

RESOLUTION E04-15

APPROVAL OF PRESIDENTIAL EMPLOYMENT AGREEMENT FOR DR. RICK S. KURTZ

WHEREAS, the Board of Trustees of Shawnee State University approved Resolution E02-15 at a special meeting held on February 24, 2015, thereby appointing Dr. Rick S. Kurtz as the sixth President of Shawnee State University, and approving a Term Sheet that contained essential terms of employment; and

WHEREAS, Resolution E02-15 directed that the Term Sheet and all other essential terms of employment be more fully set forth in a negotiated Presidential Employment Agreement, subject to the Board's formal approval.

THEREFORE BE IT RESOLVED, that the Board of Trustees of Shawnee State University formally approved the attached Presidential Employment Agreement between the University and Dr. Rick S. Kurtz.

(March 13, 2015)

SHAWNEE STATE UNIVERSITY
PRESIDENTIAL EMPLOYMENT AGREEMENT

This Presidential Employment Agreement (“Agreement”) is made by and between The Board of Trustees of Shawnee State University (the “Board”) and Dr. Rick S. Kurtz (the “President” or “Dr. Kurtz”) and is effective July 1, 2015.

RECITALS

WHEREAS, the Board wishes to employ Dr. Kurtz as President of Shawnee State University (“University”) and Dr. Kurtz wishes to serve as President and be its employee, subject to the terms of this Agreement and applicable law; and

WHEREAS, both the Board and Dr. Kurtz desire to set forth their respective rights and obligations in this Agreement;

WHEREAS, this Agreement has been duly approved and its execution has been duly authorized or ratified by the Board at the regular meeting of the Board of Trustees held on March 13, 2015.

NOW, THEREFORE, in consideration of the promises, and the mutual covenants and conditions herein contained, the adequacy and sufficiency of which are hereby acknowledged, the Board and the President agree as follows:

1.0 Appointment as President.

- 1.1 The Board hereby appoints and employs Dr. Kurtz to be the President of the University and to serve as the chief executive officer of the University under the bylaws, policies and supervision of its Board and its primary officers (Chairperson and Vice-Chairperson). The President hereby accepts and agrees to such appointment and employment.
- 1.2 The President shall perform all duties required by law and this Agreement, and in accord with Board directives, bylaws and policies, as adopted or amended. The President shall also perform those duties as are customarily

performed by a University president including, but not limited to, the following:

- 1.2.1 Providing institutional leadership;
- 1.2.2 Administering and developing board policies and procedures that advance the University's goals and mission;
- 1.2.3 Providing executive leadership and guidance for the academic affairs of the University;
- 1.2.4 Providing executive leadership in long-range strategic planning; budget formulation; and supervision of the University's buildings and grounds;
- 1.2.5 Engaging in public, governmental and alumni relations;
- 1.2.6 Fund-raising and development;
- 1.2.7 Recruiting, retaining and graduating students;
- 1.2.8 Recruiting and retaining the most qualified faculty and staff;
- 1.2.9 Performing such other responsibilities commensurate with the position as President that may from time to time be assigned by the Board.

2.0 Best Efforts as President.

- 2.1 The President agrees to faithfully, industriously and with maximum use of his experience, ability and talent, devote full-time attention and energies to the duties as President of the University.
- 2.2 Such duties shall be principally rendered at the campus of the University in Portsmouth, Ohio, and at such other place as the Board or the President deem appropriate for the interest, needs, business or opportunity of the University.
- 2.3 The President shall not, without prior written permission from the Board Chairperson, render services of any professional nature to, or for any person or firm, for remuneration other than to the University. Nor may the President engage in any activity that may be competitive with or adverse to the best interest of the University or otherwise engage in any activity or conduct in violation of Ohio's ethics laws applicable to public officers and public employees. The expenditure of reasonable amounts of time for

charitable activities shall not be deemed a breach of this Agreement, provided that such activities do not interfere with the duties of President.

3.0 Term of Appointment; Extension.

3.1 This appointment as President shall be for a term of three (3) years, commencing on July 1, 2015 and terminating on June 30, 2018, subject to earlier termination, as provided in this Agreement. The parties acknowledge and agree that this Agreement shall end by its terms on June 30, 2018 unless terminated sooner as provided for in this Agreement or unless extended by mutual written agreement of the parties.

