

AMENDED EXECUTIVE EMPLOYMENT AGREEMENT

THIS AGREEMENT is effective as of April 14, 2020 (the "**Effective Date**")

BETWEEN:

THE BOARD OF GOVERNORS OF ATHABASCA UNIVERSITY
(hereinafter called the "**Board**" or the "**University**")

-and-

DR. NEIL FASSINA, (hereinafter referred to as the "**Executive**")

(each a "**Party**" and collectively, the "**Parties**")

WHEREAS the Board, in accordance with the powers vested in it pursuant to the *Post-secondary Learning Act* (Alberta), appointed the Executive as President of Athabasca University and the Executive accepted the appointment and entered into an Employment Contract with the Board effective August 9, 2016 (the "Original Employment Agreement") for a five (5) year term expiring on October 10th, 2021;

AND WHEREAS subject to the execution of the Original Employment Agreement the *Reform of Agencies, Boards and Commissions Compensation Act* (Alberta), the *Reform of Agencies, Boards and Commissions (Post-secondary Institutions) Compensation Regulation* (Alberta) and the Guidelines thereunder (collectively referred to as the "Legislation") were enacted in the Province of Alberta, the effect of which was to require the Board and the Executive to substantially alter the terms and conditions of the Executive's employment with the Board effective April 15, 2020;

AND WHEREAS the Executive and the Board are obliged to revise the Original Employment Agreement to comply with the Legislation;

NOW THEREFORE in consideration of the covenants and agreements herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, the Executive and the Board agree to the terms of this Amended Executive Employment Agreement (the "Agreement"), which supersedes and replaces the Original Employment Agreement.

ARTICLE 1: DEFINITIONS

1.1 In this Agreement, the following terms shall have the following meanings:

- (a) "**Administrative Leave**" means an entitlement to a period of temporary leave from a job assignment with pay and benefits intact;

- (b) **"Agreement"** means this executive employment agreement and any schedules attached hereto;
- (c) **"Base Salary"** means the annual base salary set out in Section 3.1;
- (d) **"Confidential Information"** means any information of a confidential nature which relates to the University, including but not limited to, trade secrets, technical information, patents, marketing strategies, sales and pricing policies, financial information, business, marketing or technical plans, programs, methods, techniques, concepts, formulas, documentation, intellectual property, research, software, industrial designs, products, technical studies and data, strategic studies, client and supplier lists, shareholder data and student and personnel information. Notwithstanding the foregoing, Confidential Information shall not include any information which:
 - (i) was in the possession of or known to the Executive, without any obligation to keep it confidential, before it was disclosed to the Executive by the University;
 - (ii) is or becomes public knowledge through no action of the Executive;
 - (iii) was independently developed by the Executive outside the scope of the Executive's employment duties to the University;
 - (iv) was disclosed by the University to another person or entity without any restriction on its use or disclosure, or
 - (v) is or becomes lawfully available to the Executive from a source other than the University;
- (e) **"Continuous Service"** means employment without any interruption in service of more than thirty (30) days, which is inclusive of the Executive's previous service with the University and other Public Agency in Alberta (if applicable), provided that the Executive was not provided with any severance, termination or separation pay in respect of that previous employment;
- (f) **"Department"** means a department of the Government or of the public service of Alberta established under the *Government Organization Act* (Alberta), a part of the public service of Alberta that is designated as a department by the Lieutenant Governor in Council for the purposes of the *Public Service Act* (Alberta), and any part of the public service of Alberta, but does not include an Office of the Legislature;
- (g) **"Health Benefits"** means group insurance coverage, which includes Extended Health Care, Dental Care, Group Life Insurance, Accidental Death and Dismemberment Insurance, Long-term Disability, Accidental Death and Dismemberment Insurance, Optional Life Insurance, Health Spending Account, and Employee and Family Assistance Plan;
- (h) **"Just Cause"** means any matter that would constitute just cause for termination from employment at common law;
- (i) **"Public Agency"** means a public agency to which the *Alberta Public Agencies Governance Act* applies;
- (j) **"Severance Payment"** has the meaning set out in Section 6.2;

- (k) **"Severance Period"** means the period starting the day after the Termination Date and ending after the number of weeks for which the Severance Payment is payable as set out in Section 6.2;
- (l) **"Term"** has the meaning set out in Section 2.4;
- (m) **"Termination Date"** means the last day actively worked by the Executive under this Agreement as President and does not include any period of statutory, contractual or reasonable notice of termination of employment or any period of salary continuance or deemed employment, whether pursuant to this Agreement or at law.

