



Item: VI.b.

Friday, December 6, 2019

SUBJECT: Second Renewed Employment Agreement for Dr. John Kelly

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**PROPOSED BOARD ACTION**

Approve a second renewed employment agreement with President John W. Kelly.

**BACKGROUND INFORMATION**

On January 17, 2014, the Board unanimously selected Dr. John W. Kelly to serve as President of Florida Atlantic University. On February 18, 2014, the Board unanimously approved and entered into an employment agreement (the "Agreement") with Dr. Kelly. The Board and Dr. Kelly subsequently agreed to three amendments to the Agreement, dated February 1, 2016, October 1, 2016, and October 25, 2017.

The term of the Agreement expired on February 28, 2019. Effective March 1, 2019, the Board and Dr. Kelly entered into a renewed employment agreement (the "Renewed Agreement"). In accordance with Board of Governors ("BOG") policy, the term of the Renewed Agreement is limited to one year. The Renewed Agreement will therefore expire on February 29, 2020.

At its September 2019 retreat, the Board discussed entering into a second renewed employment agreement with Dr. Kelly when the current one expires. The Board unanimously authorized the Chair and the General Counsel to develop a second renewed agreement with the following revised provisions:

- The term is extended from March 1, 2020 to February 28, 2021. Current BOG policy only allows for one-year extensions of presidential employment agreements.
- The vesting terms of the contingent retention bonus set forth in Section 6.2 are revised to align with the vesting terms of the annual retention bonus set forth in Section 6.1.2.

Additionally, after the Board's retreat, the BOG announced that it is now requiring a general cooperation covenant in all SUS presidential employment agreements.

The Chair and the General Counsel have developed a proposed Second Renewed Employment Agreement that contains the provisions approved by the Board and the covenant required by the BOG. In all other respects the material terms of the proposed Second Renewed Employment Agreement are identical to those of the Renewed Agreement. The General Counsel has confirmed that the proposed Second Renewed Employment Agreement complies with all legal requirements for State of Florida State University System employment agreements.

#### **IMPLEMENTATION PLAN/DATE**

If approved by the BOT and the BOG, the Second Renewed Employment Agreement will become effective March 1, 2020.

#### **FISCAL IMPLICATIONS**

All of the financial terms in the proposed Second Renewed Employment Agreement are identical to those in the Renewed Agreement. Florida law caps the amount of salary, bonuses, and cash-equivalent compensation that may be paid to state university presidents from public funds. The Second Renewed Employment Agreement provides that the Board will request that the FAU Foundation provide all sums beyond the amount permitted to be paid from public funds. This practice is consistent with that of every other SUS university.

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Supporting Documentation: Proposed Second Renewed Employment Agreement  
(with changes to Section 6.2 and the BOG's general  
cooperation covenant shown in redline format)

Presented by: Trustee Anthony Barbar, Chair

## **SECOND RENEWED PRESIDENT'S EMPLOYMENT AGREEMENT**

This Second Renewed President's Employment Agreement (the "Agreement") is entered into by the Florida Atlantic University Board of Trustees (the "Board" or "the Board of Trustees"), a public body corporate of the State of Florida, and Dr. John W. Kelly ("Dr. Kelly").

WHEREAS, the Board, acting on behalf of Florida Atlantic University (the "University"), has the authority to select and employ the President of the University; and

WHEREAS, the Board previously selected Dr. Kelly to serve as President of the University and entered into a President's Employment Agreement with Dr. Kelly dated February 20, 2014, as amended February 1, 2016, October 1, 2016, and October 25, 2017 (collectively, the "Prior Agreement"); and

WHEREAS, by its terms the Prior Agreement expired on February 28, 2019, and the Board and Dr. Kelly entered into a Renewed President's Employment Agreement dated March 1, 2019 (the "Renewed Agreement"); and

WHEREAS, by its terms the Renewed Agreement expires on February 29, 2020; and

WHEREAS, the Board and Dr. Kelly desire to renew and amend the Renewed Agreement and restate the terms and conditions of Dr. Kelly's employment as set forth herein;

NOW, THEREFORE, in consideration of mutual promises and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree to this Agreement as follows:

