

Voluntary Separation Incentive Program (VSIP) at Western Kentucky University
WAIVER AND GENERAL RELEASE AGREEMENT

This Waiver and General Release Agreement (Agreement) is made on this _____ day of _____, 2021, by and between _____ (employee name) and Western Kentucky University, its respective Regents, officers, administrative officials, agents, affiliates and successors, past and present, and each of them (collectively referred to in this Agreement as the "University").

This Agreement is in conjunction with the Voluntary Separation Incentive Program (VSIP) as offered by WKU to certain employees who meet the stated eligibility criteria.

This is to indicate my agreement with the incentive and benefits which are specified and which are a part of the VSIP.

1. **Voluntary Separation from Employment.** I understand that my last day of employment with WKU shall be June 30, 2021, "the Effective Date." I acknowledge and agree that I have decided to voluntarily separate my employment, having made such decision of my own free will, having researched and evaluated the advantages and disadvantages and having a period of at least forty-five (45) calendar days (the "Offer Period") to consider my decision and its implications.

2. **Consideration.**
 - a. I specifically acknowledge and agree that the incentive and benefits payable to me under the VSIP are in addition to any amounts otherwise due to me upon my voluntary separation from employment with WKU.
 - b. I understand that the customary pay and benefits payable to an employee on voluntary separation from the University shall be paid in accordance with the terms of established policy, plans and documents, unless specifically excluded in the VSIP program description. Accumulated vacation leave shall be paid out according to existing University policy.
 - c. I understand and agree that the compensation incentive and benefits payable to me, as defined in the VSIP program description, are the only consideration I will receive in exchange for my voluntary separation from employment and entering into this Agreement.
 - d. I specifically acknowledge that the compensation incentive payable to me will be \$ _____, (annual base pay as of January 1, 2021, limited to \$100,000) less applicable federal, state, local and other relevant payroll withholdings.

The health insurance allowance payable to me will be calculated at \$650/month for each month before the month in which I attain age 65, as measured from July 1, 2021, and limited to \$11,700. The insurance allowance is subject to applicable federal, state, local and other relevant payroll withholdings. My health insurance allowance is:_____.

- e. I choose to receive the compensation incentive and any health insurance allowance paid to me by electing one of the two options indicated below. My initials indicate my irrevocable choice.

_____ Lump sum, one-time payment payable on **July 30, 2021**.

_____ Two equal payments payable on **July 30, 2021** and **January 31, 2022**.

3. **General Release.** In consideration for the compensation incentive and benefits provided to me under the WKU VSIP, I on behalf of myself and my heirs, executors, administrators, attorneys, trustees, assigns, hereby waive, release and forever discharge Western Kentucky University, its entities, including departments, divisions, affiliates, Board of Regents, president, directors, administrators, officials, supervisors, employees, attorneys, employee benefit plans, vendors, insurers, assignees, fiduciaries including past, present and future from any known or unknown actions, causes of action, claims or liabilities of any kind arising out of or related to my employment with and/or voluntary separation from employment as a participant of the WKU VSIP. This Release and Agreement includes:
- a. Any and all claims of alleged discrimination, defamation, breach of contract, constructive discharge, tort claims, any claims under all applicable University policies, procedures or governing regulations, retaliation, fraud, misrepresentation, contract, fiduciary duty, negligent or intentional interference, Americans with Disabilities Act (the "ADA"), the Americans with Disabilities Amendments Act of 2008 ("ADAAA"), the Age Discrimination in Employment Act ("ADEA"), the Older Workers Benefit Protection Act (the "OWBPA"), Title VII of the Civil Rights Act of 1964 ("Title VII"), the Equal Pay Act of 1963, the Civil Rights Act of 1981 ("Section 1981"), the Civil Rights Act of 1871 ("Section 1983"), the Rehabilitation Act of 1973, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, the National Labor Relations Act, the Occupational Safety and Health Act of 1970 (OSHA), Executive Order 11246, Title VI of the Civil Rights Act of 1964, the Fair Labor Standards Act of 1938, the Employee Retirement Income Security Act of 1974 ("ERISA"), the Family Medical Leave Act ("FMLA"), the Kentucky Civil Rights Act ("KRS 344"), the Kentucky Wage and Hours Act ("KRS 337"), the Kentucky Equal Pay Act ("KRS 337.420-433"), Kentucky OSHA ("KOSHA"), or the Kentucky Equal Opportunities Act (KRS 207.140-240).
 - b. **ADEA/OWBPA Waiver.** I specifically release and waive any right or claim against the University arising out of my employment or separation from employment with University under the Age Discrimination in Employment Act, as amended, 29 U.S.C. section 621 et seq. ("ADEA") and the Older Workers Benefit Protection Act, 29 U.S.C. section et seq. ("OWBPA"). I understand and agree to the following:
 - i. This Agreement is written in a manner that I understand;
 - ii. I do not release or waive rights or claims that may arise after I sign this Agreement;
 - iii. My waiver of rights and claims I may have had under the OWBPA and the ADEA are solely in exchange for benefits which are in addition to anything of value to which I am already entitled;
 - iv. I have been advised to consult with an attorney before signing this Agreement;
 - v. I have forty-five (45) calendar days to consider whether to sign this Agreement. If I sign it before the end of the Offer Period, I acknowledge that my decision is knowing, voluntary, and not induced by fraud, misrepresentation, or a threat to withdraw, alter, or provide different terms prior to the expiration of the Offer Period. I agree that any changes or revisions to this Agreement, whether material or immaterial, do not restart the running of the Offer Period;
 - vi. I have seven (7) days after signing this Agreement in which to revoke my acceptance of this Agreement. This Agreement will become effective and thus binding upon both parties, upon the expiration of the seven (7) day period described herein.
 - c. Any claims for damages for front pay, back pay, loss of wages, attorney's fees, costs, waiver, medical bills, loss of coverage, pain, suffering, humiliation, embarrassment or loss of reputation.

