

## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement"), by and between Eli I. Capilouto, D.M.D., Sc.D., M.P.H. ("Dr. Capilouto" or the "President"), and the University of Kentucky (the "University"), a public institution of higher education in the Commonwealth of Kentucky, is to take effect on July 1, 2011.

### WITNESSETH

WHEREAS, the University wishes to employ Dr. Capilouto as President of the University and Dr. Capilouto wishes to be employed as President and be its employee, subject to the terms and conditions of this Agreement;

WHEREAS, both the University and Dr. Capilouto desire to set forth their respective rights and obligations in this Agreement;

WHEREAS, this Agreement has been duly approved and its execution has been duly authorized by the Board of Trustees of the University (the "Board"); and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

A. Term.

The University shall employ Dr. Capilouto as its President for a term from July 1, 2011 through June 30, 2016 (the "Term"), except as provided in Section I ("Termination"). Dr. Capilouto hereby accepts such employment on the terms and conditions set forth in this Agreement.

B. Renewal/Extension.

Unless this Agreement has been sooner terminated, the Executive Committee of the Board of Trustees (the "Executive Committee") and Dr. Capilouto shall meet for the purposes of discussing and agreeing upon the renewal, extension, or nonrenewal of this Agreement no later than April 1, 2015. If the President's employment is to be renewed or extended, the parties must fully execute an agreement containing such understanding by no later than June 30, 2015. If the parties fail to execute a new agreement, this Agreement and Dr. Capilouto's employment as President shall terminate upon the expiration of the Term (June 30, 2016).

C. Powers and Duties.

During the Term, Dr. Capilouto shall perform those services and duties that are consistent with his position as President of the University, that are required of the President of the University under Federal law, the Kentucky Revised Statutes or Governing and Administrative Regulations of the University, or which may be assigned to him by or under the authority of the

Board of Trustees consistent with his position as President of the University (collectively, the "Duties"); and Dr. Capilouto shall devote his full business time, attention, skill, and efforts to the faithful performance of the Duties for the University.

Dr. Capilouto and the Board of Trustees acknowledge and agree that the Duties hereunder shall be limited to those duties customarily performed by presidents of institutions comparable in size and type to the University, such as educational leadership at the university and national level, faculty and community relations, legislative leadership, budgeting, long range planning, fundraising, development, public relations, student services, recruitment of personnel and the appointment, promotion, and dismissal of all staff and faculty members, and such other duties as may be deemed appropriate by the Board of Trustees or Board Chair. During Dr. Capilouto's service as President of the University, Dr. Capilouto shall also serve as President of the University of Kentucky Athletic Association and President of the University of Kentucky Research Foundation.

D. Compensation.

1. Annual Base Salary. As compensation for the services to be performed by Dr. Capilouto pursuant to this Agreement, the University shall pay to Dr. Capilouto an initial annualized base salary of \$500,000 (the "Base Salary"), less applicable deductions. Any increases of the Base Salary shall be within the Board's discretion and based upon the President's performance during the previous 12 months in connection with his annual evaluation as set forth in Section E of this Agreement. Base Salary shall not be decreased at any time during the Term of this Agreement unless the University has declared a state of fiscal exigency.

2. Deferred Compensation Plans. The University shall annually contribute \$50,000 to excess retirement benefit plans under the Internal Revenue Code for Dr. Capilouto's benefit.

3. Retirement Contribution. The University shall make an annual contribution of 15% of the President's Base Salary on Dr. Capilouto's behalf to the University's retirement plans. Retirement contributions are subject to vesting based on the plan documents for each plan.

4. Performance Incentive. The Board, at its discretion, at any time may award a first year performance incentive payment based upon extraordinary performance. Dr. Capilouto shall be eligible for a performance incentive payment beginning fiscal year 2012-2013, based upon his substantial achievement of target goals established during his first year and, thereafter, during his annual evaluation process (See E. below). The performance incentive, if any, shall be established at no less than the level of ten percent (10%) of the President's Base Salary. The Board, at its discretion, at any time may award an additional performance incentive payment based upon extraordinary performance during the previous year. Performance incentive payments shall be paid in a single lump sum within sixty (60) days of the determination of the amount of such incentive.

