

**Central Washington University
Presidential Contract**

I. Preamble

This contract of employment is executed by and between the Board of Trustees and the President of Central Washington University with the mutual understanding that the Board formulates and adopts policies of the institution and the President, as the chief executive officer, carries out those policies and has administrative authority at the operational level over all matters affecting the University. The Board and the President recognize that there must be a close working relationship, not only operationally, but also philosophically, concerning the administration of the institution. Both the Board and the President will expend their best efforts to see that this is accomplished for the benefit of the institution as a whole.

II. Appointment

The Board of Trustees of Central Washington University hereby reaffirms its appointment of Dr. James L. Gaudino as President of the University originally effective January 1, 2009. This current contract of employment, superseding all previous contracts and amendments thereto, shall extend from August 1, 2016, through and including July 31, 2021, subject to further extension as provided herein.

III. Faculty Appointment

The Board of Trustees also grants Dr. Gaudino a tenured faculty appointment at the University as Professor of Communication in the Communication Department of the College of Arts and Humanities. Following his service as President, Dr. Gaudino may elect to serve in his faculty position at a salary equivalent to that of the highest paid Full Professor under the then applicable faculty salary schedule. However (and without in any way limiting the scope of cause for which this contract may be terminated under Article XI hereof), Dr. Gaudino shall not be entitled to continue his faculty appointment if this contract is terminated based on serious acts or omissions of a criminal, fraudulent, or otherwise illegal nature or that involve substantial and material dishonesty or moral turpitude.

IV. Evaluation and Contract Extension

During the month of July of each year, or approximately at that time, the Board shall evaluate the performance of the President. At the discretion of the Board, the evaluation may, however, occur at any time. Any extensions of this contract must be contained in a written agreement signed by the President and the Board and adopted at a meeting open to the public.

V. Duties

The President shall act as the chief executive officer of the University, and shall be responsible for the performance of duties of all subordinate personnel and for carrying out such duties and responsibilities as may be directed by the Board or as may be set forth in the administrative policies or directives of the institution or as may be required by state or federal law. The President shall perform all duties and shall carry out all responsibilities that the Board has delegated to the President by resolution or otherwise. The Board reserves the right, in its sole discretion, to assign or reassign the duties of the President.

The President and the Board acknowledge and agree that the duties hereunder shall be to supervise the entire program of activities at the University and shall be consistent with those customarily performed by presidents of public colleges and universities of comparable size and type, including, without limitation: institutional, faculty, and educational leadership and management; fostering positive external relationships with federal, state, and local governments; fundraising, development, public and alumni relations; long-range and strategic planning and budget formulation; recruitment, appointment, promotion, and dismissal of faculty and staff members consistent with applicable University policies and collective bargaining agreements; and such other duties as may be mutually agreed upon by the Board and the President.

The President shall at all times keep the Board fully informed of significant activities at the University, especially those activities or issues which may cause apprehension or concern regarding the performance of personnel, budgetary problems, over- or under-enrollment of students, or any other major issues affecting the institution. The President shall provide special reports or other information requested by the Board. Between Board meetings, the President shall report to the Chair of the Board, but any written material shall be distributed to all members of the Board.

The President agrees to perform at all times, faithfully and industriously, and to the best of his ability, experience, and talents, all of the duties that may be required pursuant to the express and implicit terms hereof to the reasonable satisfaction of the Board of Trustees. The President agrees to respect and obey all laws, rules, and regulations of the State of Washington and to act at all times in a thoroughly professional manner so as not to bring discredit upon the President or injure the reputation of the institution.

VI. Compensation

A. Base Salary

The annual base salary of the President shall be \$375,000, subject to whatever periodic increases may be provided by the Board to administrative exempt employees during the term of this contract. The salary shall be paid semi-monthly on the state's regularly scheduled payroll dates. Any additional increase, other than a periodic increase, in the salary of the President shall be implemented by resolution or motion duly adopted by the Board at an open public meeting and shall be evidenced by written addendum to this contract.

B. Annual Deferred Compensation

In order to provide an incentive for Dr. Gaudino to continue serving as President and to fulfill his term of office under this contract, the University shall accrue on behalf of Dr. Gaudino the following annual deferred compensation amounts:

<u>Contract Year Ending</u>	<u>Annual Deferred Compensation Accrual</u>
July 31, 2017	\$25,000
July 31, 2018	\$50,000
July 31, 2019	\$75,000
July 31, 2020	\$100,000
July 31, 2021	\$125,000

Each annual deferred compensation accrual amount shall accrue and vest on July 31 of each applicable contract year; provided that, in each case, Dr. Gaudino continues to serve as President through and including the applicable vesting date.

