

## AFFILIATION AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2011, by and between the WEST VIRGINIA STATE UNIVERSITY RESEARCH AND DEVELOPMENT CORPORATION, a West Virginia not-for-profit corporation ("WVSURDC") and the WEST VIRGINIA STATE UNIVERSITY BOARD OF GOVERNORS, a body corporate existing under the laws of West Virginia ("Board"), for the benefit of WEST VIRGINIA STATE UNIVERSITY ("University").

### WITNESSETH:

WHEREAS, the West Virginia Legislature (Legislature) has determined that the future economic development in the state will depend upon research developed at the state institutions of higher education, and enhanced research opportunities for state institutions of higher education will promote the general economic welfare of the citizens of the state; and

WHEREAS, the Legislature has determined that in order to enhance the competitive position of the state institutions of higher education in the current environment for research and development, expenditures for equipment and materials for research projects must be handled in an expeditious manner, and the acquisition and utilization of research grants can be simplified and expedited through the utilization of corporations; and

WHEREAS, the Legislature has determined that the interest of the citizens of the state will be best met by agreements entered into and carried out by the governing boards and corporations to provide research assistance for state institutions of higher education; and

WHEREAS, in order to facilitate research and development grants and opportunities for state institutions of higher education, the Legislature has authorized the governing boards to contract with corporations organized for the purpose of providing such services to state institutions of higher education; and

WHEREAS, WVSURDC was formally incorporated and has been affiliated with the University since its inception in 1991, through its established bylaws, with the main purpose of providing services and activities related to promotion, encouragement, and stimulation of research for and on behalf of West Virginia State University; and

WHEREAS, the Legislature has undertaken to reorganize the structure of the state institutions of higher education and has furthermore spoken with regard to such research and development agreements for state institutions of higher education; and

WHEREAS, WVSURDC and the Board desire to describe the features, purposes and mechanisms of the relationship by which WVSURDC and the Board will implement a new affiliation agreement between the parties in accordance with legislative findings and objectives;

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto mutually agree and contract as follows:

### **ARTICLE I**

- 1.1 This Affiliation Agreement substitutes and precedes any prior affiliation agreement executed between WVSURDC and the Board and/or the University. It is the intention of the parties that this AFFILIATION AGREEMENT shall constitute the entire agreement between WVSURDC and the Board.
- 1.2 This agreement is effective for the period beginning July 1, 2011, and will be automatically renewed from fiscal year to fiscal year (e.g. state fiscal year) unless terminated in writing by either party within ninety (90) days of the commencement of each new fiscal year.
- 1.3 In the event the Board shall elect not to renew this Agreement, the Board shall endeavor to give WVSURDC prompt notice of such said decision by the Board not to renew.
- 1.4 This Agreement may be amended at any time upon the mutual agreement of the parties hereto, with said amendments to be executed by the Chairman of WVSURDC and the Chairman of the Board of Governors.

### **ARTICLE II**

- 2.1 WVSURDC shall provide evaluation, development, patenting, licensing, management and marketing services for inventions, processes, trademarks, copyrights or any other intellectual property developed by faculty, staff and students of West Virginia State University.
- 2.2 On the effective day of this Agreement, WVSURDC shall be charged with the responsibility of serving as fiscal agent for sponsored programs conducted by faculty, staff and students of West Virginia State University, and grants shall be accepted by WVSURDC on behalf of the institution and assigned to WVSURDC for fiscal management.
- 2.3 WVSURDC shall have the right to determine the application of the proceeds for any invention, process, trademark, copyright or any other intellectual property developed by the faculty, staff and students of West Virginia State University among WVSURDC, the inventor or developer, and the University or as established in the University's active Intellectual Property Rights Management Policy.
- 2.4 WVSURDC shall have such additional responsibilities related to the administration of research and development at West Virginia State University as is necessary or desirable to facilitate the development of research at the University.

- 2.5 Upon termination of this Agreement, the funds or grants paid or held by WWSURDC shall be paid to the University or its designee, as the Board of Governors shall direct.
- 2.6 WWSURDC may utilize both its own employees or personnel of West Virginia State University, provided however, that WWSURDC shall compensate the costs incurred by the University including personnel funded on grants and contracts, fringe benefits of personnel funded on grants and contracts, administrative support costs and other costs which may require reimbursement and shall include as costs any applicable overhead and fringe benefit assessments necessary to recover the cost expended by the University pursuant to the terms of this Agreement, it being the intention that the Board of Governors may be reimbursed for expenses incurred pursuant of this Agreement.

### ARTICLE III

- 3.1 Upon the effective date of this Agreement, WWSURDC is authorized to enter into an Operations Agreement with West Virginia State University to be executed by WWSURDC and the President of the University or his designee. The Operations Agreement shall describe the relationship between WWSURDC and the University concerning the use of University facilities and personnel, and shall contain provisions for the accounting and recovery of expenses incurred by the University pursuant to this Affiliation Agreement; provided, however, that the terms of such Operations Agreement shall not contravene the terms of this Affiliation Agreement or amendments thereto, or any applicable state or federal law as amended.
- 3.2 Specific grant or contract instruments for those activities related to the administration of sponsored programs, as described under Article II herein, shall be executed between the WWSURDC and the sponsored agency. The Board shall be provided on an annual basis, a description of the activities undertaken by WWSURDC. Such activities, including the administration of grants and/or contracts, shall be subject to and consistent with the terms of this Agreement.
- 3.3 Any student activity related to WWSURDC shall be appropriate for the students' educational experience and shall be consistent with the mission of the University.
- 3.4 WWSURDC and the Board grant to each other the right to publicize this Affiliation Agreement and any of the general activities undertaken by virtue of its existence. However, it is agreed that any proprietary or business information known to each party through or in relation to WWSURDC activities will not be divulged to any other party except as required by law.
- 3.5 It is agreed that WWSURDC shall not give, without the specific written consent of the Board or West Virginia State University, the right to use the name of WWSURDC, the Board, or West Virginia State University in any advertisement or promotion to any person, business, organization, agency or agent.

- 3.6 The operations of WVSURDC shall be subject to an annual audit by an independent auditor retained by WVSURDC. The auditor's opinion and report on the financial statements of WVSURDC shall be disclosed and presented to the Board within 120 days of the end of the fiscal year.
- 3.7 This is the entire Agreement between the parties hereto and supersedes all prior negotiations and oral understandings between the parties hereto.
- 3.8 This Agreement is executed pursuant to and shall be construed under the laws of the State of West Virginia.

WEST VIRGINIA STATE UNIVERSITY  
RESEARCH AND DEVELOPMENT CORPORATION

BY: \_\_\_\_\_

WEST VIRGINIA STATE UNIVERSITY  
BOARD OF GOVERNORS

BY: \_\_\_\_\_