

ADMINISTRATIVE AND ACADEMIC SUPPORT SERVICES AGREEMENT

THIS ADMINISTRATIVE AND ACADEMIC SUPPORT SERVICES AGREEMENT (the "Agreement") is made by and between the West Virginia University Board of Governors on behalf of West Virginia University (hereinafter collectively referred to as "WVU") and the West Virginia University at Parkersburg Board of Governors on behalf of West Virginia University at Parkersburg (hereinafter collectively referred to as "Parkersburg").

WHEREAS, effective July 1, 2008, Parkersburg, a former regional campus of WVU, became an Independent Community and Technical College separate and apart from WVU with its own Board of Governors under the jurisdiction of the West Virginia Council for Community and Technical College Education;

WHEREAS, to address the legal separation and to establish a more formal relationship, WVU and Parkersburg entered into that certain Memorandum of Understanding (the "MOU") dated ___ day of June, 2009;

WHEREAS, in the MOU, WVU agrees to provide Parkersburg administrative and academic support services, which may include but are not limited to, the following functional areas: human resources, finance, facilities and services, budget and treasury services, technology, student services, academic support, institutional relations and social justice; and Parkersburg agrees to pay a reasonable, customary, market-value fee for such services (hereinafter collectively referred to as the "WVU Performed Services");

WHEREAS, WVU has determined that a reasonable, customary, market-value fee for the WVU Performed Services, to be an aggregate sum of Two Million Two Hundred Thousand Dollars (\$2,200,000) per fiscal year;

WHEREAS, in the MOU, Parkersburg agrees to provide to WVU certain services which may include, but are not limited to, facilities usage, staff support and technical services for WVU educational programs and activities on the Parkersburg campus (hereinafter collectively referred to as the "Parkersburg Performed Services").

WHEREAS, WVU acknowledges the delivery of services is dependent upon Parkersburg's capacity to provide administrative and support functions on its campus. Both parties agree to identify a single point of contact to ensure the timely and effective delivery of services.

WHEREAS, in light of the unique and special longstanding relationship articulated in the MOU, WVU and Parkersburg desire to enter into an agreement wherein Parkersburg will receive the WVU Performed Services for a discounted

aggregate sum of Five Hundred Thousand Dollars (\$500,000) per fiscal year. However, considering Parkersburg has received only \$500,000 in state funds to support its change to an Independent Community and Technical College, separate and apart from WVU; considering the customary market value of services Parkersburg provides to WVU; and considering that Parkersburg will also incur additional costs as a result of this transition; WVU agrees to accept \$250,000 to perform services until such time that additional funds are appropriated to support this agreement; and

THEREFORE, the parties hereto intending to be mutually bound, hereby agree that this Agreement sets forth the terms pursuant to which WVU will provide WVU Performed Services to Parkersburg, and by which Parkersburg will provide Parkersburg Performed Services to WVU:

1. DURATION

The effective date of this Agreement is July 1, 2009, and shall continue, unless otherwise terminated pursuant to this Agreement, until its expiration on July 1, 2011 (the "Initial Term"). Upon mutual agreement of the parties, this Agreement shall renew for successive terms of two (2) years each (each a "Renewal Term") unless the Agreement is earlier terminated in accordance with Section 5 below. The Initial Term and each Renewal Term may be referred to herein as a "Term".

In the event the parties agree to a Renewal Term then, no later than one hundred eighty (180) days prior to the effective date of such Renewal Term, the parties shall negotiate in good faith to establish new terms and/or conditions.

2. CONSIDERATION AND PAYMENT

- a. As consideration for the WVU Performed Services agreed to hereunder, Parkersburg agrees to:
 - i. Provide Parkersburg Performed Services to WVU, and
 - ii. Pay WVU the discounted aggregate sum of Five Hundred Thousand Dollars (\$500,000) per fiscal year (the "Annual Payment"). The Annual Payment shall be payable in arrears in four equal installments of One Hundred and Twenty Five Thousand Dollars (\$125,000) with the first being due on the first day of October, 2009 (the "Quarterly Payments"). Until such time as additional funds are appropriated to support this agreement to Parkersburg, WVU will accept two hundred fifty thousand dollars (\$250,000) to be paid in four equal installments of sixty two thousand five hundred dollars (\$62,500) with all payments made pursuant to this paragraph.

- b. Each January, beginning with 2010, the parties shall conduct a review of the administrative and academic support services being performed by WVU. At that time, the parties will determine whether during the course of the previous year, Parkersburg adopted any policy, procedure or practice that required modification, upgrade, or accommodation by WVU that requires additional funding from Parkersburg. A review of administrative and academic support services delivered by WVU to Parkersburg will be conducted to determine continuing need. In the event that a funding revision is necessary, the Annual Payment (and by extension the Quarterly Payments) for the next fiscal year shall be adjusted by an amount sufficient to cover the cost of the necessary modification, upgrade, accommodation and/or reflect reduced services by WVU to Parkersburg.