E. Evaluation. An annual performance evaluation of Dr. Capilouto shall be in accordance with Governing Regulation II.A.6.(a).

F. Benefits and Reimbursements.

1. Standard Benefits. The President shall be eligible to participate in any medical insurance, dental insurance, life insurance, long-term disability insurance (See I.4.), and other plans or benefits offered by the University for all regular full-time faculty and staff, in accordance with the terms and provisions of any such plan or benefit program. Notwithstanding the foregoing, nothing in this Agreement shall restrict the University's right to amend or terminate any benefits plan or program. The University shall pay for family coverage for any medical, dental, vision, or accidental death & dismemberment plan in which Dr. Capilouto enrolls.

2. Moving Expenses. The University will pay or reimburse Dr. Capilouto for the reasonable moving expenses incurred to move his family and their tangible personal property from the Birmingham, Alabama area to Lexington, Kentucky. Dr. Capilouto shall obtain moving estimates from two national moving companies and shall use the company providing the lower estimate, unless otherwise approved by the Board Chair. If the University should terminate this Agreement without Cause, the University shall also pay all normal and reasonable expenses associated with moving the President, his family, and their tangible personal property from Maxwell Place to his next residence in the continental United States. Moving expenses paid by the University that are not considered as deductible moving expenses per IRS regulations will be included as taxable income.

3. Travel, Entertainment and Other Business Expenses. Dr. Capilouto's reasonable travel, entertainment and other business expenses incurred in his capacity as President of the University shall be paid for on a cost reimbursement basis through the University's annual operating budget. When the President's spouse accompanies him on travel or entertainment for the benefit of the University, the University shall cover the costs of her reasonable travel and entertainment expenses. Both the President's and his spouse's expenses shall be reviewed quarterly by the then-current Chair of the Board and the Chair of the Board's Finance and Audit Committee or his/her designee(s) who does not report to the President. The reasonable expenses incurred by Dr. Capilouto on his behalf or on behalf of his wife under this Section F.3 shall be reimbursed by the University within thirty (30) days of submission of the required documentation.

4. Automobile. The University shall provide Dr. Capilouto with a recent model automobile suitable for his role as President, to be purchased or leased by the University. The University shall pay for all the operating costs of the vehicle, including insurance, repair, maintenance, and fuel. Dr. Capilouto shall maintain a log of his personal use of the vehicle and shall quarterly report such use in writing to the Treasurer of the University, which shall be reported as taxable income to him.

5. Vacation, Sick, and other Related Leave. Dr. Capilouto shall receive vacation, sick, and holiday leave on the same terms as members of the University's faculty.

6. Club Memberships. The University shall pay the membership fees and related expenses for Dr. Capilouto's membership in clubs and organizations for his business use and as approved by the Board Chair, which approval shall not be unreasonably withheld or

delayed. Dr. Capilouto shall report any personal use of such memberships in accordance with University policy. There may be tax consequences to Dr. Capilouto for this benefit.

7. Tuition Remission. Dr. Capilouto shall receive the same tuition remission benefit as provided to other regular full-time employees of the University. In accordance with the terms currently provided for such benefit under the Family Education Program, eligible family members of Dr. Capilouto shall receive a benefit in accordance with the administrative regulations for this benefit.

8. Faculty Appointment/Tenure Rights. If Dr. Capilouto's employment as President is terminated without Cause, Dr. Capilouto may, at his election, continue employment for the remaining period of the Term of this Agreement on the University's faculty. During his service as President, Dr. Capilouto shall receive no additional compensation with respect to his faculty appointment. Dr. Capilouto's active faculty assignment shall be mutually agreed upon by Dr. Capilouto, the corresponding Dean, and the Board Chair. Dr. Capilouto's faculty compensation shall be equal to the average of the annual salaries of the top ten (10) compensated faculty members in the President's academic discipline. In the event Dr. Capilouto is receiving severance payments as provided in Section I.2 during the initial eighteen (18) month period in which he performs services as an active member of the faculty, he will not receive any additional amounts as faculty compensation.

9. Technology Support. The University shall provide the President with appropriate and reasonable technology support such as a Blackberry, cell phone, and portable computing devices necessary to conduct his University-related activities. There may be tax consequences to this benefit.

