



EASTERN KENTUCKY UNIVERSITY

Serving Kentuckians Since 1906

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Coates Building Room 212, CPO 40A
521 Lancaster Avenue
Richmond, Kentucky 40475

February 5, 2020

Via Electronic Mail: jennifer_perkins84@mymail.eku.edu

Jennifer K. Perkins
Editor-in-Chief, Eastern Progress
Combs 316

RE – Open Records Request

Dear Ms. Perkins:

This letter is in follow up to your open records request received January 31, 2020 seeking:

“Open Records Request for any and all contracts, memorandums of understanding, or memorandums of agreement related to Michael T. Benson’s employment at Eastern Kentucky University”

Public records responsive to your request are attached. Pursuant to KRS 61.878(1)(a) personal information, the disclosure of which would constitute an unwarranted invasion of personal privacy, has been redacted.

Because we are able to provide these documents electronically there are no copying fees associated with your request. Should you have any questions or need additional information, please let me know.

Sincerely,

/s/ Micah Hunsucker

Micah Hunsucker, Paralegal
Office of University Counsel

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement" or "Contract"), executed this 11 day of OCTOBER, 2016 by and between MICHAEL T. BENSON, Ph.D. ("Dr. Benson" or "President") and EASTERN KENTUCKY UNIVERSITY ("EKU" or "University"), an agency and instrumentality of the Commonwealth of Kentucky.

WHEREAS, Dr. Benson has served as the President of the University since August 1, 2013 and has led the University through sustained growth to its present success;

WHEREAS, the University, by and through its Board of Regents ("Board") desires to continue employment of Dr. Benson as President on the terms and conditions provided herein;

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

WHEREAS, Dr. Benson's prior Employment Agreement, effective August 1, 2013, and signed by Dr. Benson on May 1, 2013 and by Craig Turner, Chairman of the Board, on behalf of the Board and the University, on May 6, 2013 ("First Employment Agreement"), is hereby incorporated by reference as if set forth in full herein;

WHEREAS, the parties desire to adopt the First Employment Agreement in full, with amendments and changes specifically noted herein;

WHEREAS, this extension has been duly approved and authorized by the Board at its regularly scheduled meeting on April 27, 2016;

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in the First Employment Agreement, and in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. TERM

1. Subject to the terms, conditions and provisions set out herein and in the First Employment Agreement, the University hereby amends the term of the First Employment Agreement, and hereby appoints and employs Dr. Benson as its President up through and including 11:59 p.m. on July 31, 2020 ("Term"), except as otherwise provided.

B. COMPENSATION

1. **Base Salary.** The President shall be paid an annual base salary of Four Hundred Thousand Dollars (\$400,000.00) for the first two years of the Term of this Agreement set forth above, that is, through June 30, 2018, payable in installments as provided for pay of University administration.

2. **Extension or Increase of Base Salary.** On or before June 30, 2018, the Board shall review the President's annual base salary. If the Board fails to increase or review the President's salary as set forth in this subparagraph, then the President's salary will automatically renew at Four Hundred Thousand Dollars (\$400,000.00) for the additional two (2) years remaining under the Term of this Agreement, that is, through July 31, 2020.

C. TERMINATION

1. **Termination by Dr. Benson.** Dr. Benson may resign from his employment as President of the University by providing at least six (6) month's written notice to the Chair of the Board. Dr. Benson's employment as President shall cease on the effective date of this resignation, and he shall not be entitled to any further compensation or benefits as President, except as set forth in this Agreement and the prior Employment Agreement and in the University's various benefit plans with respect to vesting and rights after termination of employment. In the event Dr. Benson resigns after July 31, 2016 but before July 31, 2017, he shall pay to the University, as liquidated damages, the sum of two hundred thousand dollars (\$200,000.00), said sum to be paid within thirty (30) days after the effective date of his resignation. The University agrees to accept payment from the President's new employer in satisfaction of this provision. The parties hereby agree that these liquidated damages are not a penalty, but represent fair compensation to the University for administrative, recruitment, resettlement and other costs associated in obtaining a replacement president.

D. OTHER PROVISIONS

1. Unless explicitly set forth in this Agreement, all other provisions of the First Employment Agreement are adopted in totality as if set forth at length herein.

E. ENTIRE CONTRACT

1. This Agreement and the Prior Employment Agreement, adopted by reference herein as if set forth in full, constitute the entire understanding and agreement between the University and Dr. Benson regarding the employment of the President. There are no other agreements, conditions or representation, oral or written, expressed or implied, with regard thereto. This Agreement may be amended only in writing signed by both parties hereto.