3. WVU PERFORMED SERVICES

As an overreaching service, WVU agrees to advise and consult with Parkersburg administrative and academic officers on policy development and interpretation; strategic planning and best business and operating practices: The specific administrative and academic services to be provided are stated below.

- a. **Administrative Support Services:** The administrative support services to be provided by WVU to Parkersburg include, but are not limited to, the following:
 - i. To the extent permitted by law and the relevant contracts, access to WVU's MAP system (including Oracle) and related services provided through that system including, but not limited to: accounting services; financial transaction processing; payroll administration services; procurement services; human resources; financial reporting tools; and budget and treasury services. These services shall include the standard package of services that are currently provided to Parkersburg. If access is not permitted, as described above, it is anticipated that Parkersburg will be responsible for any costs incurred to restore access. It is recognized that any change in access could impact the charge for delivering services.
 - ii. Preparation of annual financial statements and audit administration services.
 - iii. Provide access to the full complement of human resource services as currently provided to Parkersburg by the following units: classification and compensation administration; benefits administration; employee relations; and employment services.

- iv. General oversight of safety and risk management functions; oversight and management of construction and major deferred maintenance projects; non-legal assistance with property acquisitions or lease arrangements; federal and state safety practices; sustainability and energy efficiency strategies; and facilities master plan development support as needed.
- v. Provide assistance in developing Parkersburg's annual affirmative action plan.
- vi. WVU will, as needed, consult Parkersburg on the investigation of discrimination complaints and assist with relevant training.
- vii. Subject to any Trademark License Agreement entered into between the parties, provide advice and support from WVU News and Information Services as well as other services provided by WVU Division of University Relations.
- viii. Provide advice and technical assistance, as requested for Parkersburg students in need of disability services.
- ix. Provide support and assistance to Parkersburg through the WVU Mediation Program and assist with relevant training as needed.
- x. Provide support and allow access for Parkersburg students to the Carruth Center for Counseling and Psychological Services; said access will be the same access afforded to Parkersburg students prior to July 1, 2008.
- xi. WVU will collaborate with Parkersburg to provide assistance with regard to policies, procedures, equipment selection and other hardware and software related issues to ensure the continuing compatibility of WVU and Parkersburg telecommunications and management information systems. WVU will also assist Parkersburg to ensure that there are no breaks in services between it, WVU and WVNET. Parkersburg will continue to have access to and, with appropriate prior approval, use of WVU's technology infrastructure under the condition that Parkersburg adopts policies, procedures and standards similar to existing WVU Information Technology policies, especially those related to system access and security. Provided that, Parkersburg acknowledges and understands that WVU is not responsible for the independent actions of WVNET.
- xii. Administration of the WVU Siemens performance contract as it relates to Parkersburg's portion of the contract. WVU will continue to monitor utility consumption and other ongoing contract requirements contained in the Siemens contract. Parkersburg agrees to assume any financial liabilities that may arise from the contract.

xiii. To the extent permitted by law and the relevant contracts, Parkersburg will continue to participate in WVU's pouring rights and bookstore contracts and will continue to receive proceeds from the agreements at the established rate. WVU agrees to review the distribution of revenues earned from these contracts on an annual basis and to provide an equitable distribution of income to Parkersburg based on operations and other factors.

b. **Academic Support Services:** The academic support services and collaboration to be provided by WVU to Parkersburg include, but are not limited to, the following:

- i. WVU and Parkersburg will work together to facilitate the offering of courses with the same title, number, and description to be taught at both campuses in order to ensure course equivalencies between the respective schools.
- ii. WVU's Office of Extended Learning may maintain an office on the Parkersburg campus. Its purpose will be to assess community needs for undergraduate and graduate degree programs and professional development opportunities not offered by Parkersburg.
- iii. To the extent permitted by law and the relevant contracts, Parkersburg may continue to participate in E-campus.
- iv. To the extent permitted by law and the relevant contracts, WVU and Parkersburg's libraries will continue collaboration and be linked via an online integrated library system, which provides instructional and research support.
- v. Provide and administer sponsored projects, including such functions as grant and contract administration (Federal and non-Federal), special security, purchasing, personnel administration, and editing and publishing of research and other reports.
- vi. Parkersburg may consult with the Provost's Office to ensure the consistency, objectivity and fairness of the tenure process.
- vii. WVU and Parkersburg will work together to ensure that students experience a seamless transfer or "swirl" from one institution to the other.

4. PARKERSBURG PERFORMED SERVICES

In support of WVU educational programs and activities, Parkersburg agrees to provide the following services which may include, but are not limited to:

- i. An exclusive platform for WVU to deliver educational programs and activities to the Mid-Ohio Valley of West Virginia;
- ii. Facilities usage for Extended Learning programs; Extension; and
- iii. Necessary staff, technical and support services and access to the necessary information to fulfill WVU's support responsibilities.