10. 409A Compliance. This Agreement will be interpreted and administered in accordance with the applicable requirements of, and exemptions from, Code § 409A in a manner consistent with Treas. Reg. § 1.409A-1 et seq. To the extent payments and benefits are subject to Code § 409A, this Agreement shall be interpreted, construed, and administered in a manner that satisfies the requirements of (i) Code § 409A(a)(2), (3) and (4), (ii) Treas. Reg. § 1.409A-1 et seq., and (iii) other applicable authority issued by the Internal Revenue Service and the U.S. Department of the Treasury (collectively "Section 409A").

Where the term "termination of employment" or "termination" or similar words and phrases describing termination of employment are used in this Agreement, such terms are to be read as satisfying the definition of a "separation from service" in Section 409A. It is understood that "separation from service" shall be defined as referenced under Treas. Reg. § 1.409A-1(h). For the avoidance of doubt and consistent with the terms of Treas. Reg. § 1.409A-1(h)(1)(ii), Dr. Capilouto shall be deemed to have separated from service if the bona fide level of services he provides the University following termination of employment is less than fifty percent (50%) of the average monthly level of services provided by Dr. Capilouto during his service as President over the thirty-six (36) months immediately preceding his termination of employment as President.

All reimbursements and in-kind benefits provided under this Agreement shall be made or provided in accordance with the requirements of Section 409A to the extent that

such reimbursements or in-kind benefits are subject to Section 409A. All expenses or other reimbursements paid pursuant to this Agreement that are taxable to Dr. Capilouto shall in no event be paid later than the end of the calendar year following the calendar year in which Dr. Capilouto incurs such expense or pays the related tax. With regard to any provision in this Agreement for reimbursement of costs and expenses or in-kind benefits, except as permitted by Section 409A, the right to reimbursement or in-kind benefits shall not be subject to liquidation or exchange for another benefit and the amount of expenses eligible for reimbursement or in-kind benefits provided during any taxable year shall not affect the expenses eligible for reimbursement or in-kind benefits to be provided in any other taxable year.

G. Housing.

For the benefit and convenience of the University in having the functions of the Office of President efficiently discharged and as a term and condition of his employment as President of the University, Dr. Capilouto shall reside in the on-campus residence provided for the President at the University's expense, known as Maxwell Place, during the Term of this Agreement. The University shall pay for all maintenance and operating expenses, including upkeep, grounds keeping, general maintenance, housekeeping, and all utilities including local and long distance telephone, cable, high-speed internet, electric, gas, and water. The University shall maintain hazard and liability insurance for the residence. Dr. Capilouto shall be responsible for insuring the personal property of his family at the residence. The University shall provide support to the President in maintaining an office at the residence, including a computer, high speed internet access and fax machine. Dr. Capilouto shall be provided with a reasonable allowance for refurbishing the residence consistent with University policy in an amount to be determined by the Board.

For convenience of the University, the President's residence shall be available, and shall be used, for University-related business and entertainment on a regular and continuing basis. All costs associated with such University events shall be paid by the University. The University shall not pay for daily personal food and entertainment expenses.

In the event of Dr. Capilouto's death or disability during the Term (including all renewals and extensions), the President's family shall be permitted to occupy the residence under the same terms and conditions for no more than ninety (90) days from the date of the President's death or disability.

Dr. Capilouto and his family shall vacate the President's residence no later than thirty (30) days following the effective date of termination following termination of this Agreement without Cause, his resignation or the expiration of the Term of this Agreement (including all renewals and extensions).

H. Tax Reporting.

The University shall include in the W-2 issued to the President all payments, benefits, allowances, and reimbursements that are defined as income or otherwise required to be reported to the federal, state, or local governments. Except as provided in this Agreement, the President shall be responsible for the payment of all personal taxes due and shall make such payments on a

“when due” basis.

It is Dr. Capilouto’s responsibility to seek advice from his tax, legal, and financial advisors with respect to this Agreement. Neither the University, nor any trustee, employee, or agent of the University, makes any guarantee of any tax consequences with respect to Dr. Capilouto’s employment with the University under this Agreement.