## **1.0 Appointment as President**

- 1.1 The Board appoints and employs Dr. Kelly to be President of the University and to serve as the Chief Executive Officer of the University subject to the laws of the State of Florida, the regulations and policies of the Florida Board of Governors, the regulations and policies of the University, and the regulations, policies, and supervision of the Board of Trustees.
- 1.2 Dr. Kelly shall perform all duties required or delegated by law, by University and Board of Trustees policy and regulation, by this Agreement, or by custom and practice to be performed by a university president. Those duties include, but are not limited to:
  - 1.2.1 Operating the University;
  - 1.2.2 Providing institutional, faculty, and educational leadership;
  - 1.2.3 Strategic planning;
  - 1.2.4 Acting as corporate secretary to the Board;
  - 1.2.5 Preparing a budget request and operating budget;
  - 1.2.6 Establishing and implementing policies and procedures to recruit, appoint, transfer, promote, compensate, evaluate, reward, demote, discipline, and remove personnel;
  - 1.2.7 Governing admissions;
  - 1.2.8 Approving, executing, and administering contracts for the acquisition of commodities, goods, equipment, services, lease of real and personal property, and planning and construction;

- 1.2.9 Acting as custodian of all University property, including the authority to prioritize the use of University space, property, equipment, and resources;
- 1.2.10 Implementing approved programs for the University;
- 1.2.11 Establishing the internal academic calendar of the University;
- 1.2.12 Administering the University's program of intercollegiate athletics;
- 1.2.13 Recommending the establishment and termination of undergraduate, masters, and doctoral level degree programs within the approved role and scope of the University;
- 1.2.14 Awarding degrees;
- 1.2.15 Recommending a schedule of tuition and fees to be charged by the University;
- 1.2.16 Entering into Agreements for student exchange programs;
- 1.2.17 Approving the internal procedures of student government organizations and providing purchasing, contracting, and budgetary review processes for those organizations;
- 1.2.18 Adjusting property records and disposing of state-owned tangible property;
- 1.2.19 Maintaining all data and information pertaining to the operation of the University and reporting on the attainment by the University of institutional and statewide performance accountability goals;

- 1.2.20 Ensuring compliance with federal and state laws, regulations, and other requirements applicable to the University;
- 1.2.21 Reviewing periodically the operations of the University to determine how effectively and efficiently the University is being administered and whether it is meeting the goals of its strategic plan;
- 1.2.22 Organizing the University to achieve the goals of the University efficiently and effectively;
- 1.2.23 Developing and actively participating in philanthropic fundraising initiatives to support the University; and
- 1.2.24 Recommending the adoption of regulations and policies to successfully implement provisions of law governing the operation and administration of the University and the items listed above.

## **2.0 Best Efforts as President**

- 2.1 Dr. Kelly agrees, subject to Section 2.3 below, to devote his full-time attention and energies to his duties as President of the University.
- 2.2 The duties of the President shall be performed for all existing and future campuses of the University, and for and at such other place or places as the Board deems appropriate for the interests, needs, business, or goals of the University.

- 2.3 The expenditure of reasonable amounts of time for personal or outside business, as well as non-University related charitable and professional development activities, shall not be deemed a breach of this Agreement, provided such activities do not interfere with the services required to be rendered to the University under the provisions of this Agreement, Part III of Chapter 112 of the Florida Statutes: Code of Ethics for Public Officers and Employees, and applicable regulations or policies of the Board of Trustees or University.
- 2.4 Dr. Kelly shall not knowingly engage in any activity that may be competitive with and adverse to the best interests of the Board of Trustees or the University.
- 2.5. Dr. Kelly shall seek approval from the Board prior to agreeing to serve on any board of directors or to engage in outside employment, business or professional activities subject to the provisions of University Regulation 5.011, or its successor regulation or policy. Any and all income or other compensation earned by Dr. Kelly in connection with approved non-University outside activities shall be paid to and retained by him, and such income or other compensation shall have no effect on the amount of salary, compensation, or benefits he is otherwise entitled to receive under this Agreement.

### **3.0 Term of Appointment; Evaluation; Renewal**

- 3.1 This appointment shall be for a term of one (1) year, commencing on March 1, 2020 and ending February 28, 2021, renewable by mutual written consent of the parties. This appointment is subject to prior termination as provided for in this Agreement, and by the applicable laws of the State of Florida, the regulations and policies of the Board of Trustees, the regulations and policies of the University, and the regulations and policies of the Florida Board of Governors.
- 3.2 On or before each June 1 while Dr. Kelly is employed as President, Dr. Kelly shall provide the Chair of the Board of Trustees (“Chair”) with a list of proposed goals and objectives for the next fiscal year that begins on the following July 1, based upon the accountability processes implemented pursuant to Florida law including Section 1008.46 of the Florida Statutes, the Board of Governors’ Performance Funding Model, the University’s and the Board of Governors’ strategic plans, and the current priorities of the University. The Chair and Dr. Kelly shall discuss and agree upon Dr. Kelly’s goals and objectives for the next fiscal year. The goals and objectives shall then be presented to the Board for discussion and approval.
- 3.3 On or before each September 1 while Dr. Kelly is employed as President, Dr. Kelly shall initiate the evaluation process for the fiscal year ending on the prior June 30 by preparing a self-appraisal of his performance for submission to the Chair and evaluation by the Board, its designee, or both, in accordance with policies and procedures established by the Board as the



