

SEPARATION AND RELEASE AGREEMENT

This Separation and Release Agreement (“**Agreement**”) is made effective as of the last date signed below (“**Effective Date**”) between Northern Kentucky University (“**University**”), a public institution of higher education and instrumentality of the Commonwealth of Kentucky, and Darryl A. Peal (“**Employee**”) (each a “**Party**,” and collectively, the “**Parties**”).

WHEREAS, Employee has been employed by University since 2020 as its Chief Diversity, Equity and Inclusion Officer and Title IX Coordinator;

WHEREAS, University and Employee have agreed that Employee’s last day of employment with University will be August 28, 2024 (“**Separation Date**”); and

WHEREAS, the Parties desire a mutually beneficial transition and an amicable resolution of any outstanding matters related to Employee’s employment with University.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Separation. The Parties agree that Employee’s last day of employment by University is the Separation Date. After the Separation Date, Employee will not be a University employee. The Parties acknowledge that this separation is a mutual decision of both University and Employee. University will pay Employee his regular salary through the end of the Separation Date. Employee will be entitled to access his retirement benefits and continuation of health insurance in accordance with this Agreement, applicable law, and the University’s policies and plan terms.

2. Consideration. In consideration for the releases herein, and subject to Employee’s obligation to mitigate as described in Section 4, University shall pay Employee the monthly gross amount of \$13,068.13, beginning on August 29, 2024, through the end of August 31, 2025. University will deduct from such monthly gross amounts all applicable taxes and all withholdings required by law, withholdings required by the University’s insurance and retirement plan terms, and withholdings authorized by Employee. Such amounts will be paid by direct deposit, and the payment for the partial month of August 2024 after the Separation Date will be prorated.

In addition, and subject to Employee’s obligation to mitigate as described in Section 4, University shall provide Employee with regular medical, dental, vision, life, and long-term disability insurance coverage, as well as provide the employer-match retirement contribution, according to the plan terms then in effect as generally available for University employees, beginning on August 29, 2024, through the end of August 31, 2025. Employee’s share of medical, dental, vision, life, and long-term disability insurance premiums, and Employee’s share of the retirement contribution, will be deducted from the monthly payments described above, according to the plan terms then in effect as generally available for University employees.

University also agrees to provide outplacement services to Employee through an external outplacement agency.

All payments and benefits described in this Section are referred to collectively as the “**Separation Payment**.”

Employee acknowledges that the Separation Payment, in addition to payment of regular salary and benefits through the Separation Date, includes or is deemed to include all payments and amounts to which Employee is entitled from University, including but not limited to any severance pay, accrued bonuses, incentives, payout of accrued vacation time, expense reimbursements, and any other payments due under University's policies.

Notwithstanding the Separation Payment, Employee acknowledges that his employment at University will terminate effective at the end of the Separation Date, and Employee will not have any professional responsibilities to University and shall not be considered a University employee after the Separation Date.

3. **No Other Payments.** Employee agrees that he is not entitled to, and University has no obligation to provide to him, any payments, incentives, bonuses, expense reimbursements, retirement plan contributions, insurance, or other benefits or privileges other than those expressly described in Sections 1 and 2 hereof.

4. **Mitigation; New Employment.** Employee acknowledges his obligation to minimize the payments due to him under Section 2, and agrees to make every reasonable effort to obtain new employment beginning on the Effective Date and continuing for as long as the University has the obligation to make payments to him under this Agreement. If Employee obtains new, full-time employment with an employer prior to August 31, 2025, then University's obligation to make the payments and provide the benefits under Section 2 shall cease, effective as of the first day of the new employment. For purposes of this Section, full-time is defined as an expectation of working at least 30 hours per week for an employer. Full-time also includes a combination of part-time employment with employers that is expected to exceed 30 hours per week.

Upon acceptance of new full-time employment, Employee shall immediately notify University's Chief Human Resources Officer in writing of such employment.

For purposes of this Section, full-time employment does not include self-employment or work as a professional services provider (eg, as a consultant or speaker) that is not customarily performed by employees.

On request by University in order to verify compliance with this Section, Employee agrees to provide University with a copy of his W-2 form for calendar years 2024 and 2025.