Notwithstanding the foregoing, the housing provided to Dr. Capilouto in Section G is intended to qualify as lodging provided for the employer’s convenience and exempt from income tax under Section 119 of the Internal Revenue Code. The University shall indemnify Dr. Capilouto from any determination of the Internal Revenue Service or a state taxation authority that the housing provided in Section G is not exempt from federal or state income tax by making a supplemental payment to him in such amount to cover his federal and state income tax liability.

#### I. Termination.

1. Termination For Cause. The University may terminate this Agreement at any time for cause upon written notice to the President. For purposes of this Agreement, “Cause” shall mean conduct by the President reasonably determined by the Board in good faith to be: (a) gross negligence or willful malfeasance in the performance of his duties; (b) actions or omissions that materially harm the University which are undertaken or omitted knowingly and are criminal or fraudulent or involve material dishonesty or moral turpitude; (c) conviction, plea of guilty or *nolo contendere* for any felony or for a crime involving misuse or misappropriation of University funds or assets; (d) breach of fiduciary duty to the University; or (e) breach of any material term of this Agreement not cured within thirty (30) days from the time the President receives written notice of said breach. In the event the President is terminated for Cause, Dr. Capilouto’s employment as President shall cease immediately and he shall not be entitled to any further compensation or benefits under this Agreement except as provided by Section F.9 and, if applicable, the University’s various benefit plans with respect to vesting and rights after termination of employment.

2. Termination Without Cause. The University may terminate this Agreement without Cause at any time for the convenience of the University upon thirty (30) days prior written notice to the President. Termination of this Agreement by virtue of the President’s disability or death (as set forth in Sections I.4 and I.5 of this Agreement, respectively) shall not be construed as termination without Cause. If the University terminates this Agreement without Cause prior to the expiration of the Term and Dr. Capilouto does not serve on the University’s faculty following his presidency pursuant to Section F.9, he shall receive his then-current presidential Base Salary and payment of COBRA premiums for eighteen (18) months, provided that Dr. Capilouto executes a general mutual release in a form acceptable to the University, and does not thereafter revoke such release, within sixty (60) days of the effective date of the termination of his presidency. Dr. Capilouto shall also be entitled to any other benefits provided by the University’s benefits plans and this Agreement, which are not affected by the termination of his presidency without Cause or discontinued by virtue of being a perquisite of the Presidency.

3. Resignation. Dr. Capilouto may resign from the Presidency by providing at least six (6) months written notice to the Board. Dr. Capilouto’s employment as President

shall cease on the effective date of his resignation, and he shall not be entitled to any further compensation or benefits as President, except as set forth in this Agreement and in the University's various benefit plans with respect to vesting and rights after termination of employment.

4. Disability. If Dr. Capilouto shall become disabled during his service as President, this Agreement shall terminate effective on the date of disability and he shall receive all benefits to which he is entitled under this Agreement and pursuant to the University's long term disability (LTD) insurance plan. Disability is defined by the University's LTD plan and is the same definition as for all other eligible employees. In the event Dr. Capilouto is not immediately eligible for the University's LTD plan, the University shall purchase a comparable plan for Dr. Capilouto during the interim period.

5. Death. In the event of the death of Dr. Capilouto during his service as President, his compensation and benefits shall cease immediately and this Agreement shall terminate effective on the date of death. The President's designated beneficiary shall receive all benefits to which he or she is entitled under the University's benefits plans.

J. Outside Activities.

The University recognizes that it is both appropriate and beneficial for the President to engage in outside activities, such as serving on for-profit and nonprofit boards of directors, consulting, delivering speeches, and writing, provided such activities do not interfere with his duties as President. However, the President shall obtain prior approval from the Board Chair before agreeing to serve as a consultant or on the board of directors of any for-profit or nonprofit corporation, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the President may serve on a maximum of two corporate (for-profit) boards at any given time. The President may serve on non-profit boards subject to the prior approval of the Board Chair. The President may not engage in any outside activity that conflicts with his duties to and responsibilities for the University.

All income or other compensation earned by Dr. Capilouto in connection with his outside activities shall have no effect on the amount of salary, benefits, or other compensation to which he may be entitled under this Agreement.