Board may deem appropriate. Dr. Kelly agrees to furnish any additional information requested by the Chair to aid the Board in its annual performance review of Dr. Kelly.

- 3.4 The performance of the Board of any of its obligations under this contract shall be subject to and contingent upon the availability of funds appropriated by the legislature for the current and future periods.

#### **4.0 Salary**

- 4.1 For all services rendered by Dr. Kelly, the Board of Trustees establishes and approves a base salary of Five Hundred Five Thousand Dollars (\$505,000) per year. This amount shall be payable according to the Board's payroll policies and procedures and the pay plan applicable to the President's position, with applicable deductions, such as applicable taxes and benefits being withdrawn. Dr. Kelly shall be responsible for any income tax liability incurred as a result of this Agreement.
- 4.2 Dr. Kelly's salary shall be reviewed annually by the Board in conjunction with the Board's evaluation of job performance set forth in Section 3.3 of this Agreement. Dr. Kelly shall also be eligible for any legislative salary increase applicable to University employees in his employment classification.
- 4.3 The Board authorizes, and Dr. Kelly shall receive, all standard employment benefits applicable to the position of the President based on his annual base salary.

## **5.0 Tenure and Return to Faculty Appointment**

- 5.1 Dr. Kelly was granted a tenured faculty appointment at the rank of Professor in the Charles E. Schmidt College of Science upon his appointment as President in accordance with the University's tenure upon appointment procedures, and shall be accorded all the rights and privileges afforded to such appointment.
- 5.2 If Dr. Kelly is eligible pursuant to this Agreement and chooses to return to professorial duties after completion of a minimum of five (5) years of service as President, he shall be eligible for a one-year administrative study leave immediately after his service ends as President and prior to returning to the faculty. During this study leave period, if taken, Dr. Kelly shall earn a 12-month base salary equal to ninety percent (90%) of his last base salary as President.
- 5.3 For the first three (3) years of service as Professor (or for years 2 and 3 if a study leave is taken), Dr. Kelly shall earn a 12-month Professor base salary equal to eighty percent (80%) of his last base salary as President. If appointed to a 9-month academic year assignment by the dean, the 9-month salary will be 9/12 of this adjusted 12-month salary.
- 5.4 If Dr. Kelly continues to serve as a full-time tenured faculty member after the expiration of this three (3) year period, his base salary shall be adjusted to the average 9-month base salary rate (exclusive of any supplement or enhancement paid for administrative positions) paid at the time to the three

(3) most highly paid full-time, non-administrative, non-clinical tenured faculty members in the Charles E. Schmidt College of Science, excluding Dr. Kelly. This base salary shall be adjusted accordingly in the event Dr. Kelly is assigned a 12-month appointment.

## **6.0 Other Compensation**

6.1 In conjunction with the Board's annual evaluation of Dr. Kelly's performance for each fiscal year, Dr. Kelly shall be eligible for performance and retention compensation equal to a combined total of 30% of his annual base salary then in effect, to be allocated as follows:

6.1.1 Performance Compensation. Dr. Kelly shall be eligible for performance compensation of up to 20% of his annual base salary then in effect. The award of performance compensation is discretionary and shall be awarded based on the Board's assessment, in its sole and absolute discretion, of Dr. Kelly's performance during the fiscal year under review. The Board may award any amount of performance compensation from zero to the maximum identified above. In making its determination, the Board shall consider Dr. Kelly's achievement of the annual goals and objectives set pursuant to Section 3.2, the evaluation results pursuant to Section 3.3, and/or other criteria set by the Board. Any performance compensation awarded shall be paid to Dr. Kelly within 90 days of the date on which it is awarded.