ARTICLE 2: EMPLOYMENT AND TERM

Employment

2.1 Subject to the terms and conditions hereof, the Board continues to appoint the Executive as President of the University and the Executive agrees to render services to the University in this capacity.

2.2 Subject to the terms and conditions hereof, the Executive shall also hold an appointment as a Professor in the Faculty of Business with the University, provided however that so long as the Executive continues to hold the office of President, the Executive shall not be entitled to any compensation, benefits or rights under any applicable Collective Agreement or otherwise, nor be expected to perform any duties, with respect to the appointment as a Professor.

2.3 At the expiry of the Executive's employment as President, or upon termination with or without just cause, or upon the Executive's resignation, the Executive shall forthwith commence duties as a Professor with tenure, at the University. Remuneration for the Executive in these circumstances will be commensurate with his qualifications and experience, to be negotiated between the Executive and the Board (subject to the provisions of any applicable Collective Agreement), except that if not otherwise agreed the Executive's salary and other entitlements shall be determined in accordance with the Collective Agreement and salary schedule in force as of April 8, 2020 plus the value of each annual adjustment and deemed increment awarded during the Term of this Agreement.

Term

2.4 This Agreement shall continue to be for a fixed five (5) year term, which commenced on October 11, 2016 and shall end on October 10, 2021 (the **"Expiration Date"**), unless terminated earlier in accordance with the terms of this Agreement. The Term shall automatically expire on the Expiration Date, at which time the University will have no further obligations to the Executive other than for unpaid Base Salary, any applicable Administrative Leave, and accrued vacation pay properly owing to the Executive up to and including the Expiration Date, and other than as provided by this Agreement.

Notice for Negotiation

2.5 The Executive will advise the Board at least eighteen (18) months in advance of the Expiration Date of whether he is interested in being considered for reappointment.

2.6 The Board will advise the Executive at least twelve (12) months in advance of the Expiration Date if the Board intends to negotiate a new agreement with the Executive, governing the appointment of the Executive as President of the University subsequent to the expiry of the Term. In the event that the Parties successfully negotiate and execute a mutually agreed-upon agreement which complies with all applicable laws, the Executive's appointment as President shall be governed by the terms and conditions of the new agreement upon the expiry of the Term. For clarity, regardless of whether the Parties successfully

negotiate and execute a new agreement, this Agreement shall automatically expire on the Expiration Date.

ARTICLE 3: COMPENSATION AND BENEFITS

Base Salary

3.1 During the Term of this Agreement, the University will pay the Executive the maximum Base Salary as contemplated by Schedule 2 of the *Reform of Agencies, Boards and Commissions (Post-secondary Institutions) Compensation Regulation*, as amended from time to time, which is currently Three Hundred Five Thousand Canadian Dollars (\$305,000.00), less any withholdings required by applicable law. The Base Salary shall be payable in accordance with the University's payroll practices and procedures and is subject to review and adjustment during the Term, at the discretion of the Board, and in a manner that is compliant with all applicable policies, procedures, legislation, regulations, amendments, directives and guidelines.

Health Benefits

3.2 The Executive shall be entitled to participate in Health Benefits commensurate with the Executive's position, provided that the total annual cost to the University of all Health Benefits shall not exceed 5% of the Executive's Base Salary. All Health Benefits provided by the University to the Executive shall be done in accordance with the formal plan documents or policies, and any issues with respect to entitlement or payment of Health Benefits shall be governed by the terms of such documents or policies establishing the benefit in issue. The University reserves the right to change, substitute and delete benefits from time to time, so long as such change, substitution or deletion does not materially or detrimentally affect any right, protection or benefit to which the Executive is entitled, and that any resulting benefit shall be substantially similar to the benefits to which the Executive is entitled hereunder.

Administrative Leave

3.3 The University and the Executive agree and acknowledge that as of the Effective Date, the Executive has accrued 39 weeks of Administrative Leave. Commencing on the Effective Date, the Executive shall accrue 10.4 weeks of Administrative Leave per completed year of subsequent service as President, to a maximum of 52 weeks' accrued Administrative Leave under this Agreement. The accrual of Administrative Leave shall be prorated for the remainder of the current year of service from the Effective Date to October 10, 2020. Such subsequent accrual shall be in accordance with the *Reform of Agencies, Boards and Commissions (Post-secondary Institutions) Compensation Regulation*, the Guidelines thereunder or as may be established, amended or replaced by the Minister from time to time.

