

WESTERN KENTUCKY UNIVERSITY

EMPLOYMENT AGREEMENT

27th **THIS EMPLOYMENT AGREEMENT** ("Agreement") is made and entered into this day of January, 2017, and effective as of the 1st day of July, 2017 by and between **Western Kentucky University** (hereinafter "WKU" or "the University") and **Timothy C. Caboni** (hereinafter referred to as "Caboni" or "President").

WITNESSETH

WHEREAS, The WKU Board of Regents ("Board") has approved the employment of Caboni to serve as President of the University; and

WHEREAS, WKU, acting by and through the Board, and Caboni desire to enter into this Agreement for the purpose of defining the terms and conditions of Caboni's employment as WKU's President; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, WKU and Caboni agree as follows:

I. EMPLOYMENT. Pursuant to the terms and conditions of this Agreement, WKU agrees to employ Caboni as its President and Caboni agrees to serve as the President of the University and to render services to the University as set forth herein, the laws of the Commonwealth of Kentucky, and in the "Code of Ethics and Bylaws of the Board of Regents of Western Kentucky University", attached hereto and made a part hereof as **Exhibit "A"**, (collectively the "Bylaws"), as presently existing and as amended from time to time.

II. INITIAL TERM. The initial term of employment will commence as of the 1st day of July, 2017 ("Commencement Date") and will extend for an initial period of four (4) years from the Commencement Date, expiring on June 30, 2021, unless extended in accordance with the provisions of paragraph VII.

III. DUTIES. The President shall well and faithfully serve the University in such capacity as aforesaid and shall, at all times, (i) devote his whole time, attention, and energies to the administration, management, superintendence, and improvement of the University to the utmost of his ability and (ii) do and perform all such services, acts, and things connected therewith, including, but not limited to, the responsibilities enumerated in the Bylaws and specifically Article VI of the Bylaws. Participation in any outside organizations, associations, clubs, or groups shall be consistent with the importance and dignity of the office of the President of the University. Any paid directorships, board memberships, or consultancies are to be assumed only with the concurrence of the Board.

IV. COMPENSATION.

A. BASE SALARY. Effective as of the Commencement Date, the President's base salary shall be Four Hundred Thousand dollars (\$400,000.00) per year. The President's base salary, for subsequent years, shall be increased by the average percentage salary increase granted to the WKU faculty, effective as of the date of any WKU faculty salary increase.

B. PERFORMANCE BASED BONUS. An annual performance incentive for exemplary best efforts, not to exceed ten percent (10%) of the current annual Base Salary may be granted by, and at the discretion of the Board based substantially on any or all of the following criteria, including WKU's compliance with the "Performance Funding Model" adopted by the Postsecondary Education Working Group, established by the Kentucky General Assembly as part of the 2016-18 Budget (HB 303) and any future amendments thereof:

(a) Enrollment, retention and graduation rate increases which measure overall increases in student enrollment, retention and graduation rates.

(b) Successful initiation, progression, and completion of a six (6) year capital campaign with a goal of not less than \$300,000,000 or the consensus campaign goal that emerges from a feasibility study.

(c) A Student Success component which measures production of bachelor's degrees and the number of degrees awarded per 100 full time equivalent students.

(d) A Course Completion component which recognizes improvement in student enrollment in a course and course completion.

(e) An Operational Support component which recognizes improved funding for critical expenses relating to the maintenance and operation of buildings dedicated to student learning, the cost of instruction and student services.

(f) A Revenue component which measures increases in revenues from all sources, including but not limited to, tuition generated from increased enrollment and retention, other traditionally based University revenues, and revenues from new outside sources not presently included in the current 2016-17 WKU Budget.

(g) Other additional and/or special salary adjustments which may be approved by the Board from time to time, in its discretion.

It is also agreed and understood that so long as the President's performance is deemed satisfactory following evaluation by the Board, the compensation amount shall remain competitive (i.e., at or near the top of) the salaries paid to the presidents of the other comprehensive institutions in the Commonwealth of Kentucky.

