



## DEPARTMENT OF DEFENSE

DEFENSE ACQUISITION UNIVERSITY  
OFFICE OF THE PRESIDENT  
9820 BELVOIR ROAD  
FORT BELVOIR, VA 22060-5565

### MEMORANDUM OF UNDERSTANDING between GRANTHAM UNIVERSITY, INC. and DEFENSE ACQUISITION UNIVERSITY

This Agreement is effective as of January 30, 2013, (the "**Effective Date**") and is between the Defense Acquisition University ("**DAU**"), a Federal agency that provides education and training to members of the Department of Defense's Acquisition, Technology, and Logistics workforce and Grantham University, Inc., ("**Grantham**") a Missouri corporation.

The Agreement has as its sole purpose the establishment of a relationship of mutual benefit between DAU and Grantham in order to make Grantham's online courses and online bachelor and graduate degree programs available to the Department of Defense's Acquisition, Technology and Logistics workforce (the "**DAU students**").

Therefore, DAU and Grantham agree as follows.

I. **Obligations of Grantham.** During the term of this Agreement, Grantham will award semester hour transfer credit to DAU students for approved DAU courses into Grantham degree programs in accordance with Attachment 3 to this Agreement, and will perform the obligations set forth in Attachments 1, 5, and 6 to this Agreement.

II. **Obligations of DAU.** During the term of this Agreement, DAU will perform the following obligations, in addition to the obligations set forth in Attachment 1 to this Agreement.

a) DAU will assist Grantham in the distribution of information and in ensuring adequate publicity regarding the academic opportunities available to DAU students that are inherent in programs offered by Grantham, in accordance with Attachment 6 to this Agreement.

b) DAU will employ its communication resources (including, but not limited to, print and newsletters) to make information available about Grantham's online courses and degree programs to DAU students using the co-branded promotional, sales, marketing, and advertising materials (the "**Co-branded Materials**") provided to DAU by Grantham in accordance with Attachment 6 to this Agreement.

III. **Licenses.**

a) DAU hereby grants to Grantham, a limited, non-exclusive, non-transferable license (without any right to sub-license) to use DAU's trade name, service marks, logos, trade dress, other indicia of source, and associated goodwill (collectively, the "**Marks**") in connection with Grantham's preparation and use of the Co-branded Materials as contemplated by this Agreement. To the extent practicable, Grantham agrees to comply with the rules of use promulgated from time to time by DAU with respect to the appearance and manner of use of the

Marks. All rights and goodwill that might be acquired or developed by Grantham's use of the Marks will inure to the benefit of DAU. Grantham agrees that the Marks, and the fact that DAU has entered into this Agreement with Grantham shall not be used by Grantham in such a manner as to state or imply that Grantham's products or services are endorsed, sponsored, or recommended by DAU, or by any other element of the Department of Defense or the federal government, or that Grantham's products or services are considered by these entities to be superior to any other products or services.

b) Grantham hereby grants to DAU a limited, non-exclusive, non-transferable license (without any right to sub-license) to use the Co-branded Materials solely for the performance of its obligations under this Agreement. DAU shall not modify, revise or create derivative works from any of the Co-branded Materials without the prior written consent of Grantham.

IV. **Compliance with Applicable Laws.** Each party shall comply with all federal, state or local constitution, law, statute, ordinance, code, regulation or rule, enacted, adopted, or promulgated by a governmental authority that is binding upon or applicable to the party, and any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any governmental authority or by any arbitrator that is binding upon or applicable to the party ("**Applicable Laws**"), unless expressly specified otherwise in the performance of its obligations under this Agreement.

V. **Term; Termination.**

a) The term of this Agreement begins on the Effective Date and will continue for a period of one year from such date unless earlier terminated under this Paragraph V. Thereafter, the term of this Agreement will automatically renew for successive one year periods unless earlier terminated under this Paragraph V.

b) A party may terminate this Agreement at any time prior to its expiration by providing the other party with written notice at least 90 days prior to the date of termination. A party may terminate this Agreement if the other fails to perform or comply with any material term of this Agreement, and the failure is not cured within a period of 30 days after the date of the aggrieved party's written notice to the other party describing the specific failure. If the failure is not timely cured, termination will be effective on the 31st day after the date of the aggrieved party's notice.

c) Upon termination or expiration of this Agreement, DAU shall promptly return or destroy all Co-branded Materials in DAU's possession or control. The expiration or termination of this Agreement will not relieve the parties of any obligation accruing with respect to this Agreement prior to such expiration or termination. Paragraphs VI and VII will survive the expiration or termination of this Agreement.