6.1.2 Annual Retention Compensation. It is the intent of the Board to provide sufficient incentive to Dr. Kelly to serve as President for the full term of this Agreement. In support of this objective, for each fiscal year of service completed under this Agreement, the Board authorizes and approves an annual retention bonus for Dr. Kelly equivalent to 10% of his annual base salary in effect at the end of the fiscal year. The annual retention bonus shall be paid to Dr. Kelly within 90 days of the conclusion of the fiscal year. If Dr. Kelly leaves the presidency prior to June 30 of any University fiscal year, or if he is involuntarily terminated by the Board for cause pursuant to paragraph 12.0 of this Agreement, Dr. Kelly forfeits all right and entitlement to payment of current year or future year annual retention compensation, or any portion thereof. If Dr. Kelly is terminated without cause pursuant to paragraph 13.0, or if he dies or becomes permanently incapacitated as defined in paragraph 14.0, Dr. Kelly or his estate shall be entitled to a portion of the annual retention compensation for the current year, prorated based on service completed during the year.

6.2 It is the intent of the Board to provide sufficient incentive to Dr. Kelly to serve as President for the full term of this Agreement and for additional renewal terms if the Board decides, in its sole and absolute discretion and with the approval of the Florida Board of Governors, to offer Dr. Kelly renewal terms after the expiration of the current term. In support of this objective, the

Board authorizes and approves a contingent retention bonus for Dr. Kelly in the amount of Three Hundred Fifty Thousand Dollars (\$350,000) payable on February 28, 2022 (the “2022 Retention Bonus”), provided that Dr. Kelly remains continuously employed as President of the University through that date. Nothing herein shall constitute an offer, guarantee, obligation, or expectation of continued employment of Dr. Kelly as President beyond the expiration of this Agreement on February 29, 2020; the Board retains the right to determine, in its sole and absolute discretion and subject to the approval of the Florida Board of Governors, whether to offer a renewal and extension of this Agreement at the conclusion of its term and any subsequent terms. The entirety of the 2022 Retention Bonus is contingent upon Dr. Kelly continuously serving as President of the University through February 28, 2022; no portion of the 2022 Retention Bonus shall vest or otherwise be due and payable at any time prior to that date except as follows: if prior to February 28, 2022, Dr. Kelly is terminated without cause pursuant to paragraph 13.0, or if he dies or becomes permanently disabled as defined in paragraph 14.0, Dr. Kelly or his estate shall be entitled to a portion of the 2022 Retention Bonus, prorated proportionately to the length of Dr. Kelly’s continuous service as President completed between October 1, 2016 and the date of his termination without cause, death, or disability. If Dr. Kelly leaves the presidency prior to February 28, 2022, for any other reason, Dr. Kelly forfeits all right and entitlement to payment of the 2022 Retention Bonus, or any portion thereof.

6.3 During the term of this Agreement and contingent upon the availability of funds, the Board shall not be responsible for, but authorizes this compensation arrangement and shall use its best efforts to cause the Florida Atlantic University Foundation, Inc. ("FAU Foundation") to contribute to Dr. Kelly the portions of all payments provided for in this Agreement that exceed the limits set forth in Florida Statutes Section 1012.975.

## **7.0 Other Benefits**

7.1 Dr. Kelly shall be eligible for all applicable State of Florida and University developed benefits and perquisite programs as authorized by the legislature or other authorized governing bodies. The Board further agrees that Dr. Kelly shall be entitled, at all times, to the state sponsored life insurance benefits applicable to executive service personnel.

7.2 The Board authorizes a retirement benefit of supplemental deferred compensation equal to twenty-five percent (25%) of Dr. Kelly's annual base salary during each year of this Agreement. This supplemental deferred compensation shall be in addition to regular state benefits and applied towards a qualified account of Dr. Kelly's choosing for the specific purpose of Dr. Kelly's retirement. The supplemental deferred compensation shall be paid in accordance with regular payroll practices.

7.3 The Board authorizes, and shall use its best efforts, to cause the FAU Foundation to provide funds for Dr. Kelly's spouse for travel to official functions in accordance with regular state and University travel policies.

Funding for spouse travel is only authorized in conjunction with Dr. Kelly's travel outside of the University service area.

- 7.4 The Board authorizes and approves providing a complete annual executive physical examination for Dr. Kelly by a medical center or professional of Dr. Kelly's choosing. The Board authorizes and approves full payment of or reimbursement for all costs of such exam to the extent any costs are not covered by Dr. Kelly's medical insurance plan.