- d. Any claim for unemployment compensation from the Commonwealth of Kentucky or WKU arising out of my voluntary separation from employment under the VSIP.
 - e. Any claim or grievance whatsoever related to my voluntary participation in the VSIP and my resulting separation from employment.
4. **Exceptions.** Notwithstanding the above General Release from all claims as stated in Item 3, I am not waiving or releasing my rights to possible claims related to:
- a. Claims for workers' compensation benefits
 - b. Claims for medical conditions caused by exposure to hazards during my employment of which I was not aware before or at the time of signing this Agreement.
 - c. Claims arising after the date on which I sign this Agreement.
 - d. Claims for vested or accrued benefits under a state employee benefit plan.
 - e. My rights to file a charge with the U.S. Equal Employment Opportunity Commission (EEOC) or any other federal or state fair employment practices entity. **I am, however, waiving all rights to recover money or other individual relief in connection with any such charge filed by myself, the EEOC or any other person or entity representing me.**
5. **No Re-employment.** I also agree that I shall not seek re-employment with WKU in any capacity (full-time, part-time, temporary, occasional, etc.) until after January 1, 2022, as described within the VSIP document. Any subsequent employment at WKU is at the University's total discretion.
6. **Return off University Property and Settlement of Outstanding Debts.** I agree that on or before my voluntary separation date of June 30, 2021, I will return all University property in my possession or control, including but not limited to, keys, access instruments, computing equipment, uniforms, badges, credit cards, ID cards, University documents or recordings and all other property of WKU.
- I also agree and authorize deductions from my ending pay with WKU, all debts owed to WKU including parking fees/citations, outstanding tuition and fees, unauthorized expenses based on official University documents.
7. **Employee Acknowledgements.** I agree that I have been paid for all hours worked, including overtime, up through the last pay period for which I have been paid before signing this Agreement.
- I agree that I do not currently have any lawsuits and/or administrative claims pending against WKU and/or any of its officers, directors, employees, and/or agents at the date of execution of this Agreement.
- I also confirm that I have not suffered any one-the-job injury or illness of which I am aware and for which I have not already filed a claim with WKU.
8. **Exclusivity of Benefits and No Further Compensation.** I agree that I am not entitled to any payments or benefits not expressly provided for in this Agreement. I further agree that I have no additional claim for compensation against the University. I agree that the payments described in Item 2 shall constitute the entire amount of monetary consideration to which I am entitled to under this Agreement and that I am not entitled to any further monetary consideration from the University. I understand that I am responsible for payment of any attorneys' fees or costs that I have incurred or will incur in connection with reviewing the terms of this Agreement or otherwise related to my employment or separation from employment with the University and that I will not seek any further compensation or consideration for any claimed damages,

costs, or attorneys' fees in connection with the matters encompassed by this Agreement or any other events or circumstances that existed or occurred up to the date of the execution of this Agreement.

9. **Taxes and Required Deductions.** To the extent that additional taxes and required deductions are applicable to my compensation incentive and benefits payable to me under the VSIP, I agree to such and agree to indemnify and hold the University harmless. I further agree to provide any and all information to the University pertaining to myself such as any new address or other information necessary to comply with applicable laws or regulations.
10. **Application and Eligibility for Retirement Benefits.** I agree that it is my responsibility to file the required documents necessary to attain retirement status and benefits available to me from either KERS or TRS. I agree that the University shall not be responsible for any negligent action on the part to follow the established retirement process—including required documents (birth certificate, marriage license, etc.)—as established by KERS or TRS.