VI. **Indemnification.**

a) To the extent not otherwise prohibited by federal law, each party (the "**Indemnifying Party**") shall indemnify, defend, and hold harmless the other party, its affiliates, and its and their respective officers, directors, employees, and agents (each, an "**Indemnified**

Person") from and against the claims, actions, or demands of any third party, and all resulting losses, damages, judgments, settlements, costs and expenses (including reasonable attorney's fees and expenses), and liabilities of every kind and character whatsoever ("**Losses**") incurred by any Indemnified Person, arising from or related to the Indemnifying Party's failure to perform or comply with this Agreement.

b) To the extent not otherwise prohibited by Federal Law, notwithstanding the foregoing, the Indemnifying Party will not be liable to any Indemnified Person under this paragraph to the extent any of the Indemnified Person's Losses arise from or relate to a third party claim, action or demand, arising from or relating to the gross negligence, willful misconduct, or material breach of this Agreement by the Indemnified Person, its employees, or independent contractors.

VII. **Limits on Liability.** TO THE EXTENT NOT OTHERWISE PROHIBITED BY FEDERAL LAW, IN NO EVENT WILL A PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS OR LOST BUSINESS OPPORTUNITY) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE BY REASON OF ITS HAVING ENTERED INTO OR RELIED ON THIS AGREEMENT, OR ARISING OUT OF THE PERFORMANCE OF THIS AGREEMENT, EVEN IF THE PARTY TO BE CHARGED WAS ADVISED OR KNEW OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMIT WILL APPLY REGARDLESS OF THE FORM OF CLAIM IN WHICH SUCH LIABILITY MAY BE ASSERTED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE. HOWEVER, THE FOREGOING LIMIT WILL NOT APPLY TO, OR LIMIT THE LIABILITY OF A PARTY FOR ITS INDEMNIFICATION AND DEFENSE OBLIGATIONS, OR ANY GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

VIII. **General Terms.**

a) Neither party may assign any of its rights or obligations or this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed.

b) All notices and other communications required or permitted under this Agreement must be in writing, addressed to the parties at the addresses set forth below, or to such other addresses as to which the parties give notice in accordance with this Paragraph.

c) Any claim against DAU arising from this Agreement shall be resolved in accordance with the Federal Tort Claims Act, Federal Acquisition Regulations, or other applicable Federal laws or regulations. Any claim against Grantham arising from this Agreement shall be resolved in accordance with the Federal Acquisition Regulations, and other applicable federal laws and regulations. This Agreement shall be governed, interpreted, and enforced in accordance with the federal laws of the United States of America. To the extent permitted by federal law, the laws of the state of Missouri will apply in the absence of federal law.

d) This Agreement and its attachments (each of which is incorporated into this Agreement by this reference) (i) constitutes the entire agreement between the parties with respect to the subject matter; (ii) supersedes and replaces all prior agreements, oral and written, between

the parties relating to the subject matter. This Agreement may be amended or waived only by a writing that specifically refers to this Agreement and that is signed by both parties. A party's waiver of a duty or breach on one occasion will not constitute a waiver of any other or subsequent duty or breach.

e) The relationship of DAU and Grantham to each other is that of independent contractors. Nothing in this Agreement is intended or will be deemed to create any association, joint venture, partnership, or agency relationship of any kind between the parties, between a party and an employee of the other party, or as authorizing one party to act as agent for the other or to enter into contracts on behalf of the other.

f) Whenever possible, each term of this Agreement is to be interpreted to be effective and valid under Applicable Law. If a court of competent jurisdiction finds that a term is prohibited by or invalid under Applicable Law, then that term will be ineffective to the extent of the prohibition or invalidity, without affecting the rest of this Agreement. But the parties do not intend this severability if it would materially change the economic benefits of this Agreement to any party.

g) This Agreement may be executed and delivered (including by facsimile transmission) in one or more counterparts, and by the different parties in separate counterparts, each of which when executed and delivered will be deemed to be an original but all of which when taken together will constitute one instrument.

The duly authorized representatives of the parties executed this Agreement effective as of the Effective Date.

Defense Acquisition University

By: James S. McMichael

James S. McMichael  
*Acting President*

Notice Address:  
9820 Belvoir Road  
Fort Belvoir, VA 22060

Grantham University, Inc.

By: Joseph McGrath

Joseph McGrath  
*President*

Notice Address:  
7200 NW 86<sup>th</sup> Street  
Kansas City, MO 64153