

EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), between Jonathan Alger ("Mr. Alger" or the "President") and the Board of Visitors (the "Board") of James Madison University ("the University"), an agency of the Commonwealth of Virginia, is made and entered into on this ___ day of __, 2021.

RECITALS

1. The Board wishes to extend Mr. Alger's term as President of the University (currently July 1, 2017 through June 30, 2022) and Mr. Alger wishes to accept the Board's offer to extend his term as the President and to be its employee subject to the terms and conditions of this Agreement; and
2. This amendment has been duly approved and its execution has been duly authorized by the Board of the University.

AGREEMENT

In consideration of the mutual promises, covenants, and conditions contained in this Agreement, the parties agree as follows:

A. Term

The Board agrees to employ Mr. Alger as its President for an additional term of five (5) years, running from July 1, 2022 through June 30, 2027 (the "Term"), subject to earlier termination as provided in Section J. Mr. Alger accepts that employment on the terms and conditions set forth in this Agreement.

B. Renewal

The Board, or its designee, and Mr. Alger will meet for the purposes of discussing renewal or nonrenewal of this Agreement no later than June 30, 2026, with the goal of concluding those discussions by December 31, 2026.

C. Powers and Duties

Mr. Alger must perform those services and duties: (1) that are incident to the Office of the President of the University, as the Chief Executive Officer of the University; (2) that are required of the President under the laws of Virginia, the bylaws of the Board, or the University's policy and procedures; or (3) that may be assigned or delegated to him by the Board consistent with his position as President (collectively, the "Duties"). Mr. Alger must devote his full time, attention, skill, and efforts to the faithful performance of these Duties, except as set forth in Section K ("Outside Activities").

The Duties of the President will be to supervise the entire program of activities of the University consistent with those customarily performed by presidents of public colleges and universities comparable in size and type to the University, including, but not limited to, the following:

1. institutional, faculty, and educational leadership and management;
2. fostering positive external relationships with federal, state, and local governments;
3. fundraising, development, and public and alumni relations;
4. long-range and strategic planning and budget formulation;
5. recruitment, appointment, promotion, discipline, and dismissal of faculty and staff members; and
6. such other duties as may be mutually agreed upon by the Board and the President.

D. Compensation

1. Annual Base Salary: As compensation for the services to be performed by Mr. Alger pursuant to this Agreement, the University will pay to him an annualized base salary of \$505,554 or his salary as of June 30, 2022, whichever is greater (the "Base Salary"), beginning July 1, 2022 through June 30, 2027, less applicable deductions. Of the total Base Salary each year, the University will pay from state funds that amount specified annually in the Commonwealth's Appropriation Act, and the balance will be paid from either (1) private gifts, endowment funds, or income from endowments and gifts or (2) other sources from which presidential salary supplements were paid prior to June 30, 1997 [(1) and (2), collectively, "Other Funds"]. The President will receive salary increases as designated by the General Assembly in the Appropriations Act as well as any salary increase or bonus approved by the University which applies to University employees within his employment category or classification. Any additional increase in the Base Salary provided by the James Madison University Foundation will be paid only upon approval by resolution of the board, and will be based upon the President's performance during the previous twelve (12) months in connection with the annual evaluation of his performance, as set forth in Section E of this agreement. Mr. Alger's annual Base Salary will not be less than the greater of \$505,554 or his salary as of June 30, 2022, during the term of this Agreement.

2. Bonus: The Board may, consistent with its findings following the annual evaluation process outlined in Section E, below, authorize an annual bonus not to exceed 15% of Mr. Alger's Base Salary. The maximum contribution from state funds shall not exceed that permitted under the Commonwealth's Appropriation Act or other applicable state law or regulation, with the balance paid from Other Funds.

E. Annual Evaluation

An evaluation of the President's performance will be conducted annually in accordance with the applicable provisions of the Board bylaws and based upon goals mutually agreed upon by the President and the Board for the twelve (12) month period prior to the evaluation.