5. **Positive Reference.** On request by Employee, University agrees to provide a truthful, positive letter of reference to Employee for his use in seeking other employment.

6. **Return of Property.** Employee hereby agrees to return any and all property belonging to University on or before September 2, 2024, including but not limited to office keys, badges, University computers, electronic equipment and other devices; and any other University records, documents, and electronic and hard copy files. Employee may not access his campus office after the Separation Date except where permitted by and in coordination with University Human Resources.

7. **Release of Claims by Employee.** In exchange for the consideration, promises, and benefits set forth in this Agreement, Employee, for himself and his predecessors and successors in interest, heirs, executors, administrators, assigns, and any and all other legal representatives, upon

the Effective Date, does hereby completely and forever RELEASE, WAIVE, AND DISCHARGE Northern Kentucky University and its present and former regents, officers, employees, and agents, in official and individual capacities, as well as their heirs, representatives, assigns, and predecessors and successors in interest (collectively the “**University Releasees**”), of and from any and all claims, suits, complaints, grievances, charges, actions, causes of action, rights, demands, damages, fees, costs, of whatever kind and nature, known and unknown, past and present, which Employee has or may have through the Effective Date. This release includes, but is not limited to, all claims related to Employee’s employment and separation from employment, as well as claims arising from any alleged constitutional violations (including but not limited to due process claims), breach of contract, negligence, impairment of economic opportunities, wrongful discharge, defamation, other tort claims, Title IX claims, and discriminatory discharge (including discrimination based on any protected class including but not limited to disability, race, national origin, sex, or religion).

Employee also dismisses and waives all grievances, appeals, or similar proceedings, whether pending or otherwise, to which he is or may be entitled under University policies and applicable law.

This release covers all claims about which Employee knows and may not currently know as of the Effective Date. This release shall not be construed as a release of claims that may arise after the Effective Date.

This release also shall not be construed as a release of claims that may not be released by private agreement under federal or state law. Employee is not barred by this Agreement from initiating or participating in an investigation or proceeding involving University before the Equal Opportunity Employment Commission or similar state agency, although Employee releases any claim to monetary or other individual relief arising from any such investigation or proceeding.

8. Release of Age Discrimination Claims. Employee expressly acknowledges and agrees that by entering into this Agreement, he is releasing any and all rights or claims that he may have arising under the Age Discrimination in Employment Act (“**ADEA**”). Employee represents that he is aware of no fact suggesting that University has discriminated against him on the basis of age. Employee further expressly acknowledges and agrees that:

- a. This Agreement is written in layman’s terms, and Employee understands and comprehends its terms;
- b. Employee has been advised of his right to consult an attorney to review the Agreement and has had the opportunity to have the benefit of an attorney in reviewing and considering the terms of this Agreement and the releases described herein;
- c. Employee does not waive any rights or claims that may arise after the Effective Date;
- d. Under this Agreement, Employee is receiving consideration beyond anything of value to which he is already entitled; and
- e. Employee acknowledges that he has had a reasonable period of time within which to consider this Agreement.

9. ADEA Acknowledgment; Revocation. Employee acknowledges that he was offered a period of time of at least twenty-one (21) days to consider the release of all rights and claims he may have under the ADEA; was notified that he will have a period of at least seven (7) days in which to revoke his release of such ADEA rights and claims by giving written notice to the Chief Human Resources Officer; and was notified that his release of rights and claims under the ADEA will become effective and enforceable only after the Agreement has been executed by all Parties and this revocation period has expired.

The Parties acknowledge that after the Effective Date, Employee is entitled to revoke only his release of rights and claims under the ADEA during the revocation period described in this Section, and Employee is not entitled to revoke any other release, waiver, or term of this Agreement following the Effective Date. If Employee revokes his ADEA release, then University at its option may rescind and cancel this Agreement in its entirety by giving written notice to Employee within forty-eight (48) hours after receipt of Employee's written notice. If University does not provide such notice within that time, then this Agreement shall remain in full force and effect except for the release of age discrimination claims and rights under the ADEA.

