

EMPLOYMENT AGREEMENT (FIFTH AMENDED)

This FIFTH AMENDED EMPLOYMENT AGREEMENT (this "Agreement") is entered into and effective this 8th day of June 2019 by and between the Board of Trustees (the "Board") of New College of Florida (the "College") and Donal B. O'Shea (the "President" or "Dr. O'Shea"), individually.

BACKGROUND

WHEREAS, the College is a state assisted degree-granting institution of higher education; and,

WHEREAS, the College desires to retain the services of Dr. O'Shea as its President and he desires to serve the College as its President under the specific terms and conditions of employment stated in this Agreement; and,

WHEREAS, Dr. O'Shea and the College have freely negotiated their respective terms and conditions of employment and have reached agreement on such matters; and,

WHEREAS, the College will perform some of its obligations through the New College Foundation;

NOW, THEREFORE, in consideration of promises, covenants and agreements of the parties contained herein, the parties intending to be legally bound, agree that the above recitals are correct and further agree as follows:

TERMS

1. Position and Duties

a. Position. During the Term of Employment (as defined below in 1(c)), the College will employ Dr. O'Shea as the President and Chief Executive Officer of the College. Dr. O'Shea will hold the faculty rank of Professor of Mathematics. On June 16, 2012, the Board granted tenure to Dr. O'Shea in accordance with the College's established policies and procedures. Dr. O'Shea will not hold tenure in his administrative role as President.

b. Duties. During the Term of Employment, Dr. O'Shea will diligently devote his full professional time, ability, and attention to the day-to-day operations of the College, including without limitation, all administrative, executive and academic functions as required by law, rule and regulation. Dr. O'Shea's powers and duties are as stated in the State University System of Florida Board of Governors' regulations, in Board of Trustees' rules, regulations, policies and procedures, and in the laws of the State of Florida as they presently exist or may hereafter be amended, and will include such other duties as may be reasonably assigned to him by the Board. As chief executive officer of the College, Dr. O'Shea shall be responsible for the oversight of all aspects of the College's activities and performance in conformance with the provisions of said regulations, rules, policies, procedures and laws. The Board recognizes the benefits to the College of Dr. O'Shea participating in civic, charitable, corporate, educational and cultural activities that are consistent with his position and of benefit to the College. Service on corporate boards or consulting activities must receive prior approval of the Board Chair, and with approval from the Board Chair, which such approval will not unreasonably withheld, Dr. O'Shea may retain any such compensation as permitted by the laws of the State of Florida.

c. **Term of Employment**. Dr. O'Shea's Term of Employment by the Board under this Agreement will begin on July 1, 2019 and will end on June 30, 2020. The parties may agree to renew this Agreement for additional one-year terms. No later than March 31 of each year, the Board and Dr. O'Shea shall confirm in writing whether to renew the Agreement for an additional one-year term. Any renewal of this Agreement is subject to confirmation of Dr. O'Shea's reappointment by the Board of Governors.

d. **Periodic Reviews**. A review, based on goals prepared by the President and approved by the Board, will occur in each year. Each year, prior to the Board's annual meeting, the President will submit to the Board an assessment of the state of the College, and his personal objectives and specific goals and priorities for the College and himself for the ensuing twelve months. The Board may discuss and amend these goals and priorities at its discretion. No later than March 1 of each year, Dr. O'Shea will report to the Board on the extent to which the goals and priorities adopted by the Board have been accomplished and supply appropriate commentary. The Board will evaluate Dr. O'Shea on the basis of its assessment of his overall performance and his success in accomplishing these goals and priorities.

