

Nevada System of Higher Education

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CONTRACT RENEWAL SUMMARY OF TERMS PRESIDENT DR. KUMUD ACHARYA DESERT RESEARCH INSTITUTE

- 1) **Base salary:** \$320,000 per fiscal year.
- 2) **Eligibility for Merit Raise:** Eligible for one-time merit pay raise up to 3% of base salary.
- 3) **COLA:** No Cost of Living Adjustments (COLA) unless specifically authorized and funded by the Nevada State Legislature.
- 4) **Car Allowance:** \$8,000 per fiscal year.
- 5) **Housing allowance:** \$24,000 per fiscal year.
- 6) **Host Account:** \$5,000 per fiscal year.
- 7) **Termination Without Cause:** If President is terminated without cause, President shall receive base salary for the term of the Agreement, but shall not receive housing, automobile or other payments or benefits. President shall return to previous fulltime faculty position at the institution.
- 8) **Force Majeure:** A force majeure clause has been added to the Agreement.
- 9) **Contract Period:** Contract will be renewed from September 12, 2020, through September 11, 2024. It is a 4-year contract term.

EMPLOYMENT AGREEMENT

BETWEEN

BOARD OF REGENTS OF THE

NEVADA SYSTEM OF HIGHER EDUCATION

ON BEHALF OF

THE DESERT RESEARCH INSTITUTE

AND

DR. KUMUD ACHARYA

PRESIDENT EMPLOYMENT AGREEMENT
between
the Board of Regents of the Nevada System of Higher Education
and
Dr. Kumud Acharya

This President Employment Agreement ("Agreement") is effective this 6th day of September, 2019, contingent upon the approval of the Board of Regents of the Nevada System of Higher Education ("Board of Regents" or "Employer"), by and between the Board of Regents and Dr. Kumud Acharya ("President" or "Employee").

The Board of Regents and Employee may collectively be referred to as "the Parties."

ARTICLE 1 – PURPOSE

The Board of Regents and Employee have entered into this Agreement because the Board of Regents desires to contract Employee to serve as the President of the Desert Research Institute ("Institution") for a period of two (2) years, as set forth in Article 3. The Board of Regents and Employee agree that the President of the Desert Research Institute conducts professional activities under circumstances unique in the Institution community and among Institution employees. Employee desires to obtain the opportunities of employment with the Board of Regents, which are set forth in this Agreement. For these reasons, the Board of Regents has agreed to employ Employee and he has promised to be employed by the Board of Regents upon the terms and conditions set out in this Agreement.

ARTICLE 2 – PUBLIC DOCUMENT

The Parties agree that this Agreement is a public document and that the Board of Regents may release copies of this Agreement to persons requesting the same.

**ARTICLE 3 –
TERM OF EMPLOYMENT, NOTICE OF NON-RENEWAL, MANDATORY BACKGROUND CHECK, AND
EMPLOYEE'S CERTIFICATION OF TRUTH AND ACCURACY OF MATERIALS AND REPRESENTATIONS**

3.1. Term of Employment.

Employee's employment hereunder, subject to the approval of the Board of Regents, shall be for a period of four years and shall commence on September 12, 2020 ("Effective Date") and, except as otherwise provided herein, shall continue until this Agreement terminates upon the close of business on September 11, 2024 ("Term").

3.2. Notice of Non-renewal.

THE PARTIES TO THIS AGREEMENT EXPRESSLY UNDERSTAND AND AGREE THAT THE PROVISIONS OF THIS ARTICLE CONSTITUTE THE NOTICE TO EMPLOYEE OF THE NONRENEWAL OF EMPLOYMENT AND EMPLOYEE'S EMPLOYMENT WILL TERMINATE UPON THE CLOSE OF BUSINESS ON THE DATE SET FORTH IN THIS ARTICLE 3, AND THAT, NOTWITHSTANDING ANY PROVISION OF THE NEVADA SYSTEM OF HIGHER EDUCATION ("NSHE") CODE (BOARD OF REGENTS' HANDBOOK, TITLE 2) (HEREINAFTER, "NSHE CODE") TO THE CONTRARY, NO OTHER NOTICE OF NONRENEWAL OF EMPLOYMENT SHALL BE REQUIRED.

3.3. Mandatory Background Check.

Employee is subject to a mandatory initial background check to be undertaken and completed within thirty (30) calendar days) of the Effective Date of this Agreement (the "Initial Background Check"). Employee's academic degrees and credentials must be confirmed as part of the Initial Background Check before the Agreement is signed. Employee's failure to pass the Initial Background Check to the satisfaction of the Board of Regents, in its sole and absolute discretion, invalidates and voids this Agreement and results in immediate termination for cause. Following initial employment, Employee is subject to and hereby consents to additional supplemental background check(s) related to pre-employment matters at the discretion of the Chancellor at any time during employment ("Supplemental Background Check)."