4.0 Compensation.

4.1 For all services rendered by the President under the provisions of this Agreement, the University shall pay the President an annual base salary of Two Hundred Sixty Thousand Dollars (\$260,000) (“Base Compensation”), payable in twenty-six (26) equal payments through the fiscal year (July 1 - June 30). Such base salary shall be subject to all applicable deductions and tax withholdings. Deductions for the employee portion of the cost of the University-provided retirement, health, life insurance or similar employee benefit costs for University administrators shall be deducted from the President’s base salary amount, and shall be subject to the plan cost adjustments applicable to all University administrators.

4.2 The President’s base salary shall be annually reviewed in conjunction with the Board’s annual performance review of the President in accordance with Board policy. A merit increase of the President’s salary may be considered at such performance review.

5.0 Physical Examination, Insurance, Retirement and Benefits.

5.1 As a condition of employment as President, and within ninety (90) days of the Effective Date of employment, the President shall have a comprehensive physical examination by a licensed physician, mutually agreed upon by the parties. The University will assume the cost of the

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examination and all tests and procedures related to the examination. A certification of his fitness for duty shall be submitted to the Chairperson of the Board of Trustees. The President shall undergo a similar examination annually, with all costs to be borne by the University and a physician's certification of fitness for duty submitted to the Chairperson of the Board of Trustees.

- 5.2 The University shall provide the President with group medical, prescription, dental, vision, and basic life insurance, in accordance with the University's employer provided plan applicable to full-time University administrative employees. The President may elect to participate in voluntary benefit plans on the same basis and on the same terms as are generally available to full time University administrative employees.
- 5.3 The President shall be entitled to participate in the Ohio State Teachers Retirement System ("STRS") pension plan or the Alternative Retirement Plan ("ARP") as the President may elect and for which the President is eligible under the terms of STRS or ARP, on the same basis and on the same terms as are generally available to University academic administrative employees.

6.0 Vacations.

- 6.1 The President shall be entitled to twenty-two (22) vacation days per fiscal year. Accumulation and payment for unused vacation days shall be governed by the same policies and procedures as are applicable to other full-time University administrative employees. Attendance at business and professional meetings and conferences shall not be construed as vacation time.
- 6.2 The President shall report use of vacation leave to the University's Human Resources Director and is subject to review by the Chairperson of the Board.
- 6.3 While vacation time is encouraged, the President shall not take vacation that interferes with properly discharging the duties of President under the terms of this Agreement.

7.0 Sick Leave.

- 7.1 The President will receive 120 hours of sick leave credit upon his date of appointment as President. After the first year of employment and thereafter sick leave will accrue at a pro-rated amount each pay period for a maximum of 120 hours per year. Payment for unused sick days shall be governed by the same policies and procedures as are applicable to other full time University administrative employees.
- 7.2 The President shall report use of sick leave to the University’s Human Resources Director, and is subject to review by the Chairperson of the Board.

8.0 Housing and Relocation.

- 8.1 As a condition of the President’s employment, the President shall be provided with and be expected to reside in the University’s Presidential Residence. The University will maintain the facility at University expense, including but not limited to providing for normal repairs, maintenance and necessary replacements; housekeeping, landscaping, grounds maintenance and snow removal; and payment of utilities. The University shall also pay the real estate taxes, insurance and utilities for such housing.
- 8.2 No changes, alterations, or modifications to the Presidential Residence, including interior appointments and furnishings, may be made or incurred without the prior written approval of the Board Chairperson.
- 8.3 The parties acknowledge and agree that to perform various duties and responsibilities as President of the University, the President shall, on a regular and on-going basis, host or hold meetings, receptions, fund-raising events or otherwise host a variety of events for business and social purposes befitting the interests of the University and the Shawnee State University Development Foundation (“Foundation”) . In such instances, cooking, catering and housekeeping services shall be provided by and paid for by the University or the Foundation, as appropriate, at the President’s

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request, and shall be subject to review by the Board Chairperson. The President will be responsible to ensure that University events at the Residence are properly documented. Use of the Presidential Residence is subject to Board review, in accordance with applicable state and federal laws and in consideration of personal income tax consequences.