The University's promise to pay the accrued and vested deferred compensation amounts under this Article VI.B is an unfunded and unsecured obligation of the University to pay such amounts. The University in its sole discretion may elect to set aside and invest funds to meet its obligation hereunder, but any such set aside remains the general assets and property of the University and subject to the University's creditors. Any set aside is not funding for the benefits, and does not create a trust fund for Dr. Gaudino or his designated beneficiaries. Neither Dr. Gaudino nor his designated beneficiaries may sell, assign, transfer, pledge, encumber, or otherwise convey the right to receive payment under this Article VI.B, and such amounts in advance of actual payment to Dr. Gaudino or his beneficiaries are not subject to their creditors; provided that such amounts as may otherwise become payable hereunder may be paid in accordance with a domestic relations order meeting such requirements as the court may determine.

In the event that Dr. Gaudino's service as President under this contract terminates during a contract year on account of and upon: (1) Dr. Gaudino's permanent disability as determined in good faith by the University, which for purposes of this Article VI.B shall mean the inability due to illness or injury to perform the duties of President for at least three (3) continuous months; or (2) Dr. Gaudino's death, then Dr. Gaudino shall accrue and vest the annual deferred compensation amount for the year *in which* such termination occurs, but shall not accrue and vest any annual deferred compensation amount in any subsequent contract year. In the event that Dr. Gaudino's service as President under this contract terminates during a contract year on account of the University's termination of this contract for convenience under Article X, then Dr. Gaudino shall not accrue and vest the deferred compensation amount for the year in which such termination occurs, and also shall not accrue and vest any annual deferred compensation amount in any subsequent contract year. However, in the event that the University terminates Dr. Gaudino's contract under Article X, Dr. Gaudino shall be entitled to payments described in Article X in addition to the payment of any previously accrued and vested deferred compensation

under this Article VI.B. If, for any other reason, Dr. Gaudino ceases to serve as President before accrual and vesting occurs as to one or more annual deferred compensation amounts, described above, he is not entitled to any payment of such unaccrued and unvested annual deferred compensation amounts under this Article VI.B.

The University will pay Dr. Gaudino (or his surviving spouse or other designated beneficiary in the event of Dr. Gaudino's death before payment) each annual accrued and vested deferred compensation amount, without interest, in a single lump sum payment, within 30 days following vesting, even if Dr. Gaudino remains employed by the University in any capacity pursuant to an extension of this contract or otherwise. In the event that payment of any accrued and vested annual deferred compensation amount is not paid within the foregoing 30-day period, the unpaid amount shall bear simple interest at the rate of three percent (3%) per annum commencing on the 31st day after accrual and vesting and continuing until paid. Notwithstanding the foregoing, *in no event shall payment of deferred compensation under this Article VI.B be made later than* the last date on which payment of such amount would qualify as a "short-term deferral" under Treas. Reg. §1.409A-1(b)(4). As such, it is intended that deferred compensation will not result in a "deferral of compensation" under Internal Revenue Code §409A or Code §457(f), rendering such Code provisions not applicable..

The payment of the deferred compensation amounts under this Article VI.B is subject to applicable federal and state taxes and withholding requirements, but shall not be "Compensation" under the Central Washington University Retirement Plan (CWURP), or any successor plan, and shall also not be salary subject to a "Salary Reduction Agreement" under the Central Washington University Voluntary Investment Plan (VIP), or any successor plan, and therefore will not be taken into account for purposes of University or Participant contributions to any such Plans.

VII. President's Residence

The University will provide an official residence in which the President will be required to reside, as a condition of employment and solely as a matter of convenience to the University. The University will provide or pay for utilities, maintenance, and property insurance (other than personal property insurance). The President's Residence will continue to be used for official functions of the University.

VIII. Benefits

The President shall be entitled to receive the following benefits as authorized pursuant to state law and University policy as now or hereafter amended:

1. State of Washington employee health and life insurance benefits as authorized by chapter 41.05 RCW. The President may elect at his cost to participate in those

additional life and disability programs as may be available from the State of Washington.