## **8.0 Housing**

- 8.1 The Board requires Dr. Kelly to reside in the University's Eleanor R. Baldwin House, 555 NW 20th Street, Boca Raton, FL 33431, at the University's expense to enable him to efficiently carry out his duties, including its use for various official University functions.

## **9.0 Automobile**

- 9.1 The Board will authorize and provide Dr. Kelly with the use of a suitable full size automobile to be insured and maintained by the University. The automobile furnished to Dr. Kelly will be replaced at least once every three (3) years.

## **10.0 Professional Dues, Meeting and Entertainment**

- 10.1 The Board will authorize and provide for reasonable expenses incurred by Dr. Kelly for University-related professional, social, or service organizations

and activities, and University-related meeting and entertainment expenses. The Board may fulfill this obligation through the use of available FAU Foundation funds.

## **11.0 Expense Receipts and Documentation**

11.1 Dr. Kelly agrees to maintain and furnish to the Board an accounting of reimbursable expenses and membership dues and fees provided for in this Agreement in reasonable detail and consistent with University and State policies, standards, and procedures on no less than a monthly basis. Following Dr. Kelly's submission of an accounting, the Board shall make prompt reimbursement to Dr. Kelly of such expenses and membership dues and fees in accordance with applicable University and State policies, standards, and procedures.

## **12.0 Termination of the Contract for Cause**

12.1 Notwithstanding anything in this Agreement to the contrary, the parties agree that, upon a vote of two thirds (2/3) of the Board of Trustees, the Board may terminate this Agreement at any time for "just cause" (as hereinafter defined).

12.2 "Just cause" shall be defined as: (i) a deliberate or material violation by Dr. Kelly of the duties set forth in this Agreement or his refusal or unwillingness to perform such duties in good faith, during his full business time, or to the best of his abilities if, within thirty (30) days following Dr. Kelly's receipt of



the written notice of what the Board considers to be the violation, Dr. Kelly fails to cure the same; (ii) materially harmful neglect of essential responsibilities; (iii) grave dishonesty that adversely affects the University; (iv) the commission of any felony or of a misdemeanor involving moral turpitude; or (v) a material, significant, or repetitive breach of this Agreement.

12.3 In the event of termination for “just cause” by the Board, Dr. Kelly’s employment with the University and tenure status shall cease, and he shall not be entitled to any further employment, compensation or benefits from the University in any capacity except for benefits required to be continued by law.

### **13.0 Termination Without Cause**

13.1 Notwithstanding anything in this Agreement to the contrary, the parties agree that upon a vote of two thirds (2/3) of the Board of Trustees, the Board may terminate the Agreement at any time prior to its term expiration without cause, provided that Dr. Kelly is given ninety (90) days prior written notice for his benefit. Upon receiving notice from the Board, Dr. Kelly may waive any portion or the entire notice period at his discretion and terminate earlier. If Dr. Kelly has served as President for at least twenty-four (24) months prior to receiving notice of termination without cause from the Board, he may choose to take a six (6) month study leave at his President’s base salary

immediately after his service ends as President and prior to returning to the faculty, in lieu of receiving the ninety (90) days prior notice above.

- 13.2 Dr. Kelly may terminate the Agreement at any time prior to its term expiration without cause, provided that Dr. Kelly gives ninety (90) days prior written notice to the Board of Trustees for its benefit. Upon receiving notice from Dr. Kelly, the Chair may waive any portion or the entire notice period at his/her discretion and terminate earlier.
- 13.3 If this Agreement is terminated without cause by either party, Dr. Kelly shall be eligible to assume the duties of full Professor with tenure.

#### **14.0 Termination Due to President's Resignation, Death or Disability**

- 14.1 Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate upon Dr. Kelly's resignation from employment at the University, death, or "permanent disability" (as hereinafter defined). Such termination shall be deemed to have occurred for "just cause" and Dr. Kelly's employment with the University and tenure status shall cease, and he shall not be entitled to any further employment, compensation or benefits from the University in any capacity except for benefits required to be continued by law. For purposes of this Agreement, "permanent disability" shall be defined as Dr. Kelly's inability to perform the duties set forth in Section 1.2 for a minimum of six (6) continuous months.
- 14.2 In the event of Dr. Kelly's death during the term of this Agreement, his spouse or, if none, his estate, shall receive all accrued benefits as of the

date of his death to the extent permitted by law and shall have a reasonable period of time, not to exceed one hundred eighty (180) days, following the date of his death in which to vacate and remove all of Dr. Kelly's personal effects from the Eleanor R. Baldwin House. During this period of time, his spouse or, if none, his estate shall make diligent efforts to vacate and find alternative housing for herself and any minor children and will permit the University to use the Eleanor R. Baldwin House as appropriate for University functions.