10. Representations; Covenant Not To Sue. Employee represents that he has not commenced any grievance, claim, charge, or action in state or federal court or through any state or federal agency. Employee agrees not to file, commence, or initiate any grievance, claim, charge, or action in state or federal court or through any state or federal agency related to the claims released by Employee herein, except as to claims that may not be released by private agreement under federal or state law.

11. No Additional University Employment. Employee agrees that he will not seek or accept University employment or a professional services engagement or contract with University for a period of three years after the Effective Date.

12. Cooperation. At any time, upon reasonable request by University and at University's sole cost and expense, Employee shall cooperate with University in defending University against or in connection with claims, potential or pending litigation, administrative proceedings, external investigations, compliance matters, and similar proceedings arising from or related to activities in which Employee participated while employed by University. Such cooperation may include attending meetings at mutually convenient times and participating in and giving truthful testimony at reasonably scheduled depositions, hearings, and similar proceedings, including any related travel.

Employee agrees that he will not voluntarily assist or cooperate in any way with any party or attorney who is adverse to the University in any private lawsuit, cause of action, or claim.

13. Non-Disparagement. University, on behalf of its President, vice presidents, and other University employees authorized to speak on behalf of the institution within the scope of employment, agrees not to disparage or make adverse public statements about Employee, except as may be necessary to defend itself against legal claims and to testify truthfully in any lawsuit or administrative proceeding. Employee acknowledges that as applied to University, this Section applies to the conduct and statements of only the University's President, vice presidents, and other University employees authorized to speak on behalf of the institution within the scope of employment, and only when those individuals are then-employed by the University. Without

limiting the foregoing, Employee acknowledges that University's release of records in response to a bona fide open records request does not constitute a violation of this Section.

Employee, on behalf of himself and his authorized representatives, agrees not to disparage or make adverse public statements about University or its current or past members of the Board of Regents, President and vice presidents, except as may be necessary to defend himself against legal claims and to testify truthfully in any lawsuit or administrative proceeding.

14. Tax Consequences. Except for legally required withholdings for which University is responsible, Employee accepts full responsibility for payment of any federal, state, local, and other tax, assessment, or penalty that may apply to payments made to him by University as part of the consideration for this Agreement and for any tax consequences associated with the continued insurance provided by University after the Separation Date.

15. No Admission of Liability; Use of Agreement. This Agreement shall not be construed as an admission of liability or fault by any Party. This Agreement shall not be used by either Party against the other, or by Employee against any of the University Releasees, in any proceeding, action, suit, claim, charge, complaint, or cause of action, except as evidence to enforce the terms of this Agreement.

16. Confidentiality of Agreement. From and after the Effective Date, Employee shall not discuss with anyone the existence of this Agreement or the negotiations or discussions that resulted in this Agreement. Notwithstanding the foregoing, Employee may discuss the existence and contents of this Agreement and the negotiations or discussions that resulted in this Agreement with representatives, including accountants and lawyers, and to governmental taxing authorities when necessary.

17. Confidentiality of Student Information. Employee acknowledges that during his employment by University, he received and had access to education records and information related to identifiable University students, including records and information pertaining to student academic, enrollment, and other matters protected by the Family Educational Rights and Privacy Act, as set forth in 20 U.S.C. §1232g. Employee agrees not to use or disclose such information for any purpose.

18. Open Records; Release of Claims by Employee. Employee acknowledges that the University is subject to Kentucky's Open Records Act and that records relating to and arising from Employee's employment may be subject to disclosure by University upon request. Accordingly, Employee does hereby completely and forever RELEASE, WAIVE, AND DISCHARGE University and the University Releasees of and from any and all claims, suits, complaints, charges, causes of action, damages, fees, costs, known or unknown, arising solely from the release by University of records in response to bona fide open records requests, including but not limited to the release of records by University after the Effective Date. The release described in this Section does not encompass claims arising from statements made by University in violation of Section 13.

Employee acknowledges that this Agreement is subject to disclosure by University upon request in accordance with the Open Records Act.