2. Sick leave with full salary in accordance with the policies existing for exempt employees of the University.
3. Thirty (30) days of annual leave will be deposited to the President's leave account on the first day of employment and thereafter each January. The President is expected to use all annual leave by December 31 of each year unless the President's request for vacation is deferred by the Board, but no more than thirty (30) days of leave may be carried over to the subsequent year. Vacation leave shall be taken at a time convenient to the Board and may be paid as terminal leave upon separation from employment in accordance with state law.
4. Retirement contributions and benefits to be paid in accordance with the Central Washington University Retirement Plan adopted by the Board of Trustees. The President may also elect at his cost to participate in the State Deferred Compensation Program or the University's Voluntary Investment Program, subject to applicable eligibility requirements and maximum tax deferral limits.
5. The University shall provide the President with a monthly taxable automobile allowance of \$1,500. The President will be responsible for any insurance, maintenance, operating, and other costs relating to any personal vehicle(s) used by the President for business purposes and will not receive any other reimbursement for such vehicle use.
6. Tickets to CWU athletic and other events, including guest tickets, shall be provided in order to fulfill the Board's expectation that the President will be visible in the community and actively participate in University events as a responsibility of the position of President.
7. Professional dues and memberships to the extent permitted by state law.
8. Such other fringe benefits as may be incidental to this appointment or as may be required hereafter by state law.

IX. Expenses

The President, to the extent permitted by law, shall be reimbursed for reasonable business expenses incurred during the contract term and in the performance of the duties set forth in this contract and, except as limited by Article VIII, Section 5, of this agreement, shall also receive travel and per diem allowances in accordance with RCW 43.03.050 and RCW 43.03.060 and the regulations of the Office of Financial Management. The University shall also pay the travel expenses of the President's spouse in connection with the President's performance of official duties, subject to review and approval of such expenses by the Chair of the Board or a designee who does

not report to the President. The President may also have available other support for University-related activities from the Central Washington University Foundation.

X. Termination for Convenience

The Board of Trustees, at any time, may terminate this contract of employment for convenience, which means without cause and in the Board's sole discretion, by providing written notice to the President. Such notice will specify the effective date of termination, which may be immediate. Upon the effective date of termination, Dr. Gaudino's employment by the University as President will end and this contract terminates, subject to any provisions which remain in effect as triggered by the termination. In the event of such termination, the University shall pay Dr. Gaudino as separation pay an amount equal to the President's then applicable monthly base salary times the number of months (including a pro-rated amount as to any partial month) remaining on the contract term. Such separation payment shall be made without interest. Payment under this Article X constitutes liquidated damages and is in satisfaction of any and all other payments and benefits otherwise due Dr. Gaudino under this contract (except under Article VI.B) or any claims whatsoever that he may have against the University under this contract or otherwise, and Dr. Gaudino agrees as a condition of payment under this Article X that he will execute and deliver to the University such a fully binding and non-revocable release of claims in such form as the University may reasonably require. Such execution and delivery must be made prior to the separation payment described in this Article X; Dr. Gaudino's failure to execute and deliver any release required hereunder, and for such release to become fully binding and non-revocable before the last date on which payment may be made under the next following paragraph, voids the University's obligation to pay separation pay under this Article X.

Payment under this Article X shall be made within 60 days following the effective date of termination for convenience, but if the total amount to be paid exceeds one year's base salary, then the amount in excess of one year's base salary shall be paid as the University determines; provided that *in no event shall payment be made later than* the last date on which such amount would qualify as a short-term deferral under Treas. Reg. §1.409A-1(b)(4) (such that the separation pay is not a "deferral of compensation" subject to Internal Revenue Code §§409A or 457(f)).

The separation payment(s) hereunder shall be subject to any required payroll deductions, but shall not be "Compensation" under the Central Washington University Retirement Plan (CWURP), or any successor plan, and shall also not be salary subject to a "Salary Reduction Agreement" under the Central Washington University Voluntary Investment Plan (VIP), or any successor plan, and therefore will not be taken into account for purposes of University or Participant contributions to any such Plans. Termination under this Article X shall be without prejudice to the President's faculty appointment rights under Article III hereof.

XI. Termination for Cause

In the event the President violates any of the terms of this contract or fails to perform the duties assigned by the Board, the Board may terminate this contract upon written notice. In the event of such termination, the President shall be entitled to an informal hearing before the Board.

The President must submit a written request for such hearing within fifteen (15) days of receiving the written notice of termination, or the right to a hearing shall be deemed waived. During any such proceeding, the President's duties may be reassigned and the President may be given such other assignments as the Board deems appropriate, but the President's salary may not be diminished during the fifteen (15) day notice period for requesting a hearing or, in the event of a hearing, pending completion of the hearing and a decision by the Board. The decision of the Board shall be final.

XII. Work Products

All correspondence, papers, documents, reports, files, films, work products, and all copies or derivatives thereof received or prepared by the President in the course of performing, or as an incident to, the duties and responsibilities hereunder shall immediately, upon such receipt or preparation, become the exclusive property of the University for any and all purposes. All such items shall be provided to and left with the University upon termination of this appointment, except as otherwise agreed by the Board of Trustees.