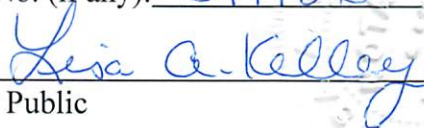
IN TESTIMONY WHEREOF, witness the hands of DR. BENSON and the UNIVERSITY


DR. MICHAEL T. BENSON


EASTERN KENTUCKY UNIVERSITY
William Craig Turner
Chairman, Board of Regents

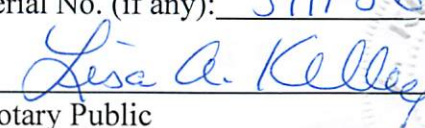
COMMONWEALTH OF KENTUCKY)
COUNTY OF Madison)

The foregoing Employment Agreement was acknowledged, sworn to, and subscribed before me, a Notary Public, by Dr. Michael T. Benson, on this the 11 day of October, 2016.

My commission expires: 7/12/2018 Serial No. (if any): 511186

Notary Public

COMMONWEALTH OF KENTUCKY)
COUNTY OF Madison)

The foregoing Employment Agreement was acknowledged, sworn to, and subscribed before me, a Notary Public, by William Craig Turner, acting in his capacity of Chairman of the Board of Regents on behalf of Eastern Kentucky University, on this the 20 day of October, 2016.

My commission expires: 7/12/2018 Serial No. (if any): 511186

Notary Public

[Faint handwritten text, possibly a signature or address]



EASTERN KENTUCKY UNIVERSITY
TRANSITION AGREEMENT

This Transition Agreement ("Agreement") is made effective as of the 6th day of January, 2020 (the "Effective Date") by and between **MICHAEL T. BENSON, D.Phil** (referred to in this Agreement as "Dr. Benson") and **EASTERN KENTUCKY UNIVERSITY**, its respective Board of Regents, officers, agents, employees, affiliates, and successors, past and present, and each of them (collectively referred to in this Agreement as "University" or "Releasees") (individually each is referred to as a "party" and collectively the "Parties"):

WHEREAS, Dr. Benson has served as the President of the University since August 1, 2013;

WHEREAS, during Dr. Benson's tenure, the University has awarded nearly 42,000 total degrees, has had record high enrollment of 16,881 students, has increased its freshman retention rate by 11 percent, and has increased its four-year graduation rate by almost 20 percent;

WHEREAS, under Dr. Benson's leadership, the University embarked on a \$250 million campus revitalization, the most ambitious initiative in its history, including the construction of a Science Building, two public-private residence halls, the University's first parking garage, the University Carloftis Gardens; the privately-funded student dining facility, the student-funded recreational center and renovations to the student center, the privately-funded Eastern Scholar House, and improvements in athletics facilities, including a new baseball stadium, new softball stadium, new baseball and softball hitting and pitching facilities, and a new east side of Roy Kidd Stadium;

WHEREAS, Dr. Benson has served as President of the University with distinction, being a bold, public advocate for higher education and tirelessly representing the University as a leader among his peers on SACS-COC committees, NCAA committees, OVC committees, CPE committees, and as an author of numerous articles and one book on the impact of higher education to the Commonwealth and society more broadly;

WHEREAS, Dr. Benson's vision for the University and personal mantra of "Make No Little Plans" has thrust the University into a nearly-complete \$50 million capital campaign, the largest and most successful campaign in University history;

WHEREAS, Dr. Benson's faithful and successful service to the University has presented him with a litany of opportunities;

WEHREAS, Dr. Benson has tendered and the University's Board of Regents has accepted his resignation from his position as President of the University in order to take a sabbatical and fully concentrate (i) on the writing of his second book about Daniel Coit Gilman and the birth of the modern research university, a book exploring the life of one of the most remarkable figures in the history of American higher education and (ii) further explore opportunities that have become available to Dr. Benson;

WHEREAS, Dr. Benson and the University wish to further clarify and augment the agreement between them related to any transition, as set forth in the Employment Agreement on August 1, 2013 (the "First Employment Agreement");

WHEREAS, Dr. Benson and the University mutually desire to enter into this Agreement, memorializing all matters in regards to Dr. Benson's employment and transition at University;

NOW THEREFORE, in consideration of the mutual promises and the terms stated herein, it is mutually

agreed between the Parties as follows:

1. **Resignation and Transition.** Dr. Benson hereby resigns from his position as University President effective January 6, 2020, but will remain employed by University and retain the title of Consultant and Special Advisor to the Board of Regents of the Eastern Kentucky University from January 6, 2020 through July 31, 2020.