3.4 In the event that the Executive assumes a faculty position following the expiration of the Term, the accrued Administrative Leave will be offered to the Executive upon the Expiration Date. Payment of the Base Salary during the Administrative Leave shall be in accordance with the Executive's entitlement to Base Salary immediately prior to the Expiration Date. The Executive shall also continue to receive Health Benefits, pension entitlements in accordance with Section 3.7 and vacation entitlements in accordance with Section 3.8 during the Administrative Leave.

3.5 The Executive shall forfeit any and all Administrative Leave accrued under this Agreement if any one of the following events occur:

- (a) the Executive does not assume a faculty position following the expiration of the Term, subject to the Parties entering into a new agreement governing the appointment of the Executive of the University for a new term, in which case any Administrative Leave accrued under this Agreement may be postponed and offered to the Executive upon the expiration of the new agreement;

- (b) the Executive's appointment as President under this Agreement is terminated during the Term by the University for Just Cause; or
- (c) the Executive resigns from his appointment as President under this Agreement during the Term.

3.6 In the event that the Executive's appointment as President under this Agreement is terminated during the Term without Just Cause, the Executive shall be provided with payment in lieu of Administrative Leave accrued up to and including the Termination Date, in accordance with Sections 6.2 and 6.3 of this Agreement. The Executive shall also have the option to retain a faculty position and resume active duties with regard to same.

Pensions

3.7 The Executive shall be entitled to participate in the Universities Academic Pension Plan on the terms and conditions specified in the Universities Academic Pension Plan (Alberta), as amended from time to time and shall receive pay in lieu of a supplementary pension plan, provided that an exemption and or modification made to the compensation framework by the President of Treasury Board, Minister of Finance is granted in respect to the Executive. For greater clarity, the Executive shall not receive any pay in lieu of a supplementary pension plan unless and until an exemption and or modification to the compensation framework is granted by the President of Treasury Board, Minister of Finance. The Board agrees that it shall apply for an exemption and or modification to the President of Treasury Board, Minister of Finance within ten (10) business days of the Effective Date. The Board agrees that it shall also apply to the Minister of Advanced Education for approval of a Supplemental Defined Contribution Pension Plan, in which the Executive shall participate. The provision of the Supplemental Defined Contribution Pension Plan is subject to the approval of the Minister of Advanced Education, and upon such approval by the Minister of Advanced Education shall replace any pay in lieu of a supplementary pension plan. In any case, the total cost to the Board of the retirement plan or benefit provided to the Executive shall be no greater than if the Executive were a participant in the Management Employees Pension Plan established by the *Public Sector Pension Plans Act* and the Supplementary Retirement Plan for Public Service Managers.

Vacation

3.8 Commencing on the Effective Date of this Agreement, the Executive shall immediately be vested with an entitlement to forty (40) days' paid vacation each calendar year. In scheduling vacation time, the Executive will have regard to the University's operations and the reasonable direction of the Board. In the event of a discrepancy, the Board shall choose when vacation days are to be taken after reasonably considering and attempting to accommodate the Executive's preferences. Vacation days accrued but not used by December 31st in a calendar year shall be paid out rather than carried forward to the next calendar year unless prior approval to do so is obtained from the Board or Board designate.

General Leave Days and Leaves of Absence

3.9 The Executive shall be eligible for general leave days and leaves of absence in accordance with the *Reform of Agencies, Boards and Commissions (Post-secondary Institutions) Compensation Regulation*, the Guidelines established by Ministerial Order No.08/2019 or as may be established, amended or replaced by the Minister from time to time, and the University's applicable policies and procedures for non-bargaining unit employees, as may be established, created or amended from time to time by the University at its sole discretion.

Automobile and Parking

3.10 The University shall provide the Executive with the use of a vehicle, the purchase or lease of which shall comply with the *Reform of Agencies, Boards and Commissions (Post-secondary Institutions) Compensation Regulation* (Alberta) and the Guidelines thereunder. The University shall pay for the

insurance, registration, maintenance and business related fuel costs associated with the Executive's use of the vehicle.

3.11 The University shall provide the Executive with parking at the Executive's primary work location.

Reimbursement of Expenses

3.12 The University shall reimburse the Executive for travel and other expenses actually and reasonably incurred in the performance of the Executive's duties on behalf of the University in accordance with the Travel, Meal and Hospitality Expenses Directive (Treasury Board Directive #1/2015), as amended from time to time.

Indemnity

3.13 Subject to Section 3.14, the University shall defend, indemnify and save harmless the Executive from and against all losses, damages, liabilities, fines, penalties, costs and expenses arising from any demand, claim, action, proceeding or order whatsoever (hereinafter called a "**Claim**") made or brought against the Executive directly or indirectly, to the extent that such Claim related to or arises as a result of or in connection with the Executive's performance of his obligations under this Agreement, except to the extent that such Claims result from the Executive's gross negligence and/or wilful misconduct. The provisions of this Section shall survive the termination or expiration of this Agreement.

