

## **SETTLEMENT AGREEMENT AND GENERAL RELEASE**

This Settlement Agreement and General Release (“Agreement”) is entered into between Dr. Jack Thomas (“Thomas”) and the Board of Trustees of Western Illinois University (“the University”). Thomas and the University are each referred to as a “Party” and they are collectively referred to as the “Parties” in this Agreement. This Agreement will be effective upon expiration of the revocation period provided in Paragraph 9 of this Agreement (the “Effective Date”).

### **BACKGROUND**

1. Dr. Thomas is currently employed by the University under an employment agreement entered into by the Parties in June 14, 2019 (“2019 Agreement”), under which he is currently employed by the University as a Distinguished Service Professor.

2. Dr. Thomas and the University have fulfilled their obligations under the 2019 Agreement for the 2019-2020 and 2020-2021 academic years. The Parties have significant dispute over the terms and meaning regarding the remainder of the 2019 Agreement, namely the nature of the assignment, the location of teaching, and duration of the employment, each side has threatened contract action, and Dr. Thomas has raised claims of discrimination. In an effort to avoid the time and costs of litigation, the Parties are entering into this Agreement which settles and resolves those outstanding disputes and claims.

### **SETTLEMENT TERMS**

#### **1. Settlement Payment.**

**A.** In exchange for this Agreement and to settle and resolve all pending disputes between the Parties, the University will pay Thomas the total gross amount of Nine Hundred Thousand Dollars and 00/100ths Dollars (\$900,000.00) (“Settlement Payment”), to be issued as follows:

- (1) One payment, in the amount Eighty Thousand Dollars (\$80,000.00), to be issued by check payable to “Jack Thomas,” representing alleged lost wages;
- (2) One payment, in the amount of Eight Hundred and Twenty Thousand Dollars (\$820,000) to “Strickland and Kendall L.L.C.” for alleged non-wage compensatory payments, attorneys’ fees, and legal expenses.

It is the intention of the Parties that this payment in Section 1.A.2 does not constitute creditable earnings or provide for service credit under SURS. Dr. Thomas and counsel shall provide appropriate tax documents to the University for issuance of the above referenced payments.

**B.** The portion of the Settlement Payment described in Section 1.A (1) above will be subject to withholding and deductions required by law and will be reported on an IRS Form W-2. The portions of the Settlement Payment described in Section 1.A (2) will not be subject to withholding and will be reported on IRS Forms 1099. The University will send the checks via delivery service or a wire transfer for the payments described in Paragraph 1.A. , to Thomas care

of his attorneys at the following address: Michael Strickland, 2740 Zelda Road, Suite 500, Post Office Box 99 (36101), Montgomery, Alabama 36106

C. The University will issue the Settlement Payment within thirty days after all of the following conditions have been satisfied or such later date to not render the payment creditable earnings or service credit under SURS:

- (1) The Agreement has been executed by Thomas and a signed copy provided to University counsel.
- (2) The Agreement has been voted upon and approved by the Board of Trustees and executed by the University.
- (3) The revocation period provided for in Paragraph 9 has expired, without Thomas having revoked his acceptance of this Agreement;

**2. Releases.** In exchange for the consideration specified in this Agreement, Thomas, on behalf of himself, his past, present and future spouses, descendants, heirs, executors, administrators, beneficiaries, legatees, personal representatives, attorneys, agents, and assigns, (collectively with Thomas, the “Releasing Parties”) releases, waives, remits, acquits, satisfies, and forever discharges the University, and all of its past, present and future Trustees, directors, officers administrators, employees, and any agent acting or purporting to act for them or on their behalf (collectively with University, the “Released Parties”) from any and all claims and causes of action, whether known or unknown, that any of the Releasing Parties have, had, or may have against them, arising from or relating in any way to Thomas’s employment with the University, the 2019 Agreement or any other employment agreement with the University, Thomas’s separation from employment with the University or the termination of any contract or agreement with any of the Released Parties, or any compensation or benefits associated with Thomas’s employment with the University. This release specifically includes, but is in no way limited to, all claims (i) arising under Title VII of the Civil Rights Act of 1964, as amended by the Civil Rights Act of 1991, 42 U.S.C. §§ 2000e *et seq.*; the Civil Rights Acts of 1866 and 1871 as amended, 42 U.S.C. § 1981; the Age Discrimination in Employment Act of 1967 as amended, 29 U.S.C. §§ 621 *et seq.*; the Americans With Disabilities Act of 1990, 42 U.S.C. §§ 12101 *et seq.*, as amended; the Equal Pay Act, 29 U.S.C. § 29 U.S.C. § 206(d); the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 *et seq.*, as amended; the Employee Retirement Income Security Act of 1973 as amended, 29 U.S.C. §§ 1001 *et seq.*; the Occupational Safety and Health Act of 1970 as amended, 29 U.S.C. §§ 651 *et seq.*; the Illinois Education Labor Relations Act, 115 ILCS 5/1 *et seq.*, the Illinois Human Rights Act, 775 ILCS 5/1 *et seq.*; the Illinois Whistleblower Act, as amended, 740 ILCS 174/1 *et seq.*; the Biometric Information Privacy Act, 740 ILCS 14/1 *et seq.*; (ii) all claims for breach of any contract, agreement, or promise, express or implied; (iii) claims for retaliatory discharge, defamation, intentional infliction of emotional distress; and (iv) all other claims, whether arising under statute, regulation, local ordinance, or the common law, excluding only claims that cannot be released by private contract under applicable law. In addition to the foregoing, Thomas releases any and all other claims or causes of action that he may have against any of the Released Parties, whether or not related to his employment with the University, arising at any time on or before his execution of this Agreement. Thomas further waives any right to recovery of attorneys’ fees,

attorneys' liens, costs, and any other remedy that could have been sought in connection with any of the claims released in this Paragraph 2.

