

**SHAWNEE STATE UNIVERSITY**

**INTERIM PRESIDENT EMPLOYMENT AGREEMENT**

This Interim President Employment Agreement (“Agreement”) is made by and between The Board of Trustees of Shawnee State University (the “Board”) and Dr. Jeffrey A. Bauer (the “Interim President” or “Dr. Bauer”) and is effective December 14, 2018.

**RECITALS**

WHEREAS, the Board on September 14, 2018 through the passage of Resolution E05-18 appointed Dr. Bauer to the position of Interim President of Shawnee State University (“University”) and Dr. Bauer has served as Interim President since that date; and

WHEREAS, both the Board and Dr. Bauer wish to memorialize their respective rights and obligations with respect to Dr. Bauer’s employment as Interim President; and

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 Dr. Bauer agree as follows:

**1.0 Appointment as President.**

1.1 The Board hereby agrees to continue to employ Dr. Bauer as Interim President of the University to serve as the chief executive officer of the University in an interim capacity under the bylaws, policies and supervision of its Board and its primary officers (Chairperson and Vice-Chairperson). Dr. Bauer hereby accepts and agrees to such employment.

1.2 Dr. Bauer shall continue to perform all duties required by law and this Agreement, and in accordance with Board directives, bylaws and policies, as adopted or amended. Dr. Bauer shall also perform those duties as are customarily performed by a University president including, but not limited to, the following:

Initials/Date:

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- 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 Fundraising 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 Interim President that may from time to time be assigned by the Board.

**2.0 Best Efforts as Interim President.**

- 2.1 Dr. Bauer agrees to faithfully, industriously and with maximum use of his experience, ability and talent, devote full-time attention and energies to the duties as Interim 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 places as the Board or Dr. Bauer deem appropriate for the interest, needs, business or opportunity of the University.
- 2.3 Dr. Bauer 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 Dr. Bauer 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 Interim President.

**3.0 Term of Appointment; Extension.**

3.1 This appointment as Interim President shall be retroactive to the Board action on September 14, 2018 and will terminate on June 30, 2019, subject to earlier termination as provided in this Agreement. The Agreement may be renewed for an additional period of time as mutually agreed upon by the Board of Trustees and Dr. Bauer. Such a mutually agreed upon extension may be memorialized in a Memorandum of Understanding and may contain some or all of the terms contained herein.

**4.0 Compensation.**

4.1 For all services rendered by Dr. Bauer under the provisions of this Agreement, the University shall pay him an annual base salary of One Hundred Sixty-One Thousand One Hundred Fifty-Nine Dollars and Ninety-Six Cents (\$161,159.96) (“Base Compensation”), payable in twenty-six (26) equal payments through each 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 and similar employee benefit costs for University administrators shall be deducted from Dr. Bauer’s base salary amount, and shall be subject to the plan cost adjustments applicable to all University administrators.

**5.0 Physical Examination, Insurance, Retirement and Benefits.**

5.1 As a condition of his continued employment, Dr. Bauer shall undergo a comprehensive annual physical examination by a licensed physician, mutually agreed upon by the parties, with all costs, including tests and procedures, to be borne by the University. Following each such annual examination, a physician's certification of fitness for duty shall be submitted upon request to the Chairperson of the Board of Trustees.

5.2 The University shall make available to Dr. Bauer group medical, prescription, dental, vision, and basic life insurance, in accordance with the University’s employer-provided plans applicable to full-time University administrative employees. Dr. Bauer 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 Dr. Bauer shall be entitled to participate in the Ohio State Teachers Retirement System (“STRS”) pension plan or the Alternative Retirement Plan (“ARP”) as Dr. Bauer may elect and for which he 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 Vacation.**

- 6.1 Dr. Bauer shall be entitled to retain the vacation leave hours he currently has on balance, and continue to accrue vacation leave hours at the rate of 6.77 hours per pay period with a maximum aggregate accrual of 352 hours. 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 Dr. Bauer 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, Dr. Bauer shall not take vacation that interferes with properly discharging the duties of Interim President under the terms of this Agreement.

**7.0 Sick Leave.**

- 7.1 For each year of employment, Dr. Bauer will accrue sick leave 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 Dr. Bauer shall report use of sick leave to the University's Human Resources Director. Such use is subject to review by the Chairperson of the Board.

**8.0 Housing and Relocation.**

8.1 The University will provide Dr. Bauer with full payment toward the actual monthly lease expenses for a suitable residence in or around Portsmouth, Ohio, including any applicable expenses associated with insurance, utilities, repairs, maintenance, replacements, housekeeping, landscaping, grounds maintenance and snow removal, at a rate of not more than Two Thousand Five Hundred Dollars (\$ 2,500.00) per month. Dr. Bauer shall promptly provide notice to the Vice President of Finance and Administration of any changes to the actual lease expenses discussed in the preceding sentence.

**9.0 Professional Dues and Meetings.**

9.1 The University will continue to provide and pay for Dr. Bauer'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 Dr. Bauer to attend or participate in educational conferences, conventions, courses, seminars and other similar professional growth activities.

9.2 The University shall pay Dr. Bauer's and his spouse's reasonable travel expenses, accommodations, and other necessary and proper expenses when the presence of Dr. Bauer'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 Dr. Bauer's spouse.