2. **Consideration.** As specific consideration for the duties of Consultant and Special Advisor, together with the waivers and covenants contained in this Agreement, the University shall provide the following benefits to Dr. Benson:

- (a) University will permit Dr. Benson to resign from his acting position as the President of the University effective January 6, 2020;
- (b) Beginning January 6, 2020, in special consideration of Dr. Benson's institutional knowledge, historical success, presidential expertise and strategic vision, and in accordance with his First Employment Agreement, the University Board of Regents requests that Dr. Benson serve as Consultant and Special Advisor to the Board of Regents through July 31, 2020. Dr. Benson will not be required to retain any regular or recurring on-campus duties. University will pay Dr. Benson, while serving as Consultant and Special Advisor to the Board of Regents, at his presidential base salary in effect as of the Effective Date, less withholding for income taxes or other withholdings required by law, through July 31, 2020, an amount which equals Two Hundred Thirty-Three Thousand, Three Hundred Thirty-Three Dollars (\$233,333.00). Said payments will be paid every two weeks pursuant to the regular semi-monthly payroll calendar, with required deductions withheld for employee contributions. The University understands that Dr. Benson is undertaking reasonable and diligent efforts to obtain executive level employment and may freely accept such employment;
- (c) Beginning on August 1, 2020 through December 31, 2020, Dr. Benson will transition to faculty status as previously agreed to in Section D, Paragraph 8 of the First Employment Agreement at a faculty pay rate of Forty-Six Thousand Seven Hundred Dollars (\$46,700.00), less withholding for income taxes or other withholdings required by law. Said payments will be paid every two weeks pursuant to the regular semi-monthly payroll calendar, with required deductions withheld for employee contributions. The University understands that Dr. Benson is undertaking reasonable and diligent efforts to obtain executive level employment and may freely accept such employment;
- (d) University will continue to provide Dr. Benson with a recent model automobile, through July 31, 2020, but Dr. Benson shall be responsible for the maintenance, fuel, insurance and repair as of Effective Date of this Agreement;
- (e) University will continue to provide Dr. Benson with a housing allowance of Four Thousand Dollars (\$4,000.00) a month for his use in mortgage and general household necessity payments, through July 31, 2020;
- (f) University will continue to make the employer contribution to Dr. Benson's University-provided health insurance until such time as Dr. Benson becomes eligible under a future employer's health insurance benefits plan;
- (g) Effective January 1, 2021, Dr. Benson may, at his election and pursuant to the First Employment Agreement, return to his current tenured faculty status as University Faculty-

At-Large, with an active faculty assignment mutually agreed upon by him, the Dean(s) of any College, and the Board Chair, with his faculty salary calculated at a rate equal to the most highly compensated faculty member, and with a full teaching load, in accordance with and subject to University, College and Department policies and procedures;

- (h) University will continue to allow Dr. Benson's three (3) children to attend Model Laboratory School for as long as they so choose to be enrolled, and University will continue to provide three (3) tuition waivers at Model Laboratory School to Dr. Benson through May 31, 2020.
- (i) So long as he remains employed with the University, Dr. Benson shall have the same Insurance, Tuition Remission, Vacation, Sick and other related leave rights, as well as rights to a standard retirement benefit, the same as afforded to regular full-time benefitted employees and according to applicable University policies.
- (j) University's financial obligations under this Agreement shall cease on the day Dr. Benson commences employment with another employer or ninety (90) days after the announcement of the new position, whichever is earlier;

3. If so requested, the University will provide factual information regarding Dr. Benson's resignation to the Education and Workforce Development Cabinet, Office of Employment and Training, Division of Unemployment Insurance and/or the Kentucky Teachers' Retirement System and/or any other relevant state entity/agency.

4. **Release.** By signing this Agreement, Dr. Benson agrees for himself, his children, and any other heirs, beneficiaries, assigns, or personal representatives that he forever releases, holds harmless and discharges and agrees not to sue or bring any claim against University or any of its past, present or future regents, directors, officers, employees, agents or attorneys (collectively, "Releasees") on the basis of any claims, damages, causes of action, or liabilities of any kind whatsoever, whether now known or suspected or unknown or unsuspected (including attorney's fees and costs) arising on or before the date of this Agreement, except for those contractual rights which this Agreement creates. Without limiting the generality of the foregoing release, Dr. Benson acknowledges that he understands and agrees that the claims he is releasing under this Agreement include, but are not limited to, all claims for torts, breach of contract, worker's compensation, wrongful discharge, retaliation of any kind, wages, bonuses, back pay, vacation pay, or any other contractual damages (except as described in this Agreement) or discrimination of any kind, including but not limited to any claims under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Older Workers Benefit Protection Act, the Age Discrimination in Employment Act, the Employment Retirement Income Security Act of 1974, the Family Medical Leave Act, the Kentucky Civil Rights Act KRS 344.010 et. seq., Kentucky Wage and Hour provisions KRS 337.010, et seq., Kentucky Equal Pay Act KRS 337.420-433, Kentucky Equal Opportunities Act KRS 207.140-240, or any other claim of any kind under any state, federal, or local law or ordinance. In addition, Dr. Benson further covenants and agrees that he will forever refrain from commencing, instituting, or prosecuting any internal grievance or claim, or any lawsuit, action or other proceeding against the University, based on, arising out of, or connected with his employment with University on or before the date of this Agreement. Nothing within this Agreement precludes Dr. Benson from filing a charge or claim with the U.S. Equal Employment Opportunity Commission ("EEOC") or comparable state or local agencies. Dr. Benson retains the right to communicate with the EEOC and comparable state or local agency and such communication is not limited by any non-disparagement obligation herein. This release does not apply to any potential matters or claims that arise from events that occur after the Effective Date of this Agreement.

