Service Foundation and the sponsoring entities, and the terms of the subcontracts between the University and the Research & Service Foundation, in accordance with the following:
  - a. The persons who are to collaborate or work with these programs or projects shall be selected by officials of the University.
  - b. The University shall prepare and submit to the Research & Service Foundation, reports upon the progress of these programs or projects, in accordance with their various requirements, so that the Research & Service Foundation may fulfill legal and contractual obligations to the sponsoring entities.
  - c. Any and all discoveries, innovations, inventions, applications for patents, patents, and copyrights thereon relating to the subject matter of these programs or projects which may be made hereafter by faculty members, staff members, or agents of the University during the time they are performing work on these projects or as a result thereof, shall become the property of the Research & Service Foundation, except where such discoveries, innovations, inventions, applications for patents, patents and copyrights remain the property of the sponsoring entity by virtue of other agreements. The University will cause all employees and/or agents working on these projects to execute an employee patent and/or copyright agreement protecting the aforesaid interest of the Research & Service Foundation.
  - d. Upon request and at the expense of the Research & Service Foundation, the University agrees to use its best efforts to cause its faculty members, staff members, and agents to execute, when necessary, papers to make applications for letters of Patent of the United States and of foreign countries and to convey complete title to the Research & Service Foundation.
  - e. The parties, hereto, shall negotiate in good faith an agreement to be executed by and between the University, and the Research & Service Foundation, such agreement to provide for sharing of net royalties and income which may result from said discoveries, innovations, inventions, patents and copyrights by the University, the Research & Service Foundation, and inventors. Said agreement shall conform to the

University's Intellectual Property Policy. Said agreement may provide for assignment to and administration by the Research & Service Foundation of other University-related or employee-related discoveries, innovations, inventions, patents and copyrights.

- f. The University shall use its best efforts to assure that the actions of the University's officials, faculty, staff or employees pursuant to this contractual relationship are consistent with policies established by the Board of Regents and the University regarding conflicts of interest, outside activities, and other matters.
- g. The University shall cause to be kept complete and systematic memoranda in writing, including notes on all experimental and research work, descriptions, diagrams, and other data resulting from work on said programs and projects, which memoranda shall be available to the Foundation at all times during normal hours.
- h. In the event a sponsor requests that the Research & Service Foundation keep secret or confidential any process, device, machine or composition of matter relating to the programs or projects, the University shall use its best efforts, to the extent of applicable laws, to maintain such secrets or confidences and not allow the disclosure of same to anyone without the consent of the Research & Service Foundation.

Upon terminating of these programs and projects all original scientific records and data resulting from them shall belong to the Research & Service Foundation but shall remain in the files of the University.

The University may furnish office space, telephone services, and other auxiliary services to the staff of the Research & Service Foundation.

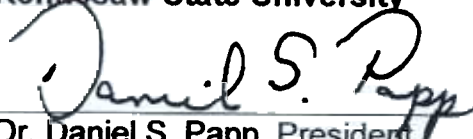
- k. Neither the University nor the Research and Service Foundation shall incur obligations or expenses on behalf of the other party without that party's written approval.
3. With regard to contractual matters, the Research & Service Foundation shall keep the University informed and shall transfer at least monthly to the University, upon invoicing by the University funds to cover direct costs of the work performed and a charge for facilities and administrative costs for the work performed in connection with programs and projects performed by the University under subcontract with the Research & Service Foundation, said facilities and

administrative costs to be in an amount equal to the base for computing indirect costs recoveries under such programs and projects multiplied by a percentage equal to 36/46<sup>th</sup> of the indirect cost rate established annually by the cognizant government agency.

4. The Research & Service Foundation, after paying the necessary costs of its operation, shall hold any balance in trust for the University and shall use such balance from time to time and in such a manner as the Board of Directors of the Research & Service Foundation may see fit for the promotion of research and service at the University.
5. The Board of Directors of the Research & Service Foundation shall submit annually to the President of the University a full report of its actions and activities for the period of such report.
6. Actions and activities of the Research & Service Foundation taken in the name of, for the benefit of, or in conjunction with the University shall be in the best interest of the University as determined by the President of the University or the President's designee.
7. The financial records of the Research & Service Foundation, including any audits, shall be available for inspection by the President of the University or the President's designee. The Research & Service Foundation shall annually present evidence satisfactory to the President of the University or to the President's designee that the Foundation is adequately capitalized for any activities undertaken in the name of, or in conjunction, with the University in addition to any reporting requirements established or imposed by law, Board of Regents policy, or executive order of the governor.
8. The Research & Service Foundation shall annually present evidence satisfactory to the President of the University, or the President's designee, of insurance or self-insurance adequate in form and amounts to cover foreseeable liability arising from activities undertaken in the name of, for the benefit of, or in conjunction with the University.
9. Any use by the Research & Service Foundation of the name of the University or of a symbol or trademark of the University shall be approved in advance by the President of the University or the President's designee.
10. The Research & Service Foundation shall incur no obligations or expenses on behalf of the University without the University's written approval.

11. This Agreement shall continue in full force and effect until terminated by either party upon ninety (90) days written notice to the other party and the satisfactory completion of all research projects being performed under subcontract for the Research & Service Foundation by the University. At the time of said termination notice by either party or upon dissolution of the Research & Service Foundation, any and all assets, property, holdings, and interests shall automatically and immediately revert and/or pass to the University.
12. The Research and Service Foundation agrees to abide by the Board of Regents' Policy section 1905, which is attached as Exhibit A and incorporated herein by reference thereto.
13. This Memorandum of Understanding (MOU) supersedes and replaces the previous MOU entered into between the parties on the 1<sup>st</sup> day of July, 2006.

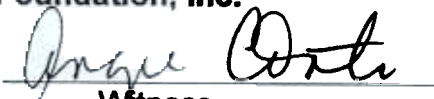
**Board of Regents of the University System of Georgia  
Kennesaw State University**

  
Dr. Daniel S. Papp, President

  
Witness

**Kennesaw State University Research and Service Foundation, Inc.**

  
Dr. Lendley C. Black, Chairperson

  
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