3.14 The University agrees to indemnify and save the Executive harmless from and against all demands, Claims, costs, charges and expenses, including any amount paid to settle an action or satisfy a judgment, reasonably incurred by the Executive in respect of any civil, criminal or administrative action or proceeding to which the Executive is made a party by reason of being or having been the President of the University if:

- (a) the Executive acted honestly and in good faith with a view to the best interests of the University; and
- (b) in the case of a criminal or administrative action or proceeding that is enforced by a monetary penalty, the Executive had reasonable grounds for believing that the Executive's conduct was lawful.

The provisions of this Section shall survive the termination or expiration of this Agreement.

Taxes and Withholdings

3.15 Taxes or other amounts required by law to be deducted from any amount paid pursuant to the Agreement shall be withheld by the University and remitted on behalf of the Executive to the Canada Revenue Agency or the appropriate government entity.

ARTICLE 4: COVENANTS OF THE EXECUTIVE

Time of Service

4.1 During the Term, the Executive shall devote the Executive's full time and attention to the University's business and affairs and shall use the Executive's best efforts to promote the interests of the University. During the Executive's appointment as President under this Agreement, the Executive shall not be involved in any other appointment, business, undertaking or employment (including self-employment), unless the Executive has complied with all requirements pursuant to the *Conflicts of Interest Act* (Alberta), as applicable and as amended from time to time. **Duties and Responsibilities**

4.2 The Executive shall faithfully and diligently perform such duties and exercise such powers related to the office of President in accordance with the *Post-secondary Learning Act* (Alberta) and as may be

assigned or specified from time to time by the Board, so long as such duties and powers are as customarily done by a President in an educational institution of similar size and stature to the University. The Executive shall fulfill the accountabilities of the role of President to a high standard of professional competence.

4.3 The Board grants and delegates to the Executive all powers as are necessary and appropriate for the proper performance of his duties and obligations as President, as set out in the Position Profile for the President as amended from time to time at the Board's sole discretion. The Position Profile for the President is attached to this Agreement as **Appendix "A"**.

4.4 The Executive shall truly and faithfully account for and deliver to the University all money, securities and things of value belonging to the University, which the Executive may from time to time receive for, from, and on account of the University.

Regulations and Policies

4.5 The Executive shall be bound by and shall faithfully observe all applicable laws and regulations (including but not limited to the *Conflicts of Interest Act* (Alberta)) and the rules, regulations and policies of the University as they may be amended or created from time to time, including but not limited to the Conflict of Interest Policy and the Code of Conduct Policy.

Conflicts of Interest

4.6 The Executive must conduct himself impartially at all times and avoid real and apparent conflicts of interest, and make all necessary and applicable disclosures mandated by the *Conflicts of Interest Act* (Alberta) as amended from time to time and as contained in the University's Code of Conflict Policy as promulgated, and as amended from time to time.

Reporting and Performance

4.7 The Executive reports directly to the Board, and the Executive's authority shall at all times remain subject to the authority of the Board.

4.8 Prior to the commencement of the Executive's employment under this Agreement, the Executive and the Board shall discuss priorities, goals and activities with regard to the President's performance in his role as President. Following their discussions, the Board shall, at its sole discretion, establish priorities, goals and activities by which to measure the Executive's performance (the "**Performance Targets**") and communicate them to the Executive. Prior to the end of each calendar year during the Term, the Board may amend the Performance Targets at its sole discretion. The Board shall communicate the Performance Targets to the Executive on an annual basis.

4.9 The establishment of Performance Targets and the review of the Executive's performance shall occur on an annual basis in accordance with the Annual Performance Review Policy as amended from time to time at the Board's sole discretion. The Annual Performance Review Policy is attached to this Agreement as **Appendix "B"**.