5. Dr. Benson acknowledges that he has been advised that he may take up to twenty-one (21) days to consider this Agreement, though he is not required to do so, and that he may revoke the agreement within

seven (7) days after he signs this Agreement. Dr. Benson acknowledges that University does not become obligated to perform in any manner under this Agreement until the eighth day after he signs this Agreement.

6. **Non-Admission.** It is understood and agreed that this Agreement does not and shall not constitute an admission by University of any liability or violation of any law or right of Dr. Benson whatsoever.

7. **Employee Acknowledgements.** Dr. Benson acknowledges and agrees that he: (i) has been paid for all hours worked, including overtime, up through the last pay period for which he was paid before signing this Agreement; and (ii) he has not suffered any on-the-job injury for which he has not already filed a claim.

8. **Tax Liability.** The University shall make a supplemental payments to Dr. Benson to cover any tax liability for his University-provided automobile and house payments for tax year 2019 and 2020 only. For the purposes of clarity, the University's last tax payment reimbursement to Dr. Benson will be made in 2021 for taxes in year 2020. To the extent that any additional taxes may be due on the other payments made pursuant to this Agreement, Dr. Benson agrees to pay the taxes (except for any taxes required by law to be paid by the Employer), and to indemnify and hold the University harmless for any tax claims, assessments or penalties resulting from such payment. Dr. Benson further agrees to provide any and all information pertaining to him such as any new address, upon request, as necessary for University to comply with applicable tax laws. It is Dr. Benson's responsibility to seek advice from his tax, legal, and financial advisors with respect to this Agreement. Neither the University, nor any Regent, employee, nor agent of the University, makes any guarantee of any tax consequences with respect to the payments and obligations to Dr. Benson under this Agreement.

9. **Confidentiality / Non-Disclosure.** Dr. Benson agrees that he has had access to certain confidential and/or proprietary information and documents that pertain to, among other things, student, financial and personnel information relating to University functions and activities (hereinafter referred to as "Confidential Information"). Dr. Benson understands and agrees that all such Confidential Information is the sole property of University and constitutes proprietary information of the University. Dr. Benson agrees (a) not to discuss or disclose to any person any Confidential Information arising out of or in connection with his employment with University and (b) not to remove, transfer, disclose or utilize any Confidential Information. He further agrees that as a condition of this Agreement, he will not publicize, publicly discuss, disclose, divulge or make any statements regarding in any way any material terms of this Agreement. It will not be considered a breach of the condition of this Agreement or the terms of this Agreement if he may disclose the terms herein to file income tax returns, keep related financial records, consult with legal counsel or a spouse or sponsored dependent, to comply with any court order, subpoena, or other direction by a court, administrative agency or legislative body so long as in each case such individuals must be informed of and agree to be bound by this confidentiality clause. In the event that disclosure is necessary to comply with any court order, subpoena, or other direction by a court, administrative agency or legislative body, Dr. Benson agrees to give advance written notice of such disclosure to the University Counsel. Dr. Benson and any attorney, agent or any person acting on his behalf or otherwise with information provided by him, shall not unilaterally make any statement about this Agreement or otherwise relating to his employment, including without limitation the ending of his duties in this position, to any person or entity.

10. **Cooperation with University.**

(a) Dr. Benson agrees to reasonably cooperate with University to the extent that such cooperation and assistance is requested by University officials regarding issues that may arise that were related to Dr. Benson's responsibilities at the University or upon which Dr. Benson may have knowledge. While this assistance will be governed by the particular facts and the principles of honesty and integrity, it is expected that such assistance will be provided in a cooperative spirit and will further the University's interest in the matter(s) involved.

(b) Dr. Benson agrees to cooperate with the University and its legal counsel in connection with any current or future investigation or litigation relating to any matter in which Dr. Benson was involved or of which Dr. Benson

has knowledge, or which occurred or may occur during his employment with the University. Such assistance shall include, but not be limited to, depositions and testimony, and shall continue until such matters are resolved. As long as the matters in litigation occurred during his employment with the University and were within the course and scope of his duties in carrying out such employment, the University shall either provide counsel or pay for counsel for Dr. Benson and shall be obligated to pay for any attendant travel expenses. However, nothing in this Paragraph is intended to waive or limit rights that are excluded from the Release.