5. TERMINATION

- a. Except as otherwise provided herein, this Agreement shall terminate automatically at the end of the Term as specified in Section 1;
- b. This Agreement may be terminated at any time by mutual written agreement of the parties;
- c. This Agreement may be terminated at any time by either party without cause on thirty (30) days' prior written notice to the other party; or
- d. This Agreement may be terminated by operation of law

6. NO WARRANTY

WVU warrants that it has the lawful capacity to execute this Agreement, but does not warrant and shall not be held to have warranted the validity or scope of all services agreed to hereunder, particularly, those terms which are conditioned upon the terms and conditions of contracts, agreements, and the like, negotiated prior to July 1, 2009.

7. WAIVER

The express or implied waiver by WVU of any right or remedy it may have under this Agreement for any breach of any term or condition by Parkersburg shall not constitute a continuing waiver of WVU's rights and remedies resulting from any breach by Parkersburg of the same or any different term or provision. Failure of WVU to exercise any right or remedy shall not constitute a waiver of WVU's rights or Parkersburg's obligations. The express or implied waiver of any right or remedy under this agreement for any breach of any term or condition by WVU shall not constitute a

continuing waiver of Parkersburg's rights or remedies resulting from any breach of WVU of the same or any different term or provision.

8. SEVERABILITY

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or void, such provision, to the extent possible, shall be severed from this Agreement, and all other provisions shall remain in effect.

9. FORCE MAJEURE

Neither party to this Agreement shall be deemed in default or otherwise liable hereunder due to its inability to perform by reason of any fire, earthquake, flood, epidemic, accident, explosion, casualty, strike, lockout, labor controversy, riot, civil disturbance, act of public enemy, embargo, war, act of God, or any municipal, county, state, national or international ordinance or law or any executive, administrative, judicial or similar order (which order is not the result of any act or omission to act which would constitute a default under this Agreement), or any failure or delay of any transportation, power, or other essential thing required, or similar causes beyond the party's control. Any delay in performance shall be no greater than the event of force majeure causing the delay. If an event of force majeure continues uninterrupted for a period exceeding six (6) calendar months, either party may elect to terminate this Agreement upon notice to the other, but such right of termination, if not exercised, shall expire immediately upon the discontinuance of the event of force majeure.

10. DISPUTES AND GOVERNING LAW

The parties acknowledge and agree that any and all disputes relating to the services contemplated herein shall be resolved as set forth in W.Va. Code §18B-2A-7a(f) and in W.Va. Code §18B-3C-12(d). With respect to all other terms that may be contained herein, this Agreement shall be governed by the laws of the State of West Virginia.

11. NOTICES

All notices shall be in writing and shall be sent to:

WVU:

West Virginia University
Office of the Vice President for Legal Affairs
105 Stewart Hall
PO BOX 6201
Morgantown, WV 26506-6686
Telephone: (304) 293-5841
Fax: (304) 293-2326
E-mail: Legalaffairs@mail.wvu.edu

Parkersburg:

West Virginia University at Parkersburg
President's Office
300 Campus Drive
Parkersburg, WV 26104-8647
Telephone: (304) 424-8200
Fax: (304) 424-8204

12. HEADINGS

The headings herein are for reference purposes only and shall not constitute a part of the Agreement hereof or be deemed to limit or expand the scope of any provision of this Agreement.

13. VOLUNTARY AGREEMENT

This Agreement is the result of arm's-length negotiation between the parties; each party having had the opportunity to be represented by counsel of its own choosing. Each party enters into this Agreement freely and voluntarily and with the full intent to be bound hereby.

This Agreement shall not create any rights in any third parties, specifically any students at either of the respective institutions. The only parties to this Agreement are WVU and Parkersburg.

14. INTEGRATION

- a. With respect to the administrative and academic services stated herein, this Agreement, and any other special provisions contained herein, represent the entire understanding between WVU and Parkersburg.
- b. This Agreement supersedes all previous representations, understandings or agreements, oral or written, between WVU and Parkersburg with respect to the subject matter hereof and cannot be modified except by a written instrument signed by the parties hereto.
- c. The parties agree to execute any further documents necessary to effectuate or implement this Agreement so that each will receive the benefits contemplated by this Agreement.

IN WITNESS WHEREOF, WVU and Parkersburg have caused this instrument to be executed as a sealed instrument by their duly authorized representatives as set forth below:

**West Virginia University
Board of Governors,
on behalf of West Virginia University**

President
West Virginia University

Date

**West Virginia University at
Parkersburg Board of Governors,
on behalf of West Virginia University
at Parkersburg**

President
West Virginia University at Parkersburg

Date