Employee's failure to pass any Supplemental Background Check to the satisfaction of the Board of Regents, in its sole and absolute discretion, for reasons that would constitute cause for discipline under Paragraph 6.1.d or cause for termination of the contract, invalidates and voids this Agreement and results in immediate termination for cause.

3.4. Employee's Certification of Truth and Accuracy of Materials and Representations.

Employee does hereby certify and declare that Employee's application materials, including but not limited to resumes and curriculum vitae submitted in support of candidacy for employment are a true and accurate representation of Employee's education, credentials, qualifications, experience, and background and acknowledges that falsification of employment applications or documents submitted to the NSHE, or making other false or fraudulent representations in securing employment is prohibited. Falsification or misrepresentation of education, credentials, qualifications, experience, or background and/or evidence that degrees offered in support of candidacy for employment have been issued from non-accredited institutions, in Employer's sole reasonable discretion, invalidates the employment contract and voids this Agreement and results in immediate termination for cause.

3.5 Sole Employment Agreement

Upon the Effective Date, the terms and conditions of this Agreement, as set forth herein, shall constitute the sole employment Agreement between the Board of Regents and Employee.

ARTICLE 4 – POSITION

4.1 Employment As President of the Desert Research Institute.

4.1.a. Position.

Employee is hereby employed by the Board of Regents to serve in the position of President of the Desert Research Institute pursuant to Title II, Section 1.5.4 of the NSHE Code. Throughout the Term, Employee shall use his best full-time energies and abilities for the exclusive benefit and at all times in the best interests of the Board of Regents, NSHE, and the Desert Research Institute.

4.1.b. President is Administrator; Reassignment.

Employee is an "administrator" as that term is defined by the policies, rules and regulations of the Board of Regents and is subject to reassignment. In the event that Employee is reassigned to duties other than those as President during the Term of this Agreement, Employee's compensation shall be limited to the Base Salary and fringe benefits set forth in Articles 5.1 and 5.2 of this Agreement.

4.2 Description of Employee's Responsibilities.

4.2.a. Recognition of Duties.

Employee agrees to be a loyal employee of the Board of Regents. Employee agrees to devote his best efforts full-time to the performance of all duties for the Board of Regents and to give proper time and attention to furthering Employee's responsibilities and to comply with all rules, regulations, policies, and decisions established or issued by the of Regents, NSHE, and the Desert Research Institute. Employee agrees that, notwithstanding any provision of Article 5.8 herein, during the Term, he will not engage, directly or indirectly, in any business or investments that would materially detract from or interfere with Employee's ability to apply best efforts to the performance of all duties hereunder.

4.2.b. General Duties and Responsibilities of Employee.

During the Term, Employee agrees to undertake and perform properly, efficiently, to the best of his ability and consonant with the standards of the Board of Regents all duties and responsibilities attendant to the position of President as set forth in Article 4.2.c below.

All standards, requirements and policies of the Board of Regents, NSHE, and the Desert Research Institute shall be observed by Employee and members of his staff at all times. As President, Employee will publicly support the mission and policies of the Board of Regents, NSHE, and the Desert Research Institute. Employee shall not exhibit any behavior that brings him, the Board of Regents, NSHE, or the Desert Research Institute into public disrepute, contempt, scandal or ridicule or in any behavior that is unfavorable to the reputation or ethical standards of the Board of Regents, NSHE,

or the Desert Research Institute. In Employee's position as President, he is held directly accountable by the Board of Regents for these general responsibilities.

4.2.c. Duties and Responsibilities While Employed as President.

The duties and responsibilities assigned to Employee in connection with this position as President of the Desert Research Institute are set forth in the Board of Regents Handbook, NSHE Code, the NSHE Procedures and Guidelines Manual, and the Desert Research Institute's Administrative Manual and Bylaws. Specific job duties and responsibilities, as set forth in the Board of Regents Bylaws, Article 7, Section 4. These duties and responsibilities may be amended from time to time, include, but are not limited to:

1. Leadership
Providing leadership in the planning and implementation necessary for the successful operation of the member institution and to ensure that the institution develops to its potential;
2. Appointing Authority
Serving as the appointing authority for all professional personnel in the member institution, subject only to the NSHE Code, and to execute personnel contracts;
3. Personnel
Reviewing the quality of performance of all professional personnel in the member institution and to either take final action or to recommend action to the Board of Regents on personnel matters in conformity with the NSHE Code;
4. Budget
Make recommendations concerning the budget of the institution and administer the approved budgets of the institution in accordance with NSHE policies;
5. Grants, Contracts and Gifts
Authorizing the transmission of applications or requests for grants, contracts or gifts to individuals, foundations, corporations, and the federal government;
6. Spokesperson
Serving as the principal spokesman for the member institution and, in concert with the Chancellor, to represent the institution before the Board of Regents, the Legislature, and all other appropriate bodies;
7. Compliance
Ensuring compliance by the member institution by and through its professional personnel with the NSHE Code, NSHE policies, and the Board of Regents' Bylaws, and Desert Research Institute's Administrative Manual and Bylaws;
8. Communication
Notifying the Board as soon as practicable of campus events that may have significant impact on the institution including, but not limited, to the reputation or public image of the institution;
9. Additional Duties
Performing such additional duties as the Board may direct.