2. **Compensation and Rights**

a. **Base Salary**. As compensation for the services described in this Agreement, the College will pay Dr. O'Shea a base salary of \$305,000.00 per year for the time period of July 1, 2019 through June 30, 2020. The salary will accrue pro-rata. The base salary shall be paid from College funds to the extent permitted by law with the balance to be funded by the New College Foundation.

b. **Base Salary Payment and Increases**. Dr. O'Shea's base salary will be paid in accordance with the customary payroll practices of the College. The College will deduct from each such installment all amounts required to be deducted and withheld in accordance with applicable federal and state income tax laws, FICA and other withholding tax requirements.

c. **Deferred Compensation**. During the Term of Employment, Dr. O'Shea will accrue deferred compensation of seventeen and one-half (17.5) percent of his base salary in any of the College's deferred compensation plans deemed appropriate for such a contribution. Participation and benefits associated with such funds are controlled by the plan agreement. This deferred compensation will be funded by the New College Foundation. A single lump sum payment for such deferred compensation will be made on or about June 30th of each year.

d. **Automobile Provision and Expenses**. During the Term of Employment, Dr. O'Shea shall receive an annual \$5,000 allowance for the use of his personal automobile. Payment for such use shall be pro-rated bi-weekly, paid in accordance with customary payroll practices of the College and shall be funded by the New College Foundation.

e. **Insurance, Vacation and Sick Leave**. Dr. O'Shea will receive annual and sick leave and other benefits at least equal to those provided to members of the New College of Florida Executive Service classification.

f. **Benefits**. During the Term of Employment (and thereafter as required by law or permitted by the terms of the applicable plans), the College shall provide medical insurance benefits, retirement benefits, and life insurance benefits, disability benefits, and other benefits equal to those under plans provided to members of the New College of Florida Executive Service classification, as such plans may

be amended. If at any time during the Term of Employment, Dr. O'Shea becomes disabled, or is unable for any reason, other than death, to substantially perform his duties as described in this Agreement, and he has not breached any of the provisions of this Agreement, Dr. O'Shea will first use any sick or annual leave accruals and exhaust any applicable group disability income insurance (see 2(e)) prior to seeking additional disability or severance payment under this section. Any additional disability or severance payments made under this section beyond that point will be at the discretion of the Board. In no case will a severance payment exceed that permitted under Florida law at the time he relinquishes his duties as president.

h. Expenses. During the Term of Employment, the New College Foundation will provide Dr. O'Shea a discretionary fund of \$10,000.00 for reasonable and customary expenses incurred by him in furtherance of his duties hereunder. It is understood that reasonable expenses paid by this discretionary fund for traveling, meals, hotel accommodations, and business related meetings and entertainment would be charged directly to the New College Foundation.

i. President's Housing. The New College Foundation will provide Dr. O'Shea with a \$40,000.00 annual housing allowance in lieu of the College providing a President's residence. Payment of allowance shall be pro-rated bi-weekly and paid in accordance with customary payroll practices of the College.

j. Professional Appointment. Upon expiration or termination of this Agreement, Dr. O'Shea will have the right to assume a full-time teaching position as a faculty member of the College as tenured Professor of Mathematics, and will report to the Chair of the Division of Natural Sciences. In his teaching position, Dr. O'Shea shall perform all reasonable duties that would ordinarily be associated with such position, including but not limited to, teaching requirements as established by College regulations and policies. Upon assuming his full-time teaching faculty position, Dr. O'Shea will be provided with a private furnished office that includes a microcomputer, printer, fax, scanner, Internet access and secretarial support to the extent and in the same manner as provided other professors having the same tenure status. In addition to the ordinary employment-related benefits provided to full-time teaching faculty members, Dr. O'Shea shall receive an initial base salary as a full-time teaching faculty member equal to the average of the base salary of the top three highest paid faculty members at the time he assumes full time teaching faculty responsibilities. Thereafter, Dr. O'Shea will be eligible for any salary increases and benefits provided regular, full-time teaching faculty members.

Dr. O'Shea will also be entitled to a one-year (12 month) professional development leave compensated at his then current base salary and benefits. Such leave shall be taken only upon the conclusion of Dr. O'Shea's presidency. This professional development leave is to permit Dr. O'Shea to retool his teaching and research prior to returning to the Faculty at New College of Florida. In the event that Dr. O'Shea accepts full-time employment with an entity other than the College prior to the conclusion of his professional development leave, then such professional development leave shall immediately cease effective on the date that the new employment commences and no further compensation for professional development leave will be owed. An approved outside activity will not constitute employment for purposes of this Section.