C. BENEFITS. The President shall receive the same maximum benefits presently enjoyed by faculty or administrators of the University including, without limitation:

1. **Insurance/Indemnification.** The University shall provide the President with director's and officer's liability insurance coverage under the same terms and conditions applicable to regents and/or officers.
2. **Health Insurance.** The University shall provide medical insurance coverage for the President under the University's traditional health insurance plan.
3. **Retirement.** The President will be eligible to participate in KTRS or the University's Optional/Alternative Retirement Plans. The University and the President will make contributions into whichever plan is selected by the President, as provided by law.
4. **Disability Insurance.** The University will provide the President with disability insurance coverage under the University's disability policy for sixty percent (60%) of salary coverage. Disability payments under this provision shall be made and only made following the same definitions, criteria, and limits as established by the University's group disability plan.
5. **Automobile.** The University will provide the President with a leased automobile (full-sized or comparable) every three (3) years. The President will be entitled to use the automobile for University matters, professional use, and reasonable personal matters. The University shall cover the costs of maintenance and insurance. The President shall pay the costs of fuel and oil changes. As required by IRS regulations, the President shall maintain records of use and mileage, separating University use from personal use, providing such records to the University for its tax reporting purposes. The President shall be solely responsible for the payment of any federal income tax resulting from personal use of the automobile.
6. **University Travel and Entertainment.** The University shall reimburse the President for the reasonable and necessary expenses of University related travel and entertainment by him and, with the pre-approval of the Chairman of the Board, the reasonable and necessary expenses of University related travel and entertainment by the President's spouse. Such expenses are to be post-audited annually by the Board.
7. **Life Insurance.** The University will provide the President with a level twenty (20) year term life insurance policy with a maximum benefit of \$1,000,000. The President agrees that the University may acquire a "Key-Person" life insurance policy on the President, in such amount and terms as the Board may determine, in its sole discretion, naming the University as the owner and beneficiary of such life insurance policy. Premiums for any "Key-Person" life insurance policy shall be paid by the University.
8. **Vacation.** The President shall be entitled to the maximum vacation benefits as provided by University policy.
9. **Housing.** The University requires that the President reside in a residence chosen by the University. The University reserves the right to select the house which it requires that the President reside in and from time to time alter, remodel, or replace the house, and such alteration and remodeling are to be commissioned by the Board prior to the arrival on campus of the

President. The University understands that in providing the President with this residence for his convenience and requiring the President to live in this residence should not cause the President to incur any tax liability. The University shall cover reasonable costs for the operation of this housing, including utilities, maintenance, institutional and University event related custodial and domestic services, outside lawn services including landscaping, and University-related entertainment... In the event of the President's death, the President's family will be allowed to remain in the President's home for a minimum of three months.

10. **Moving Expenses.** The University shall reimburse or pay the President's moving expense relating to his relocation to WKU in accordance with University's policy, in an amount not to exceed \$12,000.

V. **ACADEMIC APPOINTMENT.** The President may hold a joint faculty appointment at the rank of Full Professor (non-tenured) in the Department of Communication and the Department of Educational Administration, Leadership, and Research (EALR).

VI. **PHYSICAL EXAMINATION.** The President shall undergo a comprehensive physical exam once a year. Should expenses for the examination exceed or not qualify for coverage under the President's medical insurance coverage, the University will pay up to One Thousand Dollars (\$1,000.00) for the exam.

VII. **EXTENSION.** The parties agree that if circumstances do not exist that would justify dismissal for cause under KRS 164.360, including, but not limited to, the criminal violation of the laws of the Commonwealth of Kentucky and/or the United States during any year of this agreement, the term of this Contract shall be extended by one additional year at the end of each year of this four (4) year agreement, providing for a continuous term of four (4) years for each of the years in the initial term of this agreement. The provisions of this paragraph shall not be construed so as to create any conflict with the provisions of KRS 164.360(2).

VIII. **SEPARATION.**

(a) The Board of Regents may remove the President from office at any time for any reason justifying dismissal for cause under KRS 164.360, including, but not limited to, the criminal violation of the laws of Kentucky and/or the United States. Should the President be terminated as provided herein, the obligations of paragraph II, and all other provisions of this Agreement herein, shall no longer be binding.

(b) If during the initial employment term, July 1, 2017 through June 30, 2021 (the "Initial Employment Term"), the President terminates his employment relationship and this Agreement without cause, prior to its expiration, and within one (1) calendar year of the date of termination he accepts or undertakes any other administrative employment or appointment in higher education, including, but not limited to, another presidential, chancellorship, or university development position, the President shall pay to the University an amount equal to his base salary as of the date of termination, multiplied by the remaining years of his Initial Employment Term. If less than one year is remaining on the Initial Employment Term, then the President shall

pay the University the required sum on pro-rated basis (1/12th) for the remaining months of that year. The provisions of this paragraph VIII(b) shall not be applicable after June 30, 2021.