11. **Enforceability.** If any provision of this Agreement is deemed invalid or unenforceable for any reason by a court or other tribunal of competent jurisdiction, it shall not be stricken in its entirety or held void or unenforceable, but rather shall be deemed modified to make it enforceable to the maximum extent legally permissible, and the Agreement's remaining provisions shall continue in full force and effect.


12. **Prior Agreements.** Dr. Benson confirms that any prior agreements between him and University are null, void and unenforceable, and that, upon the Effective Date, University has no obligations to him except as expressly set forth in this Agreement.

13. **Governing Law and Venue.** The laws of the Commonwealth of Kentucky will govern this Agreement. In the event of an action to enforce any provision of this Agreement, venue and jurisdiction shall be in Franklin Circuit Court.

14. **Terms Are Contractual.** It is agreed and understood between Dr. Benson and the University that the terms of this Agreement are contractual and not merely a recital.

15. **Final Acknowledgments.** Dr. Benson's signature on this Agreement is an acknowledgment that he has read it carefully; that he was offered sufficient time and opportunity to discuss it with an attorney, should he choose to do so; and that he has signed it freely and voluntarily, without duress, or coercion of any kind by anyone. Dr. Benson acknowledges that this document contains the entire agreement between him and University with respect to his employment and the separation of his employment with University and that by signing this Agreement, Dr. Benson is not relying on any representation or statements not set forth in this Agreement.

I ACKNOWLEDGE AND AGREE THAT I HAVE KNOWINGLY AND VOLUNTARILY ENTERED INTO THIS AGREEMENT BY SIGNING BELOW.

 5 NOV 2019
MICHAEL T. BENSON, D.Phil. Date

 12-12-19
LEWIS DIAZ, J.D.
CHAIRMAN OF THE BOARD OF REGENTS Date

EMPLOYMENT AGREEMENT

This EMPLOYMENT AGREEMENT ("Agreement" or "Contract"), by and between Michael T. Benson, Ph.D. ("Dr. Benson" or the "President"), and Eastern Kentucky University ("EKU" or the "University"), is designed to set forth the intent and rights of these parties in this Agreement.

WITNESSETH:

WHEREAS, EKU, by and through its Board of Regents ("Board"), in its corporate capacity and as an agency and instrumentality of the Commonwealth of Kentucky, agreed to employ Dr. Benson as President of the University for four (4) years, beginning 12:00 a.m., August 1, 2013, and ending at 11:59 p.m., July 31, 2017;

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained in this Agreement, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. TERM

1. Subject to the terms, conditions and provisions set out herein, EKU does hereby appoint and employ Dr. Benson as its President for four (4) years, beginning 12:00 a.m., August 1, 2013, and ending at 11:59 p.m., July 30, 2017 ("Term"), except as provided in Section F ("Termination"). Dr. Benson accepts this employment on the terms and conditions set forth in this Contract.
2. Unless this Agreement has been terminated earlier, the Executive Committee of the Board and Dr. Benson shall meet for the purposes of discussing and agreeing upon the renewal, extension or nonrenewal of this Agreement no later than January 1, 2017. If this Contract is to be renewed or extended, the parties must fully execute a new agreement containing such understanding by no later than 11:59 p.m., July 31, 2017.

B. DUTIES

1. The President shall well and faithfully serve the University in such capacity as stated herein, and shall devote his time, attention and energies to the leadership, superintendence and improvement of EKU to the utmost of his ability and with the overriding premise of acting in the best interest of the University. These duties shall be performed with integrity and in a manner consistent with statutes, regulations and bylaws effecting the operations of the University.
2. The President's participation in any outside organization, association, club or other group shall be consistent with the importance and dignity of the Office of the University President. Involvement in directorship, board membership or consultancy in an entity outside of the University may be undertaken with the Board's approval.

C. COMPENSATION

1. **Base Salary:** The President shall be paid an annual base salary of Four Hundred Thousand Dollars (\$400,000) payable in installments as provided for pay of University administrators.
2. **Deferred Compensation and Retirement**
 - a. EKU shall provide Dr. Benson with standard retirement benefits as accorded to its regular full-time benefitted employees.
 - b. The University may also annually contribute an additional amount, up to 20% of Dr. Benson's annual base salary, to retirement benefit plan(s) under the Internal Revenue Code for Dr. Benson's benefit. In determining the amount to contribute to the retirement benefit plan(s), the Board shall develop criteria which will take into account factors such as the student population, the student retention rate, the graduation rate of EKU students, and the amount and diversity of new financing sources for EKU.
 - c. Dr. Benson shall be ineligible to receive or access the retirement benefit plan(s) until he completes the third year of the Term of this Agreement, whereupon he will be eligible to one-quarter of the amount in the plan(s) only in the event he leaves Without Cause; otherwise he will be ineligible to receive or access the plan(s). Dr. Benson shall be eligible to receive the entire amount of the plan(s) upon completion of his fourth year as President at EKU.
3. **Performance Incentive**
 - a. The Board may award a performance incentive payment or plan of up to a total of no more than 10% of Dr. Benson's annual base salary in an effort to reward extraordinary performance on behalf of EKU including increased student enrollment, increased student graduation rates, and increasing the University's financial stability through its capitalization rates.
 - b. An annual performance evaluation of Dr. Benson shall be performed consistent with the procedures expressed in the Board of Regent's By-Laws, Section 6.B.(4), as well as those detailed in Section C. 2.b. of this Agreement.