F. Benefits and Reimbursements

1. Standard Benefits: Mr. Alger will be eligible for the University's standard retirement plans, standard medical insurance options, disability insurance, business travel accident insurance, group term life insurance, and other benefits generally available to University employees, subject to the eligibility requirements of such plans and programs. Nothing in this Agreement prevents the University or the Commonwealth from amending or terminating any employee retirement, deferred compensation, welfare benefit, or any employee benefit plan or program as the University or Commonwealth deems appropriate. The University will make contributions to the standard retirement plans from state funds and Other Funds in proportion to the salary contributions from each.
2. Travel, Entertainment, and Other Business Expenses: Except where paid by a third party, reasonable travel, entertainment, and other business expenses incurred by Mr. Alger on behalf of the University, in his capacity as President, will be paid for on a cost reimbursement basis through the University's annual operating budget to the extent and in the manner provided for under state law and standard state regulation. The reasonable travel, entertainment, and other business expenses incurred by Mr. Alger's spouse while traveling for the benefit of the University will be paid for on a cost reimbursement basis from Other Funds provided that such travel is approved in advance by the Rector. Mr. Alger has the responsibility to ensure that any reimbursements by parties other than the University are in accord with the Virginia State and Local Government Conflict of Interest Act and other applicable law and regulation.
3. Vacation and Leave of Absence: Mr. Alger will be eligible for the same vacation and leaves of absence as administrative and professional faculty.
4. Sick Leave: Mr. Alger will be subject to the same sick leave policies as administrative and professional faculty.
5. Faculty Appointment: Mr. Alger is also appointed Professor of Public Policy and Administration, with tenure, by the Board of Visitors. During Mr. Alger's presidency, he will not receive any additional compensation for his faculty appointment. During the term of Mr. Alger's presidency,

this Agreement supersedes and replaces in their entirety all terms and conditions of the University's bylaws and policies that would otherwise apply to this faculty appointment relating to tenure rights, evaluation, compensation, benefits, leave, discipline, suspension, termination, and complaint, grievance or appeal procedures, and also supersedes and replaces any other provisions of the bylaws and other applicable University policies to the extent they conflict with the terms of this Agreement. In the event Mr. Alger's term as President ends for any reason other than as provided in Section J.1 (related to dismissal with Cause), he will be entitled to retain this tenure and faculty appointment for a period of five (5) years beyond his presidency, and will be subject in all respects to Board bylaws and University provisions relating to similar tenured faculty appointments; provided, however, that after five (5) years his tenure and appointment will expire and Mr. Alger's employment with the University will end unless renewed by the Board of Visitors. Salary for Mr. Alger as a faculty member will be set by the Board and will be commensurate with his experience and responsibilities, but in no event will his salary exceed that of the highest paid professor at the University. The provisions of this paragraph survive the expiration of other provisions of this Agreement.

6. Sabbatical Leave: In addition to the sabbatical leave he has accrued at the University to date, Mr. Alger will accrue sabbatical leave at the rate of one (1) month for each full year completed under this contract and any extended term of this contract up to a maximum of twelve (12) months. Upon completion of the latter of the term of this contract or any extended term, Mr. Alger will leave the presidency and continue as a member of the faculty as provided in subparagraph 5 above. He will be entitled to take any accrued sabbatical leave upon leaving the presidency at his then current presidential salary and benefits. This provision will not apply in the event of termination either with or without Cause; and this sabbatical leave will not vest until completion of the entire initial term of this contract.
7. Annual Physical Examination: Mr. Alger is required to have an annual physical examination, and must report to the Board that this requirement has been met.
8. Automobile: The University will either furnish or cause to be furnished to the President an appropriate, late model automobile for the President's use. The President must cooperate with the University and third parties in keeping appropriate records of the use of the automobile, and will reimburse for personal use.

9. Deferred Compensation: The University will establish, or cause to be established, one or more deferred compensation plans in which the President may participate. Each fiscal year during the Term of this Agreement, the Board will make a contribution under the deferred compensation plan in the amount of \$110,000, paid in equal quarterly installments. All contributions to the plan(s) must be from Other Funds.

G. Housing

The Board requires, for the sole benefit and convenience of the University in having the functions of the Office of President efficiently discharged, and as a condition of his employment as President of the University, that Mr. Alger reside in housing selected by the University, and provided by, or arranged for by, the University. The University will pay for all maintenance and operating expenses, including grounds keeping, general maintenance, housekeeping, and all utilities including local and long distance telephone (other than for personal use), cable, including internet, electric, gas, and water. The University will be responsible for any real estate tax liabilities. The Board reserves the right to make any repair or improvements it deems necessary.

Mr. Alger must coordinate with the Vice President for Administration and Finance prior to performing work other than routine maintenance and repair on the residence and its grounds. The Vice President for Administration and Finance must seek prior approval from the Board or its Executive Committee before undertaking any work (including improvements and new construction) to the home or its grounds when such work will cost one hundred fifty thousand dollars (\$150,000) or more. Any improvements will be subject to, and will be made in compliance with, all relevant law, policies and procedures (including, but limited to, those promulgated by the Department of General Services and its divisions as well as the Department of Historic Resources, if appropriate).