k. Retention Bonus. Should Dr. O'Shea and the Board agree to a one-year extension of the Agreement pursuant to subsection 1(c) and he remains as president until June 30, 2020, he will receive a

retention bonus of \$30,000. The retention bonus shall be paid within 60 days of June 30, 2020. During the one-year extension, if Dr. O'Shea leaves the presidency pursuant to subsection 3(c) of this Agreement prior to June 30, 2020, or if he is terminated by the Board for cause pursuant to subsection 3(d)(i) through 3(d)(iii), Dr. O'Shea forfeits all right and entitlement to payment of the retention bonus, or any portion thereof. If Dr. O'Shea is terminated without cause pursuant to subsection 3(b) or if he becomes permanently incapacitated pursuant to subsection 3(d)(iv), he shall be entitled to that portion of the retention bonus prorated based on service completed. If Dr. O'Shea terminates the Agreement pursuant to subsection 3(e) of this Agreement, he shall be entitled to the full amount of the retention bonus.

I. Ownership of Intellectual Property and Outside Income. Dr. O'Shea's ownership of intellectual property will be governed by law and regulations of the Florida Board of Governors and the Board of Trustees. Dr. O'Shea retains all rights and income relating to speaking engagements, articles, and other intellectual property created by him not otherwise governed by the aforementioned law and regulations.

3. Renewal, Termination or Resignation

a. Renewal. This Agreement may be amended, renewed or extended in writing on terms mutually satisfactory to the Board and Dr. O'Shea.

b. Termination without Cause by the College. The College may terminate this Agreement without cause after first giving not less than 90 calendar days written notice to Dr. O'Shea of intention to terminate. The College may terminate without cause only upon a 2/3 vote of the Board.

c. Resignation by Dr. O'Shea without Breach. In the event that Dr. O'Shea desires to resign other than because of a breach of this Agreement by the College, Dr. O'Shea may terminate this Agreement by resigning after first giving not less than 90 calendar days written notice to the College of intention to terminate. If this Agreement is terminated pursuant to this subsection 3(c), the College may elect to relieve Dr. O'Shea of his duties and pay Dr. O'Shea his compensation through the notice period, not to exceed 12 weeks or the maximum permitted by Florida law, whichever is less. If the reason for resignation is due to a serious health condition of Dr. O'Shea or of a family member as set forth in the Family and Medical Leave Act (FMLA) or is otherwise beyond the control of Dr. O'Shea, then the College shall also pay Dr. O'Shea severance in an amount approved by the Board, which shall in no case be greater than the number of weeks permitted under Florida law at the time, paid at his annual base salary in effect at the time of the notice. However, if the reason for resignation is pursuant to this subsection 3(c) and is within Dr. O'Shea's control, any severance is within the discretion of the Board as guided by Florida law at the time he relinquishes his duties as president.

d. Termination for Cause by the College. This Agreement may also be terminated at any time for cause by the College. Cause shall mean upon the occurrence of one of the following events or actions by Dr. O'Shea:

i. A deliberate and actual violation of the duties set forth in this Agreement, including his refusal or unwillingness to perform such duties in good faith and to the best of his abilities, after a notice and reasonable opportunity to cure.

ii. Any conduct constituting moral turpitude that would bring public disrespect, contempt, or ridicule upon the College.

iii. A serious and deliberate violation of a State of Florida law, rule, regulation, or Constitutional provision, or a College rule, regulation or policy, which violation may in the judgment of the Board adversely reflect upon and/or adversely affect the College.

iv. If Dr. O'Shea becomes unable to perform the essential functions of his position due to a permanent disability as defined by the College's insurance carrier (subject to the terms and conditions of any College plan providing disability payments).

If this Agreement is terminated by the College under this subsection 3(d)(i.-iii)., Dr. O'Shea shall be relieved of his duties as President. There will be no severance pay or severance benefits resulting from such termination. If this Agreement is terminated by the College under this subsection 3(d) (iv)., the College may elect to pay Dr. O'Shea severance in an amount approved by the Board, which shall in no case be greater than the number of weeks permitted by Florida law at the time, paid at his annual base salary in effect at the time of the termination.