D. BENEFITS AND REIMBURSEMENTS

1. **Insurance:** Dr. Benson shall be provided any medical, dental, vision, life, and long-term disability insurance plans or benefits offered by EKU for all regular full-time benefitted faculty and staff, subject to the same terms and conditions of any such plan or benefit program. The University shall pay the premiums for family coverage for any such insurance plan in which Dr. Benson enrolls.
2. **Moving Expenses:** Dr. Benson will be provided all reasonable moving expenses incurred to move his family from their home in Utah to Kentucky. Dr. Benson shall obtain estimates of moving costs from at least two national moving companies and shall use the company providing the lower estimate unless otherwise approved by the Board Chair. If this Agreement is terminated Without Cause, EKU shall also pay all normal and reasonable moving expenses for

Dr. Benson within the continental United States. Moving expenses paid by the University that are not considered as deductible moving expenses, per IRS regulations, will be included as taxable income.

3. **Travel, Entertainment and Other Business Expenses:** The President's reasonable travel, entertainment, and other business expenses incurred in his capacity as ECU President shall be reimbursed through the University's annual budget. ECU shall reimburse Dr. Benson for costs incurred by his spouse when she accompanies him on his approved business travel or entertainment on behalf of the University. The parties agree that reimbursement will be requested and made in accordance with the University's Travel Requirements and Procedures regulation. Exceptions to this must be approved by the Board. These expenses shall be reviewed quarterly by the Board's Chair or the Chair's designee who does not report to the President. Dr. Benson's reasonable travel expenses related to and on behalf of ECU incurred prior to signing this Agreement shall be reimbursed.
4. **Automobile:** ECU shall provide Dr. Benson with a recent model automobile for his use as President. The University shall pay for this automobile, whether by purchase or lease, and shall pay for its maintenance, fuel, insurance and repair. Dr. Benson shall maintain a log of his personal use of the vehicle and shall quarterly report it in writing to the Treasurer of the University. The President shall be solely responsible for the payment of any federal income tax resulting from personal use of the automobile.
5. **Vacation, Sick and Other Related Leave:** The President shall accrue all leave, except vacation leave, as provided to all benefitted employees and according to the applicable University policies. However, as President, Dr. Benson continuously performs his duties, and therefore he does not accrue vacation leave. Rather, Dr. Benson is expected always to act in ECU's best interests and perform such services as are required. When time and circumstances permit, Dr. Benson is entitled to physically remove himself from the ECU campus for such duration as is reasonable, but shall be accessible to telephone calls, emails or other forms of communication.
6. **Club Memberships:** ECU shall pay the membership fees for Dr. Benson's membership in Arlington.
7. **Tuition Remission:** The President shall receive the same tuition remission benefit as provided to other regular full-time benefitted employees at ECU. In accordance with the terms currently provided for such benefit under the Faculty and Staff Tuition Waiver Program, Dr. Benson's eligible family members shall receive a benefit in accordance with the Program.
8. **Faculty Appointment / Tenure Rights:**
 - a. If Dr. Benson's employment as President is terminated Without Cause, he may, at his election, continue employment as at ECU as a member of the ECU faculty. During his service as President, Dr. Benson shall receive no additional compensation with respect to his faculty appointment. Dr. Benson's active faculty assignment shall be mutually agreed upon by him, the Dean of the appropriate college, and the Board Chair. Dr. Benson's faculty compensation shall be equal to the average of the annual salaries of the top five (5)

compensated faculty members in that academic discipline at EKU. In the event Dr. Benson is receiving severance payments as provided herein during the initial eighteen (18) month period in which he performs services as an active member of the faculty, he will not receive any additional amounts as faculty compensation.

- b. With the concurrence of Academic Affairs, including the Department, and with Board approval, Dr. Benson shall hold the rank of full professor with tenure in the College of Arts and Sciences, Department of Government.

- 9. **Technology Support:** EKU shall provide the President with appropriate and reasonable technology support such as portable computing and communicating device(s) necessary to conduct his duties as President. Dr. Benson is also encouraged and will be supported by the University in implementing multiple methods of communication including various forms of social media.