For convenience of the University, the President's residence must be available, and will be used, for University-related business and entertainment on a regular and continuing basis. Costs associated with such University events will be paid by the University from either state funds or Other Funds, as appropriate. The President will cooperate with the University in ensuring compliance with all Internal Revenue Service requirements related to the residence.

Upon the termination without cause of Mr. Alger's employment as President, the University will pay for reasonable expenses in moving the personal property of Mr. Alger and his family from University-provided housing to a new residence.

H. Additional Compensation

To the extent expense allowances or reimbursed expenses are not provided for under state law, policy and procedure, the Board approves such reimbursements as additional compensation pursuant to provisions of the Commonwealth's Appropriations Act.

I. Tax Reporting

The University will include in the W-2 or other tax reporting documents issued to the President all payments, benefits, allowances, and reimbursements that are defined as income or otherwise required to be reported by federal, state, or local governments. Except as provided in this Agreement, Mr. Alger will be personally responsible for the payment of all personal taxes, including but not limited to, taxes that accrue by reason of the President's housing, allowances, business and travel expense reimbursements, and other fringe benefits. Mr. Alger must make all tax payments in a timely fashion. The President will cooperate with the University in ensuring compliance with all law and regulation, including but not limited to, the state's Conflict of Interest Act and Internal Revenue Service regulations.

J. Termination

1. Termination for Cause: The Board may terminate this Agreement at any time for Cause upon written notice to the President. For purposes of this Agreement, "Cause" means conduct that, in the reasonable judgment of the Board, is contrary to the best interests of the University. Cause includes, but is not limited to: (a) gross negligence or willful malfeasance by the President in the performance of his Duties, which negligence or malfeasance harms the University; (b) conduct by the President that the Board reasonably believes to be materially detrimental or that causes harm to the interests of the University; (c) actions or omissions by the President that are undertaken or omitted knowingly and are criminal or fraudulent or involve dishonesty or moral turpitude; or (d) any material breach of this Agreement that the Board believes to cause damage or harm to the University and which the President has not cured after receiving written notice from the Board and a reasonable opportunity to cure (where the Board reasonably believes such breach is capable of being cured). Notwithstanding any other provision in this Agreement to the contrary, in the event the President is terminated for Cause, Mr. Alger's employment with the University will cease immediately, and he will not be entitled to any further compensation or benefits, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment.

2. Termination without Cause: The Board may terminate this Agreement and Mr. Alger's employment as President without Cause at any time for the convenience of the

University upon written notice to the President. Termination of this Agreement because of the President's permanent disability [as described in Section J.4] will not be construed as termination without Cause.

If the Board terminates this Agreement without Cause prior to the expiration of the Term, Mr. Alger will be entitled to receive payments, in accordance with the University's normal payroll practices, equal to his then Base Salary (less applicable deductions) for the lesser of (1) the remainder of his contract term or (2) twelve (12) months. Those payments will be reduced by the amount of compensation that Mr. Alger receives from other employment (including other employment by the University).

Mr. Alger will not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment, or as otherwise required by law.

No payments will be made under this subsection, except those required by law, unless the President provides to the University, within the time period specified by the Board, and does not revoke, a general release of claims in a form satisfactory to the Board.

3. Resignation: If Mr. Alger resigns from the Presidency, he will not be entitled to any further compensation or benefits as President, except as set forth in the University's various benefit plans with respect to vesting and rights after termination of employment.
4. Permanent Disability: If Mr. Alger becomes permanently disabled during his service as President, this Agreement will terminate effective on the date of Permanent Disability and he will receive all benefits to which he is entitled pursuant to the University's disability insurance plan in which he participates, as set forth in Section F. 1 .

For purposes of this Agreement, "Permanent Disability" means the inability of the President to perform the essential functions of the job of President for a period of six (6) continuous months, with reasonable accommodations (as such term is defined in 42 U.S.C. § 12111(9), as amended, and in the common law interpreting same).

K. Outside Activities

The Board recognizes that it is both appropriate and beneficial for the President to engage in outside activities, such as serving on boards of directors, consulting, delivering speeches, and writing. However, the President must seek prior approval from the Executive Committee of the Board before agreeing to serve on a board or accepting any other position for which the President will in any manner be compensated. In addition, other outside commitments (whether paid or unpaid) that may require a substantial amount of the President's time must be approved by the Executive Committee of the Board. The President may not engage in any outside activity that the Board considers conflicts with his Duties to and responsibilities for the University or otherwise impairs his ability to perform his Duties. If the Executive Committee of the Board subsequently determines that any previously approved outside activities pose or will pose a conflict of interest under the University's conflict of interest policy, or if the time commitments required of Mr. Alger interfere with the performance of his obligations hereunder, Mr. Alger must, at the request of the Executive Committee of the Board, cease such activities at the earliest available opportunity.