Property Rights

4.10 The Executive acknowledges and confirms that the University shall be entitled to own and control all proprietary technology, and financial, operating, and training ideas, processes, and materials, including works of expression and all copyrights in such works, that are developed, created or conceived by the Executive during the course of this Agreement (collectively referred to as "**Contract Developments**"), to the extent that such Contract Developments relate to the University's current or potential business or undertakings or if such Contract Developments were in any part undertaken in connection with this Agreement or with the University supplied software or equipment or on the premises of the University or its customers or contractors. The Executive agrees that all copyrightable materials generated or

developed under this Agreement, including computer programs and documentation, shall be owned exclusively by the University. Accordingly, the Executive hereby agrees to disclose, deliver, and assign all moral and legal rights associated with such patentable inventions, discoveries, and improvements, trade secrets, and all works subject to copyright, and further agrees to execute all documents, patent applications, and arrangements necessary to further document such ownership and/or assignment and to take whatever other steps may be needed to give the University the full benefit of them. In the event that the University promulgates a policy on intellectual property ownership after the Effective Date of this Agreement that applies to the Executive and results in any inconsistency between the newly created policy and this subsection, the policy shall govern.

4.11 Upon the expiry of the Agreement or on termination otherwise of this Agreement, the Executive shall forthwith deliver or cause to be delivered to the University all books, documents, effects, money, securities or other property belonging to the University or for which the University is liable to others, which are in the possession, charge, control or custody of the Executive. The provisions of this Section shall survive the termination or expiration of this Agreement.

ARTICLE 5: CONFIDENTIALITY

5.1 At all times during the Term of this Agreement and after the Termination Date the Executive will keep strictly confidential all Confidential Information and shall not disclose the Confidential Information to any unauthorized persons, except with the express consent of the Board, or otherwise as required by law. The provisions of this Article shall survive the termination or expiration of this Agreement.

5.2 The Executive recognizes and understands that in performing the Executive's duties and responsibilities as President of the University the Executive will occupy a position of trust and confidence and as a fiduciary, pursuant to which the Executive has and will develop and acquire wide experience and knowledge with respect to the business carried on by the University and the manner in which such business is conducted. It is the expressed intent and agreement of the Executive and of the University that such knowledge and experience shall be used solely and exclusively in the furtherance of the business interests of the University and not in any manner detrimental to the University. The Executive therefore agrees that, so long as the Executive is employed by the University pursuant to this Agreement, the Executive shall not engage in any practice or business that competes, directly or indirectly, with the business of the University. The Executive further agrees that the Executive's fiduciary duties shall survive the termination of the Executive's employment for any reason.

5.3 The Executive further acknowledges and agrees that the benefits and payments provided for pursuant to this Agreement constitute good, valuable and sufficient consideration for the Executive's agreement to the terms of this Agreement, including the restrictions set out in this Article 5. The Executive hereby freely agrees that all restrictions contained in this Article are reasonable, valid and necessary protections of the University's proprietary interests and hereby waives any and all defences to the strict enforcement thereof by the University.

5.4 The Parties acknowledge and agree that the University would suffer irreparable injury in the event of any breach by the Executive of the confidentiality obligations in this Article 5. Accordingly, the Executive hereby acknowledges and agrees that damages would be an inadequate remedy at law in connection with the breach and that the University is therefore entitled, in addition to any action for damages, to temporary and permanent injunctive relief enjoining and restraining the Executive from any such breach.

ARTICLE 6: TERMINATION

Termination for Just Cause

6.1 The University may immediately terminate this Agreement and the Executive's employment under this Agreement for Just Cause, without notice, pay, or any further obligation to the Executive except where otherwise stated in this Agreement and except for any accrued Base Salary, accrued Health Benefits and accrued vacation. The University will provide the Executive with written notice of immediate termination, which notice shall set out the particulars of the Just Cause.

Termination without Just Cause

6.2 The University may terminate the Executive's employment under this Agreement at any time during the Term without Just Cause. In the case of termination without Just Cause, the Executive will be entitled to the following Severance Payment:

- (a) Four (4) weeks' Base Salary per year of Continuous Service, to a maximum of fifty-two (52) weeks' Base Salary;
- (b) Payment in an amount equal to the cost to the University for four (4) weeks of Health Benefits per year of Continuous Service, to a maximum of 16% of the amount in Section 6.2(a); and
- (c) Payment in lieu of the Executive's Administrative Leave that has accrued to the Executive up to and including the Termination Date, to a maximum of fifty-two (52) weeks.

6.3 The Executive hereby acknowledges and agrees that should the Executive become employed with either the Alberta Crown or a Public Agency during the Severance Period, the Executive shall repay the University a portion of the Severance Payment equal to the amount of salary, before mandatory statutory deductions and Health Benefits, earned in respect of the Executive's new employment during the Severance Period, to the maximum of the full Severance Payment, before mandatory statutory deductions.