## **15.0 Non-binding Mediation**

15.1 The Board and Dr. Kelly agree that if any dispute arises concerning this Agreement, they will first attempt in good faith to resolve the dispute to their mutual satisfaction. If they are unable to do so, the Board and Dr. Kelly agree that they will submit the dispute to non-binding mediation in Boca Raton, Florida, in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association then in effect. The Board and Dr. Kelly will use their best efforts, to the extent permitted under Florida law, to keep any disputes and any efforts to resolve disputes confidential, informing only their respective legal counsel and other persons determined in good faith to have a need to know. To the extent permitted under Florida law, they will use their best efforts to ensure that such persons do not further disclose any such information. The Board and Dr. Kelly agree

that no mediator or arbitrator may have any material ongoing relationship with the University.

## **16.0 Notice**

16.1 Unless and until changed by a party giving written notice to the other, the addresses below shall be the addresses to which all notices required or allowed by this Agreement shall be sent:

If to the Board:

Chairperson  
Florida Atlantic University Board of Trustees  
777 Glades Road  
Boca Raton, Florida 33431

If to Dr. Kelly:

Dr. John W. Kelly  
Florida Atlantic University  
777 Glades Road  
Boca Raton, Florida 33431

With a copy to:

General Counsel  
Florida Atlantic University Board of Trustees  
777 Glades Road  
Boca Raton, Florida 33431

## **17.0 Entire Agreement: Modification**

17.1 This Agreement constitutes the entire understanding of the parties and supersedes any and all prior or contemporaneous representations or Agreements between the parties, whether written or oral, including but not limited to the Prior Agreement. There are no other promises, understandings, obligations, inducements, or considerations between the parties or owed by either party to the other that are not set forth in this Agreement.

17.2 This Agreement cannot be changed or modified unless accomplished in writing and signed by the parties.

## **18.0 Severability**

18.1 The terms of this Agreement are severable, meaning that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable to the extent possible.

## **19.0 Governing Law and Forum**

19.1 This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida.

19.2 Notwithstanding any other terms and conditions of this Agreement, either party may bring an action for the sole and limited purpose of enforcing the terms and conditions of this Agreement in any court of competent jurisdiction. Venue shall be in Palm Beach County, Florida.

## **20.0 Understanding of the Agreement**

20.1 Both parties represent that they have thoroughly read this Agreement, that they understand it to be a binding contract, that they understand each provision, term, and condition of this Agreement as well as its legal effect, and that they have signed the Agreement voluntarily and of their own free will with the intention to comply with its terms. Both parties have participated

in the preparation of this Agreement. Therefore, the Agreement shall not be construed against or in favor of either party based upon which party was responsible for the drafting of the Agreement.

## **21.0 Public Disclosure of the Agreement**

21.1 Both Parties agree and acknowledge that this Agreement is subject to the Florida public records laws and may, therefore, be subject to disclosure by and in the manner provided by law.

## **22.0 Waiver**

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

## **23.0 Assignment**

23.1 This Agreement is not assignable, but shall be binding upon the heirs, administrators, personal representatives, successors, and assigns of both parties.

## **24.0 Execution and Counterparts**

24.1 This Agreement may be executed in counterparts and by the parties on separate counterparts each of which, when so executed, shall constitute but one and the same instrument.

## **25.0 No Trust Fund**

25.1 Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that Dr. Kelly acquires a right to receive payments from the University, such rights shall be no greater than the right of any unsecured, general creditor of the University.

## **26.0 Miscellaneous**

26.1 The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The terms “Board,” “Board of Trustees” and “University,” where applicable or appropriate, shall include or refer to any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

## **27.0 General Cooperation Covenant**

27.1 Without limitation of the obligations specified in this Agreement and applicable University rules, regulations, policies and procedures, Dr. Kelly agrees to cooperate fully in any review or investigation involving University matters in which he may possess pertinent information. This obligation shall survive the expiration or earlier termination of this Agreement.

THEREFORE, Dr. John W. Kelly and Mr. Abdol Moabery, Chair and authorized representative of the Florida Atlantic University Board of Trustees, have executed this Agreement on the dates appearing below.

Florida Atlantic University Board of Trustees

\_\_\_\_\_  
By: Mr. Abdol Moabery  
Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Dr. John W. Kelly

\_\_\_\_\_  
Date