All income or other compensation earned by the President in connection with his outside activities may be paid to and retained by the President. Such income and other compensation must be reported by Mr. Alger in accordance with applicable tax and conflict of interest law and University policy. As required by the Commonwealth's Appropriations Act, such income and compensation must also be reported annually to the Board and will be considered by the Board at the time any salary adjustments are made.

L. Return of Property

In the event of Mr. Alger's separation as President, he must return all property belonging to the University within five (5) days. In the event of death or separation, however, his family shall be permitted to occupy the residence under the same terms and conditions as set forth in Section G above for up to sixty (60) days from the date of death or separation, with the consent of the Board.

M. Notice

All notices required or allowed by this Agreement must be hand delivered or mailed by certified mail, postage prepaid, return receipt requested. Unless and until changed by a party giving written notice to the other, the addresses below will be the addresses to which all notices required or allowed by this Agreement must be sent:

If to the University:

James Madison University
Attn: Rector of the Board of Visitors
Alumnae Hall
91 Alumnae Drive, MSC 7608
Harrisonburg, VA 22807

If to the President:

Mr. Jonathan Alger
President
Alumnae Hall
91 Alumnae Drive, MSC 7608
Harrisonburg, VA 22807

N. Severability and Waivers

If any portion of this Agreement is held to be invalid, inoperative, or unenforceable, then, so far as possible, effect will still be given to the intent manifested by that portion of this Agreement. The remainder of this Agreement will be of full force and effect. Waiver or failure to enforce any or all rights under this Agreement by any party on any occasion will not constitute a waiver of that party's right to assert the same or any other rights on that or any other occasion.

O. Governing Law

This Agreement is to be governed and construed, and the rights and obligations of the parties determined, in accordance with the laws of the Commonwealth of Virginia.

P. Counterparts

This Agreement may be executed in counterparts. Each counterpart is an original, and all together constitute but one of the same instrument.

Q. Complete Agreement

This Agreement constitutes the entire agreement among the parties and fully supersedes any and all prior agreements or understandings, written or oral, between the parties pertaining to the matters set forth in this Agreement. This Agreement may not be amended, modified, or changed other than by mutual written consent of the parties to be bound.

R. Sovereign Immunity

Nothing contained in this Agreement constitutes a waiver of the sovereign immunity of the Commonwealth of Virginia.

S. Section 409A of the Internal Revenue Code

This Agreement is intended to comply with the requirements of Section 409A of the Internal Revenue code of 1986, as amended ("Section 409A"). Accordingly, all provisions herein, or incorporated by reference, shall be construed and interpreted to comply with Section 409A and if necessary, any provision shall be held null and void, to the extent such provision (or part thereof) fails to comply with Section 409A or regulations thereunder. The University and Mr. Alger agree that, for purposes of limitations on nonqualified deferred compensation under Section 409A, each payment of compensation under this Agreement shall be treated as a separate payment of compensation for purposes of applying the Section 409A deferral election rules and the exclusion from Section 409A for certain short-term deferral amounts. The University and Mr. Alger also agree that any amounts payable solely on account of an involuntary separation from service of Mr. Alger within the meaning of Section 409A shall be excludable from requirements of Section 409A, either as involuntary separation pay or as short-term deferral amounts (e.g., amounts payable under the schedule prior to March 15 of the calendar year following the calendar year of involuntary separation) to the maximum possible extent. Notwithstanding anything to the contrary in this Agreement, all reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A, including, where applicable, the requirement that (1) any reimbursement is for expenses incurred during the period of time specified in this Agreement, (2) the amount of expenses eligible for reimbursement, or in-kind benefits to be provided, in any other calendar year, (3) the reimbursement of an eligible expense will be made no later than the last day of the calendar year following the year in which the expense is incurred, and (4) the right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit.

T. Dispute Resolution

Any material dispute between the parties arising from this Agreement shall first be submitted for non-binding mediation in Virginia prior to filing any lawsuit. The parties shall cooperate in selecting a mediator and in scheduling a time and location for the mediation. The parties shall each pay half of the mediator's fee. Nothing in this section shall prevent Mr. Alger or the University from seeking immediate injunctive relief for any breach or anticipated breach of this Agreement.

THIS AGREEMENT, having been approved by the Board of Visitors of James Madison University, is entered into by Mr. Alger and the Board, through its authorized officers this ____ day of _____, 2021.

RECTOR AND VISITORS OF
JAMES MADISON
UNIVERSITY

By:

As its Rector

Date: _____

Jonathan R. Alger

Date: _____