Resignation by the Executive

6.4 The Executive may terminate this Agreement and the Executive's employment with the University by providing six (6) months' prior written notice to the University (the "**Resignation Notice Period**"). The Executive will receive the Executive's Base Salary, Health Benefits and other entitlements provided for in this Agreement during the Resignation Notice Period, but shall not be entitled to any of the payments provided by Section 6.2. Upon receipt of such notice of resignation from the Executive, the University may either require the Executive to continue to perform the Executive's duties until the end of the Resignation Notice Period, or the University may in its sole discretion terminate the Executive at any time after receipt of the notice, without additional compensation or obligation to the Executive, except for the amount of Base Salary which otherwise would have been payable to the Executive through the remainder of the Resignation Notice Period.

Other Termination

6.5 This agreement, the Executive's employment and all obligations of the Board will also cease upon:

- (a) the Executive's death;
- (b) the Executive's permanent incapacity for the position of President, as determined by the Board following consultation with a duly qualified physician selected by the Board; or,

- (c) mutual agreement in writing.

ARTICLE 7: PROVISIONS AT CONCLUSION OF APPOINTMENT

Post-Appointment Restrictions

7.1 Unless the Executive receives a waiver or reduction of the applicable restricted period pursuant to the *Conflicts of Interest Act* (Alberta), as amended from time to time, the Executive shall not:

- (a) for a period of 12 months from the Termination Date, lobby any public office holder as defined in the *Lobbyists Act* (Alberta);
- (b) for a period of 12 months from the Termination Date, act on a commercial basis or make representations on the Executive's own behalf or on behalf of any other person in connection with any ongoing matter in connection with which the Executive, while in the position of President, directly acted for or advised a Department or Public Agency involved in the matter;
- (c) for a period of 12 months from the last day the Executive had a direct and significant official dealing with a Department or Public Agency during the Term, make representations with respect to a contract or benefit from that Department or Public Agency;
- (d) for a period of 12 months from the last day the Executive had a direct and significant official dealing with a Department or Public Agency during the Term, solicit or accept on the Executive's own behalf a contract or benefit from that Department or Public Agency; and
- (e) for a period of 12 months from the last day the Executive had a direct and significant official dealing with an individual, organization, board of directors or equivalent body of an organization during the Term, accept employment with that individual or organization or an appointment to the board of directors or equivalent body.

The provisions of this Section shall survive the termination or expiration of this Agreement.

ARTICLE 8: PRIVACY

8.1 The Executive acknowledges and agrees that the Executive will take all necessary steps to protect and maintain personal information of the employees, students or consultants of the University obtained in the course of the Executive's employment with the University. The Executive shall at all times comply, and shall assist the University to comply, with all applicable privacy laws.

8.2 The Executive acknowledges and agrees that the disclosure of the Executive's personal information may be required as part of: (i) the ongoing operation of the University, (ii) as required by law or regulatory agencies, (iii) for the purposes of requesting for approval of a policy; (iv) as part of the University's audit process, (v) as part of a potential business or commercial transaction, or (vi) as part of the University's management of the employment relationship (together, the "**Personal Information Disclosure**"), and the Executive hereby grants consent as may be required by applicable privacy laws to the Personal Information Disclosure.

ARTICLE 9: GENERAL

Fair and Reasonable

9.1 The Parties confirm that the notice and pay in lieu of notice provisions contained in this Agreement are fair and reasonable and the Parties agree that upon any termination by the Board pursuant to Section 6.2 and 6.3, or upon any termination affected by the Executive pursuant to Section 6.4, the Executive, except in respect of amounts payable in respect of termination as herein set forth, shall have no action, cause of action, Claim or demand against the University based upon the termination and severance provisions herein.

Sections and Headings

9.2 The division of this Agreement into Articles and Sections and the insertion of headings are for the convenience of reference only and shall not affect the construction or interpretation of the Agreement. The term "this Agreement" and similar expressions refer to this Agreement and not to any particular Article, Section or other portion hereof and include any agreement or instrument supplemental or ancillary hereto, Unless something in the subject matter or context is inconsistent herewith, references herein to Articles and Sections are to Articles and Sections in this Agreement.

9.3 In this Agreement, words importing the singular number only shall include the plural and vice versa and words importing the masculine gender shall include the feminine and vice versa and words importing persons shall include individuals, partnerships, associations, trusts, unincorporated organizations and corporations and vice versa.

Entire Agreement

9.4 This Agreement and any other agreements expressly incorporated by reference herein, constitute the entire agreement between the Parties with respect to the subject matter hereof, and supersede and replace any and all prior agreements, undertakings, representations or negotiations pertaining to the subject matter of this Agreement. The Parties agree that they have not relied upon any verbal statements, representations, warranties or undertakings in order to enter into this Agreement.