10. **409A Compliance:**

- a. This Agreement will be interpreted and administered in accordance with the applicable requirements of, and exemptions from, Code § 409A in a manner consistent with Treas. Reg. § 1.409A-1, et seq. To the extent payments and benefits are subject to Code § 409A, this Agreement shall be interpreted, construed, and administered in a manner that satisfies the requirements of (i) Code § 409A(a)(2), (3) and (4), (ii) Treas. Reg. § 1.409A-1, et seq., and (iii) other applicable authority issued by the Internal Revenue Service and the U.S. Department of the Treasury (collectively "Section 409A").
- b. Where the term "termination of employment" or "termination" or similar words and phrases describing termination of employment are used in this Agreement, such terms are to be read as satisfying the definition of a "separation from service" in Section 409A. It is understood that "separation from service" shall be defined as referenced under Treas. Reg. § 1.409A-1(h). For the avoidance of doubt and consistent with the terms of Treas. Reg. § 1.409A-1(h)(1)(ii), Dr. Benson shall be deemed to have separated from service if the bona fide level of services he provides the University following termination of employment is less than fifty percent (50%) of the average monthly level of services provided by Dr. Benson during his service as President over the thirty-six (36) months immediately preceding his termination of employment as President.
- c. All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that such reimbursements or in-kind benefits are subject to Section 409A. All expenses or other reimbursements paid pursuant to this Agreement that are taxable to Dr. Benson shall in no event be paid later than the end of the calendar year following the calendar year in which Dr. Benson incurs such expense or pays the related tax. With regard to any provision in this Agreement for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit and the amount of expenses eligible for reimbursement or in-kind benefits provided during any taxable year shall not affect the expenses eligible for reimbursement or in-kind benefits to be provided in any other taxable year.

11. Residence

- a. The Blanton House, which is owned by the University, is presently unfit for use as a residence for Dr. Benson, his spouse and three young children. However, the Blanton House will be utilized as a location to attract and develop new personnel for ECU.
- b. ECU will provide a housing allowance of \$4,000 per month to Dr. Benson for his use in mortgage and general household necessity payments on a home in Madison County, Kentucky, during the Term of this Agreement.

12. Discretionary Projects: Dr. Benson shall direct \$25,000 annually from the ECU Foundation to spend on projects at ECU at his discretion.

13. Model Laboratory School: Dr. Benson's children shall attend Model Laboratory School in Richmond, Kentucky, and ECU shall pay the tuition expenses and fees associated with their attendance.

E. TAX REPORTING

1. The University shall include in the W-2 issued to the President all payments, benefits, allowances, and reimbursements that are defined as income or otherwise required to be reported to the federal, state, or local governments. Except as provided in this Agreement, the President shall be solely responsible for the payment of all personal taxes due and shall make such payments on a "when due" basis.
2. It is Dr. Benson's responsibility to seek advice from his tax, legal, and financial advisors with respect to this Agreement. Neither the University, nor any Regent, employee, or agent of the University, makes any guarantee of any tax consequences with respect to Dr. Benson's employment with the University under this Agreement.
3. Notwithstanding the foregoing, the housing provided to Dr. Benson in Section D.11 is intended to qualify as lodging provided for the employer's convenience and exempt from income tax under Section 119 of the Internal Revenue Code. The University shall indemnify Dr. Benson from any determination of the Internal Revenue Service or state taxation authority that the housing provided in Section D.11 is not exempt from federal or state income tax by making a supplemental payment to him in such amount to cover his federal and state income tax liability. If the housing allowance provided to Dr. Benson in Section D.11 does not meet the requirements to be excluded from gross income under Section 119 of the Internal Revenue Code, the University shall make a supplemental payment to him in such amount to cover the related federal and state income tax liability.