XIII. Outside Compensation

The President may accept outside employment for private consultant services and board of director responsibilities with private companies or organizations, provided that such activities: (1) do not fall within his official duties as President, interfere with the carrying out of his official duties, or involve a conflict of interest with respect to such duties; (2) do not involve the improper personal use of University resources, time, materials, or facilities; (3) are otherwise in compliance with the Ethics in Public Service Act, chapter 42.52 RCW, and other applicable laws; and (4) are each approved by the Chair of the Board of Trustees. Any income received by the President in connection with his approved outside activities shall have no effect on his compensation under this agreement.

XIV. Appointment as President Emeritus

At the time of stepping down from active service as President, the President shall be eligible for appointment by the Board of Trustees as President Emeritus of the University. The President at that time may elect either to retire or to continue serving the University as President Emeritus for a period not to exceed twelve months in accordance with the provisions of this Article XIV.

The President Emeritus, reporting to the Chair of the Board, shall have the following duties during the term of continued service under this Article XIV: (1) to be available for consultation and advice during the presidential transition; (2) to collect, organize, and prepare for accession into the University Archives, or for other lawful disposition, the presidential papers and other materials accumulated during the President's active service as President; (3) to reflect and write about the University's growth and development during the President's tenure, together with reflections concerning the University's future development in the context of higher education regionally and nationally; and (4) to perform such other duties as the President Emeritus and Board of Trustees may mutually agree.

During the term of continued service under this Article XIV, the President Emeritus shall be paid a monthly salary equivalent to the monthly salary paid to the President in the last month of active service as President. Other compensation during the term of the continued service will consist of the retirement benefits and other usual benefits paid to or on behalf of exempt administrative employees of the University. In addition, upon assuming the duties of President Emeritus, the President shall vacate the President's Residence and the University shall reimburse the President's actual and reasonable household relocation costs not to exceed \$15,000 without advance approval.

Upon the President's election to continue serving as President Emeritus, this contract of employment shall terminate, except for Articles III, VI.A, X, XI, XII, and XV, as well as this Article XIV, which shall all survive the termination hereof, with the term "President" being understood to mean "President Emeritus." The termination of the President's contract under this Article XIV shall be without prejudice to the President's faculty appointment rights under Article III.

XV. General Provisions

This contract constitutes the entire agreement between the parties and supersedes any and all other agreements, understandings, negotiations, and discussions, oral or written, express or implied. The parties agree that no other representations, inducements, promises, agreements, or warranties relating to this agreement, oral or otherwise, have been made to or by them. No modification or waiver of this agreement shall be valid or binding unless signed in writing by the parties.

The terms and conditions of appointment set forth herein may be amended or modified by mutual agreement of the Board and the President. Such modifications may be made by resolution or motion duly adopted by the Board at an open public meeting, which action shall be reflected by a written addendum to this basic contract of employment and signed by the President and Chair of the Board.

This contract incorporates by reference the Exempt Employees' Code of Central Washington University. To the extent of any conflict between the Code and this contract, this contract will prevail. This contract shall be subject to all applicable laws of the State of Washington relating to public employment. Should the compensation of the President or other aspects of this contract be adversely impacted by changes in applicable laws, including but not limited to the Internal Revenue Code, the parties may negotiate amendments to this contract to mitigate such impacts to the extent possible.

Deferred compensation and separation payments under Articles VI.B. and X of this contract are not intended to result in a deferral of compensation under Internal Revenue Code §§409A or 457(f). The contract will be administered consistent with that intention. In the event that any taxable expense reimbursements or taxable in-kind benefits provided under the contract may be subject to Internal Revenue Code §409A, then: (1) such eligible expenses or benefits provided in one calendar year shall not affect the amounts eligible or provided in any other calendar year; (2)

expense reimbursement shall be paid no later than the end of the calendar year which follows the year in which the expense was incurred; and (3) the right to expense reimbursement or in-kind benefit shall not be subject to liquidation or exchange for another benefit.

This contract shall be governed by and construed in accordance with the laws of the State of Washington. If any provision of this contract shall be held invalid, such invalidity shall not affect the other provisions of this contract that can be given effect without the invalid provision, if such remainder is consistent with applicable law and the fundamental purpose of this contract, and to this end the provisions of this contract are declared to be severable.

This contract may be executed in counterparts.

IN WITNESS WHEREOF, the Board and the President have executed this contract this _____ day of _____, 2016.

KEITH THOMPSON
Chair, Board of Trustees

JAMES L. GAUDINO
President

Approved as to Form
ALAN SMITH
Assistant Attorney General
DRAFT 07.20.16