9.5 The terms of this Agreement shall supersede the terms of any other agreement, plan, policy or practice of the University where such other plans, policies or practices differ from the terms of this Agreement. To the extent such plans, policies or practices are not amended by this Agreement, the terms of such plans, policies and practices shall apply to the Executive's employment with the University. If this Agreement conflicts with any entitlement under any other agreement, plan, policy or practice of the University, or the Indemnity, then the provisions of this Agreement will govern.

Benefit of Agreement

9.6 This Agreement shall ensure to the benefit of and be binding upon the heirs, executors, administrators and legal personal representatives of the Executive and the successors and assigns of the University, respectively. The obligation of the Board to make any payment to the Executive pursuant to this Agreement shall not be affected by, and the amount of such payment shall not be reduced by virtue of the death of the Executive in which event the amounts payable shall be paid to the Executive's spouse or legal representative. In the event of the death of the Executive, the University owes to the Executive's estate or beneficiary everything earned up to the time of death. The event of death terminates this Agreement.

Modification and Waivers

9.7 This Agreement may not be modified in any respect except in writing duly executed by the Parties, and no modification or amendment of any term, provision, or condition of this Agreement will be binding or enforced unless executed in writing by them.

9.8 No waiver of this Agreement shall be binding unless it is in writing signed by the Parties hereto. No waiver of a breach hereof shall be deemed to constitute a waiver of a future breach, whether of a similar or dissimilar nature.

Severability

9.9 If any provision of this Agreement is determined to be invalid and unenforceable in whole or in part, such invalidity or unenforceability shall attach only to such provisions or part thereof and the remaining part of such provision and all other provisions hereof shall continue in full force and effect.

Assignment

9.10 Neither this Agreement nor the rights or obligations hereunder may be assigned by either Party.

Notices

9.11 Any demand, notice or other communication ("**Notice**") to be given in connection with this Agreement will be given in writing by personal delivery, by registered mail or by facsimile addressed to the recipient as follows:

To the Executive:

Dr. Neil Fassina
s.17(1)

To the University:

The Governors of Athabasca University
Athabasca University
1 University Drive
Athabasca, AB T9S 3A3
Attention: University Secretary

or such other address as may be designated by Notice given by either Party to the other. Any Notice given by personal delivery will be conclusively deemed to have been given on the day of actual delivery, and, if given by registered mail, on the third day, other than a Saturday, Sunday or statutory holiday in the Province of Alberta, following the deposit in the mail and, if sent by facsimile or email, on the day of transmittal.

Governing Law

9.12 This Agreement will be governed in accordance with the laws of the Province of Alberta and the laws of Canada.

9.13 Any claim, dispute or controversy arising among the Parties out of or in relation to this Agreement that cannot be satisfactorily settled by the Parties shall be resolved by binding arbitration in accordance with the *Arbitration Act* (Alberta). The arbitrator shall be the person chosen unanimously by the Parties or, if the Parties cannot agree upon an arbitrator, then either of the Parties may apply upon written notice to the other to a Justice of the Court of Queen's Bench of Alberta, who shall have jurisdiction to select the arbitrator. The decision of the arbitrator shall be final and binding on the Parties and the costs of the arbitration shall be in the discretion of the arbitrator. The Parties shall use their best efforts to ensure that the arbitrator delivers a decision within six (6) weeks after the appointment of the arbitrator.

Provisions that Operate Following Termination

9.14 Notwithstanding the termination of the appointment of the Executive for any reason whatsoever and with or without Just Cause, or as at the expiration of the Term, the provisions of Article 5 and Sections 3.13, 3.14, 4.11, and 7.2 shall continue in full force and effect.

Independent Legal Advice

9.15 The Executive acknowledges that the Executive has had the time and opportunity to obtain independent legal advice with respect to the execution of this Agreement, and that the Executive has read, understands and agrees with all of the terms and conditions contained in this Agreement.

Execution in Counterpart

9.16 This Agreement may be executed in counterparts, each of which shall be deemed to be an original and both of which together shall constitute one and the same instrument. To evidence its execution of an original counterpart of this Agreement, a Party may send a copy of its original signature on the execution page hereof to the other Party by facsimile or other electronic transmission and such transmission shall constitute delivery of an executed copy of this Agreement to the receiving Party.

IN WITNESS WHEREOF the Parties have executed this Agreement effective as of the Effective Date.