**10.0 Membership in Service Organizations.**

10.1 Dr. Bauer will be provided with membership in at least one service organization, such as Rotary, that would further the interests of the

University. Dr. Bauer will be responsible for any expenses not related to University business.

**11.0 Faculty Appointment.**

11.1 Dr. Bauer shall hold the rank of Professor of Geology.

**12.0 Working Facilities and Resources.**

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

**13.0 Termination and Liquidated Damages.**

13.1 Termination by the Board for Cause. The Board may terminate Dr. Bauer'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, and housing payments under Section 8.1 covering a period for thirty (30) days following the effective date of the termination. "Cause" shall mean any of the following:

13.1.1 Any conduct of Dr. Bauer that constitutes moral turpitude, or that would tend to bring public disrespect, contempt, or ridicule upon the University;

13.1.2 A material violation by Dr. Bauer 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;

13.1.3 Dr. Bauer's prolonged absence from work without the Board's consent, except when such absence is attributable to illness or disability;

- 13.1.4 Misappropriation of University funds or University Development Foundation funds;
  - 13.1.5 A conviction or guilty or no contest plea to a felony; and
  - 13.1.6 Any other material violation or neglect by Dr. Bauer 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 Dr. Bauer's abilities, any of which is not remedied after thirty (30) days' written notice to Dr. Bauer.
- 13.2 Termination by Mutual Agreement of the Board Chair and Dr. Bauer. This agreement may be terminated by mutual written agreement of Dr. Bauer and the Chair of the Board of Trustees.
- 13.3. Resignation. Dr. Bauer may resign his position as Interim President with sixty (60) days' notice.
- 13.4 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:
- 13.4.1 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 Dr. Bauer dies.
  - 13.4.2 Notwithstanding any reasonable accommodation that the Board may provide Dr. Bauer, if as a result of Dr. Bauer's disability or incapacitation, the Board reasonably deems Dr. Bauer incapable of performing the essential functions of his employment as President, the Board reserves the right to terminate this Agreement.
  - 13.4.3 If Dr. Bauer dies or becomes incapable of carrying out the duties of office due to permanent disability and is terminated, the Board shall be liable to Dr. Bauer or Dr. Bauer's personal representative for any accrued but unpaid compensation together with any other compensation and benefits that would be due and payable to Dr.

Bauer by reason of death or disability during University employment.

13.4.4 The Board may terminate Dr. Bauer without cause at any time and for any reason, subject to Section 13.5, below.

13.5 Within seven (7) days of a mutual written agreement pursuant to section 13.2, a resignation pursuant to section 13.3, or notice of termination pursuant to section 13.4.4, Dr. Bauer shall notify the Board Chair whether he opts to a) remain employed at the University and fall back to a Professor position, or b) terminate his employment with the University outright. If Dr. Bauer chooses the fallback option, Dr. Bauer will be reassigned to a Professor position, at which time the terms of employment will cease to be governed by this Agreement, and the rate of pay will be adjusted to a level commensurate with the Professor rank.

13.5.1 If Dr. Bauer opts to terminate employment with the University:

- a. The University shall pay Dr. Bauer the base salary for Interim President that was 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; and
- b. Dr. Bauer 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 Dr. Bauer's expense. Dr. Bauer will not be entitled to any other benefits except as otherwise provided or required by applicable law.
- c. 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 Dr. Bauer, 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 Dr. Bauer shall constitute adequate and reasonable compensation to Dr. Bauer for the damages and injury suffered.

If Dr. Bauer does not make a timely election to either fall back or terminate his employment outright under Section 13.5, above, his employment from the University will be terminated, and Sections (a), (b), and (c) of Section 13.5.1 will apply.

**14.0 Tax Liability and Advice.**

14.1 Dr. Bauer 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 him pursuant to this Agreement.

14.2 Dr. Bauer acknowledges and agrees that it is his responsibility to seek advice from a personal tax, legal and financial advisor with respect to each and every term of the Agreement. Neither the University, nor any trustee, employee or agent of the University makes any guarantee of any tax consequences with respect to any provision of this Agreement.

**15.0 Entire Agreement; Modification.**

15.1 The parties acknowledge and agree that this document contains the entire Agreement between Dr. Bauer and the Board.

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

**16.0 Severability.**

16.1 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.

**17.0 Governing Law and Forum.**

17.1 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 and/or federal district court that covers or includes Scioto County, Ohio.

**18.0 Wavier.**

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

**19.0 Adequacy of Funds and O.R.C. 3345.77 Requirement.**

19.1 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 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 Dr. Bauer if other funds are available for such purpose. The parties further understand that this Contract is subject to Ohio Revised Code Section 3345.77.

**20.0 Rescission of Prior Agreement.**

All terms and conditions of the “Shawnee State University Executive Employment Agreement / Vice President for Academic Affairs and Provost” between the University and Dr. Bauer, to the extent that they are inconsistent with this Agreement, are hereby rescinded.

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

SHAWNEE STATE UNIVERSITY

\_\_\_\_\_  
Francesca Hartop  
Chairperson, Board of Trustees

Date: \_\_\_\_\_

\_\_\_\_\_  
Dr. Jeffrey A. Bauer  
President

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Michael C. McPhillips  
General Counsel

Date: \_\_\_\_\_

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