8.4 The University shall pay or reimburse the President for reasonable moving and relocation expenses of the President into and then out of the President's Residence.

8.5 The President agrees to vacate the President's Residence within fourteen (14) days of the completion of this Agreement or another mutually agreed upon date with the Board Chairperson.

9.0 Automobile.

9.1 The University shall provide the President an automobile for the President's business and personal use. Such automobile shall be purchased from an Ohio dealership located within fifty miles of the University. The President's spouse may also drive or otherwise use the automobile. All expenses related to the operation of the vehicle, including insurance coverage for both the President and the President's spouse, will be the responsibility of the University. All mileage for personal use shall be logged for income tax purposes and reported monthly to the Director of Human Resources. The University shall, in accordance with applicable Internal Revenue Code provisions, include in the President's compensation for income tax purposes only the value attributable to the President's non-business use of the automobile.

10.0 Professional Dues and Meetings.

10.1 The University will provide and pay for the President's professional dues for appropriate national professional organizations and such other professional associations that would further the interests of the University. The University shall also pay for the reasonable expenses incurred by the President to attend or participate in educational conferences, conventions, courses, seminars and other similar professional growth activities.

10.2 The University shall pay the President's and spouse's reasonable travel expenses, accommodations, and other necessary and proper expenses when the presence of the President's spouse is reasonably appropriate or necessary to further the interests of the University. This provision shall be liberally construed to encourage the participation of the President's spouse.

11.0 Membership in Service Organizations.

11.1 The President will be provided with membership in at least one service organization, such as Rotary, that would further the interests of the University. The President will also have access to a club membership, located in Columbus, that would further the University's interest, which would either be in the name of the University's foundation or the University. The President will be responsible for any expenses not related to University business.

12.0 Faculty Appointment.

12.1 The President shall hold the rank of Professor of Social Sciences.

13.0 Working Facilities and Resources.

13.1 The President shall be furnished with a private office, secretarial assistance, an entertainment budget and other resources that are necessary and reasonable for the operation of the President's Office, the University's Presidential Residence, and the University's development objectives. Resources shall include a mobile phone and other appropriate technology equipment and assistance to fulfill the duties as President. Such furnishings and equipment shall remain the property of the University.

14.0 Termination and Liquidated Damages.

14.1 Termination by the Board for Cause. The Board may terminate the President's employment and this Agreement at any time for "Cause" without further liability under this Agreement, except for any earned but

unpaid wages or vested benefits. In the event of termination for Cause, the President and his family shall vacate the housing provided in Section 8 of this Agreement no longer than thirty (30) days following the effective date of the President's termination (Board action date to terminate.) "Cause" shall mean any of the following:

- 14.1.1 Any conduct of the President that constitutes moral turpitude, or that would tend to bring public disrespect, contempt, or ridicule upon the University;
- 14.1.2 A material violation by the President of any law, policy, procedure, rule or by-law of the University, or local, state or federal law, which, in the reasonable judgment of the Board, reflects adversely upon the University;
- 14.1.3 The President's prolonged absence from work without the Board's consent, except such absence is attributable to illness or disability;
- 14.1.4 Misappropriation of University funds or University Development Foundation funds;
- 14.1.5 A conviction or guilty or no contest plea to a felony; and
- 14.1.6 Any other material violation or neglect by the President of the duties, terms and conditions set forth in this Agreement, or refusal to perform such duties in good faith and to the best of the President's abilities, any of which are not remedied after thirty (30) days written notice to the President.

14.2 Termination by the Board without Cause. The parties agree that the Board, by formal vote, may terminate this Agreement prior to its normal expiration, without cause, as follows:

- 14.2.1 Regardless of any other provision of this Agreement, this Agreement shall terminate automatically, without further liability of the Board except for applicable medical, insurance and vested benefits provided in this Agreement, if the President dies.
- 14.2.2 Notwithstanding any reasonable accommodation that the Board may provide the President, if as a result of the President's disability or incapacitation, the Board reasonably deems the

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President incapable of performing the essential functions of his employment as President, the Board reserves the right to terminate this Agreement.