19. **Response to Lawful Subpoena or Request.** If Employee receives a subpoena or other request for information or documents concerning this Agreement, he shall, prior to responding to such subpoena or request, either directly or through counsel notify the General Counsel of Northern Kentucky University by phone of such subpoena or request, provide the General Counsel with a copy of the subpoena or request, and allow the General Counsel five business days to oppose the subpoena or request.

20. **Voluntary Participation.** Each Party acknowledges that it enters into this Agreement voluntarily, with full knowledge of the contents of this Agreement, and each Party accepts this Agreement as reasonable and fair. Each Party further acknowledges that it is not relying upon any representations, assertions, promises, assumed actions or inactions, or duties of any party not a Party hereto or upon any assumed state of facts in entering into this Agreement. Each Party further acknowledges that it has consulted with, or has had the opportunity to consult with, its respective attorney concerning this Agreement.

21. **Breach of Agreement.** In the event of a material breach of this Agreement, the non-breaching party may pursue any legal action available at law and equity.

22. **Modifications to Policies.** Where this Agreement refers to policies, statutes, rules, regulations, procedures, and plan terms, such reference shall be construed to mean such authorities then in effect, as they may be amended from time to time by the applicable responsible body.

23. **Notices.** All notices and other communications required or permitted to be given under this Agreement shall be in writing and deemed given when delivered personally and one day after having been delivered to Federal Express, UPS, or any similar express delivery service for overnight delivery to the Party at that address: If to University: Chief Human Resources Officer; Northern Kentucky University; 708 Lucas Administrative Center; Highland Heights, KY 41099; with a copy to General Counsel; Northern Kentucky University; 812 Lucas Administrative Center; Highland Heights, KY 41099. If to Employee: The home address for Employee on file with University Human Resources. A Party may update its notice addresses by giving written notice as required by this Section.

24. **Successors.** This Agreement is entered into on behalf of, shall be binding upon, and shall extend to, each Party and to the University Releasees and their respective regents, officers, employees, agents, successors, representatives, assigns, and agents.

25. **No Waiver.** No course of conduct, act, or omission shall be construed as a waiver of any term of this Agreement.

26. **Construction.** This Agreement was prepared jointly by the Parties and in any construction of this Agreement, each Party shall be deemed to have cooperated and jointly drafted the same.

27. **Attorneys' Fees and Costs.** Each Party will bear its own costs, expenses, and attorneys' fees in connection with the negotiation, drafting, and execution of this Agreement.

28. **Severability.** If any term of this Agreement is found to be unenforceable or in violation of any laws, statutes, ordinances, or regulations of any public authority having jurisdiction, then, notwithstanding such term, this Agreement shall remain in full force and effect, and such term shall

be deemed stricken; provided, however, that this Agreement shall be interpreted when possible to reflect the intentions of the Parties as indicated by such stricken term.

29. **No Third Party Beneficiaries.** Except as to the right of any University Releasee to enforce the releases described herein, there are no third party beneficiaries to this Agreement.

30. **Governing Law.** This Agreement and any disputes arising hereunder shall be governed by the laws of the Commonwealth of Kentucky. The Parties irrevocably consent to the exclusive jurisdiction of the Franklin Circuit Court, in the Commonwealth of Kentucky, for all disputes arising out of this Agreement.

31. **Sovereign Immunity.** Nothing in this Agreement may be construed as a waiver of University's sovereign immunity and/or related defenses to which University may be entitled under Kentucky law.

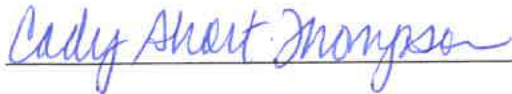
32. **Counterparts.** This Agreement may be signed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. An emailed, faxed, or electronic signature shall be deemed an original signature.

33. **Entire Agreement; Modification.** This Agreement contains the entire agreement and understanding of the Parties concerning the subject matter of this Agreement and supersedes and replaces all prior negotiations and proposed agreements, whether oral or written. This Agreement may not be modified or amended except in writing signed by authorized representatives of both Parties.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties have executed this Agreement by their authorized representatives on the dates indicated below.

NORTHERN KENTUCKY UNIVERSITY



Cady Short-Thompson, Ph.D.
President

Date: August 28, 2024



Darryl A. Peal

Date: August 28, 2024