K. Mediation.

The Board and the President shall attempt in good faith to resolve any dispute relating to this Agreement. In the event such efforts are unsuccessful, the parties agree that any controversy or claim that either party may have against the other arising out of or relating to the construction, application, or enforcement of this Agreement, as well as any controversy or claim based upon the alleged breach of any legal right relating to or arising from Dr. Capilouto's employment and/or termination of his employment shall be submitted to non-binding mediation. The mediation shall be conducted pursuant to the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association (or any comparable rules then in existence). Within fifteen (15) days after delivery of a written notice of request for mediation from one party

to the other, the dispute shall be submitted to a single mediator chosen by the parties in Lexington, Kentucky. The mediator's fees and related costs shall be borne by the University.

L. Notice.

All notices required or allowed by this Agreement shall be hand delivered or mailed by certified mail, postage prepaid, and return receipt requested. 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 University:

University of Kentucky  
Main Building, Room 301  
Lexington, KY 40506-0032  
Attn: Chair of the Board of Trustees

If to the President:

Dr. Eli Capilouto  
University of Kentucky  
Main Building, Room 101  
Lexington, KY 40506-0032

M. Severability and Waivers.

If any portion of this Agreement shall be held to be invalid, inoperative, or unenforceable, then, so far as possible, effect shall be given to the intent manifested by the portion held invalid, inoperative, or unenforceable, and the remainder of this Agreement not found invalid, inoperative, or unenforceable shall remain in full force and effect. No waiver or failure to enforce any or all rights under this Agreement by either party on any occasion shall constitute a waiver of that party's right to assert the same or any other rights on that or any other occasion.

N. Governing Law.

This Agreement shall be governed and construed, and the rights and obligations of the parties hereto shall be determined, in accordance with the laws of the Commonwealth of Kentucky, excluding its choice of laws rules.

O. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall constitute but one of the same instrument. Signatures delivered by facsimile and by email shall be deemed to be an original signature for all purposes, including for purposes of applicable Rules of Evidence.



P. Complete Agreement.

This Agreement constitutes the entire agreement between the parties and fully supersedes any and all prior agreements or understandings, whether written or oral, between the parties pertaining to the matters set forth herein. This Agreement shall not be amended, modified, or changed other than by written agreement executed by Dr. Capilouto and the University Board of Trustees.

Q. Understanding and Legal Counsel.

Dr. Capilouto acknowledges (i) he has read and understands this Agreement and all of the provisions thereof; (ii) that adequate opportunity has been afforded by the University for explanation and discussion thereof with Dr. Capilouto; (iii) that he has been given or at any time shall be entitled to an exact copy hereof; (iv) he has been provided the opportunity to consult with an attorney of his choice about all terms of this Agreement and encouraged to do so by the University; and (v) he agrees to all the terms of this Agreement voluntarily.

R. Personal Contract.

The obligations and duties of Dr. Capilouto shall be personal and not assignable or delegable in any manner whatsoever. This Agreement shall be binding upon and inure to the benefit of Dr. Capilouto and his executors, administrators, heirs, successors, and permitted assigns, and upon the University and its successors and assigns.

S. No Trust Fund.

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 the President acquires a right to receive payments from the University under this Agreement, such rights shall be no greater than the right of any unsecured, general creditor to the University.

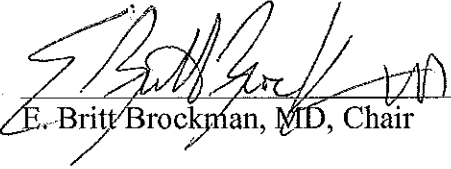
T. Miscellaneous.

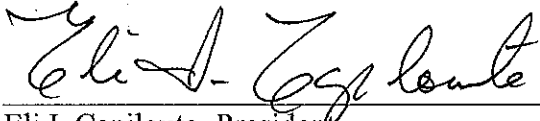
The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The terms "Board," "Board of Trustees," and "University" as used in this Agreement, where applicable or appropriate, shall be deemed to include or refer to any duly authorized board, 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates shown below.

UNIVERSITY OF KENTUCKY

ELI I. CAPILOUTO, D.M.D., Sc.D., M.P.H.

  
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E. Britt Brockman, MD, Chair

  
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Eli I. Capilouto, President

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