If I participate in the Optional Retirement Plan (ORP) and have an account with TIAA, VOYA, VALIC or Fidelity, it is my sole responsibility to consult with the respective retirement vendor concerning and any desired action related to my account.

11. **Notice and Other Information.** I agree that I have been given at least forty-five (45) calendar days to fully evaluate and consider participation in the VSIP, along with the advantages and possible disadvantages of such. This includes being advised by WKU to consult with an attorney, tax advisor and financial advisor before signing this Agreement to ensure that I fully understand the terms and conditions of the VSIP offer and obligations.
12. **Confidentiality/Non-Disclosure.** I agree to keep and maintain the confidentiality of any and all information that I acquired during my employment with WKU that should be treated as confidential and non-disclosable under University policy, state or federal law. I agree that I have had access to certain confidential information including personnel, financial, student, intellectual property, donor information, etc., related to the functions and operations of the University. I understand and agree that all such information is the sole property of WKU and constitutes proprietary information. Except as may be required by law, I agree to: a) not discuss or disclose to any person or entity any confidential information arising out of or in connection with my employment with the University, b) to not remove, retain, transfer, disclose or utilize any confidential information, c) any breach of this confidentiality clause shall be specifically enforceable by a court of law and I further agree to indemnify and hold harmless the University for any costs, including attorney's fees, incurred in the enforcement of this confidentiality/non-disclosure requirement.
13. **Cooperation with University.** I agree to reasonably cooperate with the University to the extent that such cooperation and assistance are requested by University officials regarding issues that may arise related to my responsibilities during employment or which I may have knowledge.

I agree to cooperate with the University and its legal counsel in connection with any current or future investigation or litigation relating to any matter in which I was involved or of which I have knowledge, or which occurred during my employment with WKU. Such assistance shall include, but not be limited to—serving as a witness in any matter in which the University is the subject of a lawsuit, charge, complaint, or other action, or where such action, whether legal or regulatory, has been threatened against the University and shall continue until such matters are resolved. Nothing in this section is intended to waive or limit my rights that are excluded from the General Release provisions of this Agreement as noted in Section 3.

14. **Enforceability.** If any provision of this Agreement is deemed invalid or unenforceable for any reason by a court or other competent jurisdiction, it shall not be stricken in its entirety or held void or unenforceable, but rather shall be deemed modified to make it enforceable to the maximum extent legally permissible, and the Agreement's remaining provisions shall continue to be in full force and effective.
15. **Prior Agreements.** I confirm that any prior agreements between myself and the University are null, void and unenforceable, and that, upon the effective date (June 30, 2021), the University has no obligations to me except as expressly set forth in this Agreement.
16. **Terms are Contractual.** It is agreed and understood that the terms of this Agreement are contractual between me and the University and not merely a recital.
17. **Designated Beneficiary.** In the event that I should die after entering into this Agreement and prior to the incentive compensation and benefits payable to me under the VSIP, as described above and in the VSIP plan document, is paid in full, I hereby designate the following individual as my beneficiary specifically for purposes of the VSIP payout:

Printed Name of Beneficiary _____

Relationship _____ Date of birth: _____

Address of Beneficiary _____

Telephone Number of Beneficiary _____

Last Four Digits of Beneficiary Social Security Number _____

18. **Revocation.** I understand that I may revoke this Agreement within seven (7) days after the date that I submit the signed Agreement to WKU. If I wish to withdraw from the VSIP I understand that I must complete a **VSIP Revocation Agreement Form**. The timely receipt of a valid VSIP Revocation Agreement Form will result in the immediate removal of me from the VSIP Program. No incentive or benefits (as described in this document) will be provided. I will receive electronic confirmation of receipt of the VSIP Revocation Agreement Form from a designated WKU official.
19. **Final Acknowledgments.** I agree that:
- a. I have read, considered and fully understand the VSIP offering and the associated Agreement and my questions have been fully satisfied;
 - b. I have been advised by WKU to consult with an attorney, tax advisor and financial advisor before signing this Agreement to ensure that I fully understand the terms and conditions of the VSIP offer and obligations;
 - c. No official or employee has coerced or required me to participate in the VSIP and sign this Agreement;
 - d. No other promises or inducements have been made to in me; and
 - e. No other promises or agreements shall be binding unless reduced to writing and signed by the parties.

I ACKNOWLEDGE AND AGREE THAT I HAVE KNOWINGLY AND VOLUNTARILY ENTERED INTO THIS AGREEMENT BY MY SIGNATURE BELOW:

Employee Signature _____ Date _____

Employee Printed Name _____

WKU ID _____

Authorized WKU VSIP Administrator

SAMPLE