**3. No assignment of released claims.** Thomas represents and warrants that he has not assigned any claim released in this Agreement to any person or entity, and that there are no outstanding liens as to any such claims. Thomas further represents that no Medicaid or Medicare payments have been made to or on behalf of Thomas and that no liens, claims, demands, subrogated interests, or causes of action of any nature or character exist or have been asserted arising from or related to any of claims released in this Agreement.

**4. Termination of 2019 Agreement.** In further exchange for the consideration set forth in this Agreement, the Parties agree that the 2019 Agreement is terminated, upon the Effective Date of this Agreement, and that neither Party shall have any further obligation to the other under the 2019 Agreement. No compensation, benefits or any rights of any kind are due or owing to Thomas by the University under the 2019 Agreement.

**5. Position and Tenure.** Thomas hereby resigns employment with the University, including but not limited to his position as Distinguished Service Professor and to the extent that Thomas has acquired tenure, he hereby resigns and relinquishes his tenure and all right thereto.

**6. Covenant not to sue.** Thomas covenants that he will not file or join as a plaintiff in any lawsuit based upon any claim released in this Agreement. Thomas further waives any right to receive any monetary or other benefit as a result of any charge, claim, lawsuit, or administrative proceeding based upon any claim released in this Agreement.

**7. Non-Disparagement.** Neither Party will make any statement that could reasonably be construed as disparaging of the other Party or the Released Parties. This Paragraph does not apply to statements made by Thomas to a court or government agency as part of a legal proceeding or investigation. This provision also does not apply to statements relating to "unlawful employment practices" as defined by the Illinois Workplace Transparency Act.

**8. Knowing and Voluntary Waiver of Age Claims.** Thomas acknowledges that:

**A.** He has been given a period of at least 21 days after being presented with this Agreement in which to consider whether to sign it, and has an adequate opportunity to review this Agreement and obtain any legal advice necessary to fully understand its terms;

**B.** The consideration he will receive under this Agreement is in addition to anything of value to which he is otherwise entitled to receive from the University under applicable law;

**C.** He has read and understands this Agreement;

**D.** He is waiving any and all claims against the University under the Age Discrimination in Employment Act arising up to and including the Effective Date;

**E.** He has consulted with an attorney of his choice before executing this Agreement.

**9. Revocation.** Thomas may revoke this Agreement within seven calendar days after signing it. The revocation will be effective only if written notice of the revocation is received by the University's counsel of record, Nicki Bazer, Franczek, P.C., 300 South Wacker Drive, Suite 3400, Chicago, Illinois 60606, before the eighth calendar day after Thomas signs this Agreement. The University's obligations under this Agreement will not take effect unless the time for Thomas to revoke this Agreement has expired and Thomas has not revoked this Agreement.

**10. Taxes and Deductions.** Thomas acknowledges and agrees to indemnify and hold harmless the University in the event that any federal, state, or local taxing authority determines that the University is required to pay any taxes or penalties due to the failure to withhold taxes from those portions of the Settlement Payment to be reported on an IRS Form 1099. Neither the University nor its counsel make any representations or warranties about the tax consequences of any monies paid pursuant to this Agreement.

**11. No Admission of Wrongdoing.** Nothing in this Agreement constitutes an admission of wrongdoing by either Party. The Parties deny engaging in wrongdoing of any kind.

**12. Entire Agreement.** This Agreement sets forth the entire agreement of the Parties and supersedes all prior and contemporaneous agreements and understandings between the Parties, other than any agreement. Thomas acknowledges that the consideration for this Agreement is described in this instrument and that no other promise of any kind has been made to him by any person or entity to cause him to sign this Agreement.

**13. Choice of Law.** This Agreement is to be construed in accordance with the laws of the State of Illinois, without regard to conflict of law principles.

**14. Modification of this Agreement.** This Agreement may not be amended or modified except in a writing signed by the Party against whom the amendment or modification is to be enforced.

**15. Mutual Authorship.** This Agreement is the product of mutual negotiation between the Parties and their respective counsel. Both Parties have had the opportunity to review and revise, or request revisions of, this Agreement. Therefore, the rule of construction that any ambiguity or uncertainty in a writing shall be interpreted against the party drafting the writing will not apply to any action on this Agreement.

**16. Execution in Counterparts.** This Agreement may be signed in counterparts, which together will form the original.

**17. Severability.** Nothing in this Agreement is to be construed as waiving rights that cannot be waived under applicable law, or as barring either Party from providing information or truthful testimony when required to do so under applicable law. The releases provided for in this Agreement are to be construed broadly to apply to any and all claims that may be released by contract under applicable law, but do not apply to any claim that cannot be released by contract under applicable law. Should any portion of this Agreement be ruled unenforceable by a court of competent jurisdiction, or should a court of competent jurisdiction rule the releases and covenant not to sue set forth in this Agreement invalid as to any claim later asserted by Thomas, the

remainder of this Agreement and the releases and covenant not to sue contained herein will remain in full force and effect as to any and all other claims.

**18. Thomas's Acknowledgement of Knowing and Voluntary Agreement.** Thomas acknowledges that he has read this Agreement. Thomas understands that this Agreement releases the University and the Released Parties from the 2019 Agreement, and from all claims described in Paragraph 2. By signing below, Thomas accepts the terms stated in this Agreement. He acknowledges that he has had an adequate opportunity to review it and discuss it with an attorney, and that he fully understands this Agreement and accepts it knowingly and voluntarily.

**Accepted and Agreed To By:**

**JACK THOMAS**

**WESTERN ILLINOIS UNIVERSITY.**

\_\_\_\_\_

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

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