**THE BOARD OF GOVERNORS OF ATHABASCA
UNIVERSITY**

Per: Original signed by Nancy Laird
NANCY LAIRD
CHAIR, BOARD OF GOVERNORS

Original signed by Krista Uggerslev
WITNESS

Original signed by Dr. Fassina
DR. NEIL FASSINA

APPENDIX "A" – Position Profile for President

PRESIDENT POSITION PROFILE

Position Title:	President
Department:	Office of the President
Reports to:	Board of Governors of Athabasca University
Effective Date:	June 2016

Purpose

As Chief Executive Officer, the President is responsible for leading the University academically, administratively and financially, guided by the University's mission, values, and policies. The President is accountable to the Board of Governors for the attainment of institutional internal and external key performance indicators. The President must be innovative, an effective leader, advocate and administrator with vision and creativity in order to serve the internal and external needs of Athabasca University. The President ensures the achievement of standard of excellence while fostering an atmosphere that demonstrates and promotes the highest standard of ethical behavior.

Primary Responsibilities:

Without restricting the generality of the above purpose statement and in accordance with Article 81(3) of the *Post-secondary Learning Act*, the President has supervision over the direction of the operation of Athabasca University and these other powers, duties and functions, as set out below:

Promotes and supports Athabasca University's mission and mandate in its dedication to excellence in teaching, research and scholarship, and to being of service to the general public.

Actively develops, supports, facilitates and advances the commitment to the Strategic University Plan, the Comprehensive Institutional Plan, and any other strategic plans.

Continues to build and encourage Athabasca University's recognized strength as Canada's premier open and on-line university by maintaining and raising its profile on the local, regional, provincial, national and international scenes.

Exercises oversight over the operational and fiscal management of the University and holds the senior executive accountable for their operations.

Builds a senior executive team committed to working with the community in fulfilling the vision, goals, and priorities necessary to ensure long-term sustainability of the University.

Ensures the various Faculties and other academic units, as well as executive leadership of the University, are structured in a manner that encourages innovative and efficient administration of the entire institution.

Enhances Athabasca University's research profile by expanding its reputation in disciplinary and mission-critical research.

Ensures that Athabasca University confirms and enhances its demonstrated academic, distance learning and e-learning reputation and commitment to the removal of barriers to learning.

Fosters a culture that attracts, retains and ensures the success of students and ensures a positive student experience.

Forges effective links with other educational partners at the provincial, national and international levels.

Maintains a strong relationship with the Chair of the Board of Governors.

Ensures the overall effectiveness of the University through advocacy to, contact with, and/or participation in various orders of government and with councils and organizations involved in higher education at the provincial, national and international levels.

Enhances external relations with key officials in government at the municipal, regional, provincial and federal levels in support of the University's interests.

Models and promotes Athabasca University's commitment to a supportive environment.

Fosters collegiality, respect for diversity, involvement and commitment by engaging with the entire university community.

Ensures the collegial, harmonious, and collective work of the various governing bodies (General Faculties Council (GFC), and the Board of Governors), focusing on the achievement of the University vision and mission.

Reports to the Board of Governors on all matters including the performance of the University against the measures laid out in the University's Comprehensive Institutional Plan.

Ensures connection to and alignment and engagement with Alumni and with key University community members, groups and associations.

APPENDIX "B"- Annual Performance Review Policy

Presidential Performance Evaluation Policy			
Policy Sponsor	Board	Category	Board
Policy Contact	University Secretary	Effective Date	December 14, 2018
Approved By	Board	Review Date	December 14, 2023
Approved Date	December 14, 2018		

1. Purpose

The purpose of this policy is to outline the annual performance evaluation process for the President of Athabasca University.

2. Scope

This policy applies to the President of Athabasca University.

3. Definitions

Not Applicable

4. Guiding Principles

- 4.1. It is the responsibility of the Board Chair and the Board Human Resources & Compensation Committee to conduct the annual performance evaluation of the President, which will be completed no later than the end of March each year.
- 4.2. Information gathered during the evaluation process is considered confidential and will be treated as a closed record of Human Resources & Compensation Committee. Personal information will be handled in accordance with the [Alberta Freedom of Information and Protection of Privacy Act](#).
- 4.3. The Board Chair and the Board Human Resources & Compensation Committee may seek input from constituents, both internal and external to the University.

5. Applicable Legislation and Regulations

[Alberta Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-26](#)

6. Related Procedures/Documents

[Presidential Performance Evaluation Procedures](#)

History

<i>Date</i>	<i>Action</i>
December 14, 2018	The Board of Governors of Athabasca University, Motion # 236-04 (revised)
May 27, 2011	AUGC Executive Committee, Motion #269-4: Revisions Approved
June 22, 2007	Policy Approved: AUGC