(c) If during the Initial Employment Term, the President terminates his employment and this Agreement, without cause, prior to its expiration, and within one (1) calendar year of the date of his termination has not accepted or undertaken any other administrative employment or appointment in higher education, including, but not limited to, another presidential, chancellorship, or university development position, the President shall have no financial obligations to the University.

(d) Notwithstanding the above, in the event of any termination of employment by the President, with or without cause, any sums that would have accrued to the President under the provisions of paragraph IV (B) and (C), above, following the date of termination, shall be deemed waived and forfeited by the President.

(e) **Non-Competition Agreement.** As an integral part of this Agreement, Caboni covenants and agrees that for a period of two (2) years from the date of his separation of employment, for whatever reason, (commencing on the last day of his employment with WKU and ending on the same date two [2] years thereafter), he will not act, or accept employment, as president, chancellor, university development officer, or any other administrative position with any other public university located in the Commonwealth of Kentucky. Further, Caboni, for the two year period referenced above, will not, directly or indirectly, compete with or against WKU, either as an employee of, or a consultant to, any public university located in the Commonwealth of Kentucky, including the president of such public university and any of its administrative officers, employees, agents, trustees, or regents.

WKU and Caboni acknowledge and agree each party has carefully read and considered the restrictions set forth in this paragraph VIII (e), including, but not limited to, the time period of restriction and geographical area of restriction and they agree that same are fair and reasonable and are reasonably required as the minimum area and period of time necessary for the protection of the interests of WKU.

The parties further acknowledge and agree that any breach of the covenants against competition contained herein will result in irreparable and continuing damage to WKU for which there will be no adequate remedy at law and in the event of any breach, WKU shall be entitled to specific performance, injunctive relief, and/or any such other relief, including, but not limited to, money damages, as may be proper.

If, notwithstanding the foregoing, any of the provisions of this paragraph VIII (e) shall be held to be invalid or unenforceable, the remaining provisions shall nevertheless continue to be valid and enforceable as though the invalid and unenforceable parts had not been included. In the event that any provision of this paragraph VIII (e) relating to the time period and/or the areas of restriction and/or related aspects shall be declared by a court of competent jurisdiction to exceed the maximum restrictiveness such court deems reasonable and enforceable, the time period and/or areas of restriction and/or related aspects deemed reasonable and enforceable by the court

shall become the maximum restriction in such regard, and the restriction shall remain enforceable to the fullest extent deemed reasonable by such court.

No waiver or modification of any of the provisions of the Non-Competition Agreement contained in this paragraph shall be effective unless same are in writing and signed by the party to be charged with such waiver or modification. No waiver shall be deemed a continuing waiver with respect to any breach or default, whether of a similar or different nature, unless expressly stated in writing.

IX. EVALUATION The parties agree that the President shall be evaluated by the Board in accordance with the provisions of Article VI of the Bylaws. It agreed that the provisions of paragraphs IV (A) and (B), and VII, shall be contingent upon the President receiving a "satisfactory" performance evaluation by the Board, as provided herein.

X. NOTICE. If the President desires to terminate his presidency without cause, he shall provide not less than ninety (90) days written notice to the Board. The President shall be entitled only to the benefits provided herein.

XI. COMPLETE AGREEMENT. The Agreement constitutes the complete Agreement between the parties and incorporates all prior discussions, agreements, and representations made in regard to the matters set forth herein. This Agreement shall not be amended, modified, or changed except upon the mutual consent of the President and the Board. Any amendment to modification, to be effective, must be reduced to writing and signed by all parties to this Agreement.

If any provision of this Agreement shall be deemed invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of all other provisions within this Agreement shall not in any way be affected or impaired and shall continue to be valid and enforceable as though the invalid or unenforceable provision had not been a part of this Agreement.

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky.

[Signatures appear on the following page]

IN WITNESS WHEREOF, this Agreement is executed and entered into as of the date hereinabove stated.

WESTERN KENTUCKY UNIVERSITY

By: Frederick A. Nigdon
Chair, Board of Regents

Timothy C. Caboni
Timothy C. Caboni