e. Termination for Cause by Dr. O'Shea. In the event the College breaches the terms of this Agreement, and such breach is not cured within 30 calendar days of notice of the breach or is not a breach that maybe cured, Dr. O'Shea shall have the right to terminate this Agreement at any time thereafter upon written notice of such termination to the other party. If this Agreement is terminated by Dr. O'Shea under this subsection 3(e), he shall be entitled to 20 weeks' severance or the maximum permitted under Florida law at the time paid at his annual base salary in effect at the time of termination.

f. Effect of Termination. Upon termination of this Agreement, neither party shall have any further obligation hereunder except for: (i) obligations accruing prior to the date of termination or that are intended to extend beyond the term of this Agreement, including, without limitation, the College's payment of all amounts set forth in subsections 2(a, b, & d — i) which are accrued as of the date of Termination, payment of all Deferred Compensation contemplated by subsection 2(c), compliance with the Rights set forth in subsection 2(j & k); and (ii) all rights and obligations set forth in this section 3.

In the event of termination without cause by the College, as specified in 3(b), or termination for cause by Dr. O'Shea, as specified in 3(e), or in the event that Dr. O'Shea resigns the presidency, without breach of this Agreement, after July 1, 2019, Dr. O'Shea will have the right to assume a full-time teaching position as a faculty member of the College as a tenured Professor of Mathematics, as specified in 2(j).

Dr. O'Shea will also be entitled to a one-year (12 month) paid professional development leave during his first year as a member of the faculty, as specified in 2(j). During Dr. O'Shea's leave, he will remain a member of the faculty as Professor of Mathematics, but will be relieved of all duties at the College. During the professional development period the College will pay Dr. O'Shea his annual presidential base-salary in effect at the time he relinquishes his duties as President and he will be entitled to all benefits provided other Executive Service employees. At the conclusion of Dr. O'Shea's leave, his salary as a full time teaching faculty member will be determined in accordance with subsection 2(j) of this Agreement.

4. **Miscellaneous**

a. **No Waiver.** Neither any reasonable delay nor failure on the part of any party to exercise any rights under this Agreement, nor a partial or single failure by any party to exercise any rights under this Agreement, shall constitute a waiver of such rights or of any others rights under this Agreement.

b. **Entire Agreement.** This Agreement represents the entire Agreement of the parties and supersedes any and all other oral or written agreements or understandings between them. No change, amendment, alteration, waiver or modification of any provision hereof may be made except in a writing signed by the parties hereto.

c. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

d. **Taxes.** Dr. O'Shea shall be responsible for his portion of federal, state, local or other taxes resulting from any compensation or benefits provided to him by the College. The College shall withhold all federal, state, local or other taxes as may be required pursuant to law or governmental regulation or ruling from any compensation or benefits provided under this Agreement.

e. **Severability.** If any provision of this Agreement shall, for any reason, be held to be illegal, invalid or unenforceable, such illegal, invalid, or unenforceable provision will not affect any other provision of this Agreement. In such a case, this Agreement will be construed as if such an illegal, invalid or unenforceable provision had never been contained herein.

f. **Counterparts.** This Agreement may be executed in counterparts, and by the different parties on separate counterparts, each of which, when so executed, shall constitute but one and the same instrument.

g. **Bond.** The College may, at its option and expense, obtain a faithful performance and fidelity bond on the President.

h. **Key Person Insurance.** The College may, at its option and expense, secure and maintain "key person" insurance on the life of the President in such amount, as the College deems necessary or appropriate. The President shall cooperate fully with the College in connection with securing and maintaining the insurance. In the event said insurance is paid, the proceeds shall be divided one-half to New College of Florida and one-half to the designated beneficiary of Dr. O'Shea.

i. **Arbitration of Disputes.** The parties agree that final and binding arbitration in accordance with the policies and procedures of the American Arbitration Association will be the sole and exclusive forum for resolving any disputes or claims between the President and the College concerning the terms of this agreement. Any hearings related to this agreement will be held in Sarasota County, Florida.

j. **New College Foundation.** The College may satisfy the payment obligations set forth in this Agreement directly or through the New College Foundation, which shall be at the discretion of the College and the New College Foundation, subject to any legal requirements.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed as of this 8th day of June, 2019.

NEW COLLEGE OF FLORIDA

DONAL B. O'SHEA

By: _____

Felice Schulaner,
Chair, Board of Trustees

Donal B. O'Shea