F. TERMINATION

1. Termination For Cause ("For Cause") shall include those bases expressed in KRS 164.360(3) *viz.* "incompetency, neglect of or refusal to perform his duty, or for immoral conduct." For Cause bases shall also include those actions involving a conviction for a misdemeanor or felony or the breach of a fiduciary duty to the University.
2. The President shall not be removed For Cause until after ten (10) days' notice in writing has been provided to him, stating the nature of the charges preferred, and after an opportunity has been given him to make defense before the Board by counsel or otherwise and to introduce testimony which shall be heard and determined by the Board. Charges against the President shall be pursued by the Board's Chair upon written information furnished to him. A majority vote (51%) of the Board shall be required to effect a For Cause removal of the President.
3. ECU may terminate this Agreement Without Cause ("Without Cause") at any time without reason upon thirty (30) days prior written notice to the President. Termination of this Agreement by virtue of the President's disability or death shall not be construed as termination Without Cause. If ECU terminates this Agreement Without Cause prior to the expiration of the Term and Dr. Benson does not serve on the University's faculty following his Presidency, he shall receive his then-current presidential Base Salary and payment of COBRA premiums for eighteen (18) months, provided that Dr. Benson executes a general mutual release in a form acceptable to ECU and does not thereafter revoke such release. Dr. Benson shall also be entitled to any other benefits provided by the University's benefits plans and this Agreement, which are not affected by the termination of his Presidency Without Cause or discontinued by virtue of being a perquisite of the Presidency. A two-thirds vote (66%) of the Board shall be required to effect a Without Cause removal of the President.
4. Dr. Benson may resign from the Presidency by providing at least six (6) month's written notice to the Board Chair. Dr. Benson's employment as President shall cease on the effective date of his resignation, and he shall not be entitled to any further compensation or benefits as President, except as set forth in this Agreement and in the University's various benefit plans with respect to vesting and rights after termination of employment. In the event Dr. Benson resigns within thirty-six (36) months of the effective date of this Agreement, he shall pay ECU, as liquidated damages, the sum of three hundred thousand dollars (\$300,000), said sum to be paid within thirty (30) days after the effective date of his resignation. In the event Dr. Benson resigns more than thirty-six (36) months but less than forty-eight (48) months of the effective date of this Agreement, he shall pay ECU, as liquidated damages, the sum of two hundred thousand dollars (\$200,000), said sum to be paid within thirty (30) days after the effective date of his resignation. In the event Dr. Benson resigns after the expiration of the Term of this Agreement, there will be no liquidated damages. The University agrees to accept payment from the President's new employer in satisfaction of this provision. The parties hereby agree that these liquidated damages are not a penalty, but represent fair compensation to the University for administrative, recruitment, resettlement and other costs associated in obtaining a replacement President.
5. If the President becomes disabled during his service to ECU, this Agreement shall terminate effective on the date of disability and he shall receive all benefits to which he is entitled under this Agreement and pursuant to the University's long term disability ("LTD") insurance plan.

Disability is defined by the University's LTD plan and is the same definition as for all other eligible employees. In the event Dr. Benson is not immediately eligible for the University's LTD plans, the University shall purchase a comparable plan for Dr. Benson during the interim period.

6. If the President dies during his service as President, his compensation and benefits shall cease and this Agreement shall be immediately terminated. The President's designated beneficiary shall receive all benefits to which he or she is entitled under the University's benefits plans.

G. NOTICES

All notices, requests, demands and other communications provided for in this Contract shall be in writing and shall be deemed to have been given at the time when mailed at any general or branch United States Post Office enclosed in a certified, postpaid envelope and addressed to the address of the respective party stated below, or to such changed address as that party may have fixed by notice; to:

DR. MICHAEL T. BENSON

[REDACTED]
[REDACTED]
[REDACTED]

and to:

EASTERN KENTUCKY UNIVERSITY
Chair, Board of Regents
Coates Building, CPO 12A
521 Lancaster Avenue
Richmond, Kentucky 40475

H. RIGHT OF ASSIGNMENT

The President may assign his right to payment under this Agreement, but not his obligations or duties as provided for herein.

I. APPLICABLE LAW

This Contract shall be governed by the laws of the Commonwealth of Kentucky.

J. ON WHOM BINDING

This CONTRACT shall inure to the benefit of and be binding on the **PRESIDENT**, his heirs, executors, administrators, and assigns; and on **EASTERN KENTUCKY UNIVERSITY**, its Regents, successors and assigns.

K. ENTIRE CONTRACT

This Agreement constitutes the entire understanding and agreement between the University and the President with regard to all matters herein. There are no other agreements, conditions or representations, oral or written, expressed or implied, with regard thereto. This Contract may be amended only in writing signed by both parties hereto.

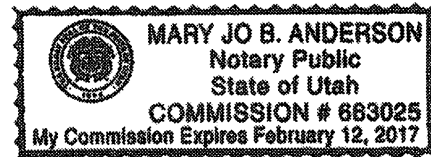
IN TESTIMONY WHEREOF, witness the hands of **DR. BENSON** and the **UNIVERSITY** affixed hereto in duplicate originals.


DR. MICHAEL T. BENSON

EASTERN KENTUCKY UNIVERSITY

BY: 
WM. CRAIG TURNER
CHAIRMAN, BOARD OF REGENTS

STATE OF UTAH)
COUNTY OF Town)



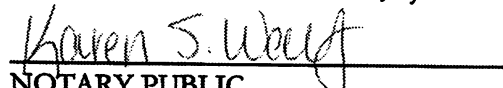
The foregoing **EMPLOYMENT AGREEMENT** was acknowledged before me this 1 day of May, 2013, by **DR. MICHAEL T. BENSON**.


NOTARY PUBLIC

My Commission Expires: 02/12/2017

COMMONWEALTH OF KENTUCKY)
COUNTY OF Fayette)

6th day of May, 2013, by **THE BOARD OF REGENTS OF EASTERN KENTUCKY UNIVERSITY**, by and through its Chairman, Wm. Craig Turner.


NOTARY PUBLIC
State-at-Large

My Commission Expires: 4/17/2017