14.2.3 If the President dies or becomes incapable of carrying out the duties of office due to permanent disability and is terminated, the Board shall be liable to the President or the President's personal representative for any accrued but unpaid compensation together with any other compensation and benefits that would be due and payable to the President by reason of death or disability during University employment.

14.2.4 In the event of termination without cause, the President and his family shall vacate the housing described in Section 8 of this Agreement no later than thirty (30) days following the effective date of the President's termination (action date of the Board to terminate.)

14.3 Liquidated Damages.

14.3.1 If the Board terminates this Agreement without cause under Section 14.2.4 of this Agreement, the President's employment obligations shall cease and the Board shall pay the President, as liquidated damages, as follows: base salary as President as in effect at the time of termination for the lesser of (a) six (6) months following the termination date, or (b) the remaining term of this Agreement. The President shall be entitled to continue to participate in the University's health insurance plan under the Consolidated Omnibus Reconciliation Act (COBRA) at 102% of the full cost of the University's health plan at the President's expense. The President will not be entitled to any other benefits except as otherwise provided or required by applicable law.

14.3.2 In no case shall the University be liable for the loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources that may ensue as a result of the Board's termination of this Agreement without

cause. The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that termination of this Agreement by the Board without cause prior to the natural end Term date may cause loss to the President, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by the Board and acceptance thereof by the President shall constitute adequate and reasonable compensation to the President for the damages and injury suffered.

14.4 Termination by President. The President may terminate this Agreement and his employment as President at any time by the President delivering to the Board One Hundred Twenty (120) days advance written notice of such termination. Upon termination by the President of this Agreement, any further obligations of the Board to the President under this Agreement shall cease and in no event shall the University be liable for the loss of any benefits, perquisites, or income from any other sources as a result of such termination.

15.0 Tax Liability and Advice.

15.1 The President shall be responsible for any federal, state or local income tax liability incurred as a result of payments made as compensation or benefits provided to the President pursuant to this Agreement.

15.2 The President acknowledges and agrees that it is the President's responsibility to seek advice from the President's personal tax, legal and financial advisors with respect to each and every term of the Agreement. Neither the University, nor any trustee, employee nor agent of the University makes any guarantee of any tax consequences with respect to any provision of this Agreement.

16.0 Entire Agreement; Modification.

16.1 The parties acknowledge and agree that this document contains the entire Agreement of the President and the Board.

16.2 This Agreement may be changed or modified by the parties only in writing signed by the President and the Chairperson of the Board with formal Board approval.

17.0 Severability.

17.1 The provisions of this Agreement are severable and independent, and if any such provision shall be determined to be unenforceable in whole or in part, the remaining provisions and any partially enforceable provision shall, to the extent enforceable in any jurisdiction, nevertheless be binding and enforceable.

18.0 Governing Law and Forum.

18.1 This Agreement shall be interpreted and construed in accordance with the laws of the State of Ohio. Claims arising under this Agreement or relating to the employment relationship between the parties shall be filed in the Ohio Court of Claims. If the Ohio Court of claims does not have jurisdiction over the subject matter of the dispute, venue shall lie in the appropriate state common pleas or federal district court that covers or includes Scioto County, Ohio.

19.0 Wavier.

19.1 No delay or failure to enforce any provision of this Agreement shall constitute a waiver or limitation of rights enforceable under this Agreement.

20.0 Adequacy of Funds and O.R.C. 3345.77 Requirement.

20.1 Payment of salary and other compensation under this Contract is subject to the appropriation of funds by the Ohio General Assembly. However, it is the understanding of the parties that funding for the University includes other sources other than appropriations by the State of Ohio. It is not the intention of the Board to use any reduction in appropriations as a reason to reduce the salary of the President if other funds are available for such

purpose. The parties further understand that this Contract is subject to Ohio Revised Code Section 3345.77.

IN WITNESS WHEREOF, this Agreement is executed to be effective as of the date first set forth above.

SHAWNEE STATE UNIVERSITY

Melissa Higgs-Horwell
Chairperson, Board of Trustees

Date: _____

Dr. Rick S. Kurtz
President

Date: _____

This Agreement has been reviewed and approved for legal form and sufficiency.

Cheryl R. Hacker
General Counsel

Date: _____

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