4.3 Other Duties and Responsibilities.

In addition to the duties and responsibilities set forth in Section 4.2.c, above, Employee shall have the following additional duties and responsibilities:

4.3.a Budget.

Employee shall annually prepare a detailed budget for the Institution and submit the budget to the Chancellor and the Board of Regents in accordance with all applicable policies and procedures. Employee shall also manage and administer the approved budget for the Institution in accordance with all applicable policies and procedures.

4.3.b Fundraising.

Employee acknowledges that fundraising and resource development are important to the development of the Desert Research Institute and that Employee is expected to continually engage in such activities for the betterment of the Institution. Employee will prepare and execute capital campaigns and other fundraising plans for the Institution as directed by the Chancellor or the Board of Regents.

4.4 Reporting Relationship.

Employee shall report to the Chancellor.

4.5 Annual and Periodic Performance Evaluations.

Pursuant to Title II, Section 1.5.4 of the NSHE Code, as President, Employee is subject to annual and periodic evaluations of the performance of his job duties and responsibilities. Evaluations shall be performed in accordance with the provisions of the NSHE Procedures and Guidelines Manual, Chapter 2, Section 2, as amended from time to time. These evaluations will also include prior evaluations and the expectations and goals set for Employee in prior evaluations.

4.6 Presence at Multiple Campuses.

The Desert Research Institute has two primary campuses, which are located at 2215 Raggio Parkway, Reno Nevada, and 755 East Flamingo Road, Las Vegas, Nevada. The President shall provide oversight, management and control of each campus, and spend appropriate time at each campus.

4.7 Compliance with all Policies and Procedures as Amended.

Employee must comply with all policies and procedures of NSHE and the Desert Research Institute, and as they may be adopted or amended from time to time during the Term of this Agreement.

ARTICLE 5 – COMPENSATION

In consideration for the promises Employee has made in entering into this Agreement, Employee shall be entitled to the compensation as described below. All payments, including non-cash consideration and benefits are subject to normal deductions and withholding of all applicable state, local and federal taxes, including all provisions, regulations and guidelines of the Internal Revenue Code, and for any retirement or other benefits to which Employee is entitled or in which Employee participates, and are subject to the terms and conditions of Article 6 hereof concerning termination of this Agreement and Article 7 hereof concerning restrictions on competitive employment.

5.1 Base Salary and COLA.

5.1.a Base Salary.

The base salary paid to Employee for all services and satisfactory performance of the terms and conditions of this Agreement shall be at the base rate of \$320,000.00 ("Base Salary") per fiscal year (a fiscal year begins on July 1 and ends the following June 30), prorated to the portion of the fiscal year Employee is actually employed, and payable in equal monthly installments to Employee on the first working day of each consecutive calendar month during the Term. Notwithstanding this Article 5.1, in the event there are salary reductions throughout NSHE for any fiscal year during the Term, Employee's salary shall be reduced by the same percentage and in the same manner as other employees of NSHE through the mechanisms required by the Board of Regents, such as, for example, pay cuts and unpaid leave days.

5.1.b. COLA.

The Employee shall only be eligible for Cost of Living (COLA) increases that are specifically approved and funded by the Nevada State Legislature during the Term of the Agreement. No COLAs are currently approved and funded during the Term of this Agreement.

5.1.c. Merit Pay Raise.

Subject to approval by the Board of Regents, the Chancellor may recommend during the course of the Employee's annual evaluation that the Employee receive a one-time merit pay raise during the Term of the Agreement based on the Employee's performance and contingent upon the availability of funding. The one-time raise may be no more than three percent (3%) of the base salary set forth in Article 5.1.a.

5.2 Fringe Benefits.

Except as provided herein, Employee shall be entitled to the standard fringe benefits provided to all other professional employees of the NSHE including, but not limited to, retirement contributions based upon the Base Salary paid pursuant to Article 5.1 of this Agreement, insurance, annual and sick leave.

5.3 Initial Employment Allowance and Expenses

The Institution shall allocate an initial employment allowance for the purpose of reimbursing Employee for reasonable moving and related expenses for relocation which shall not exceed ten (10) percent of base compensation.

Reimbursement of Employee for all travel and out-of-pocket expenses reasonably incurred for the purpose of and in connection with the performance of Employee's duties under this Agreement, reimbursement shall be made in accordance with standard reimbursement rates and procedures of NSHE and the Desert Research Institute upon presentation to the Chancellor of standard travel reimbursement forms, vouchers or other statements itemizing such expenses in reasonable detail. For purposes of this section, Employee's primary residence shall be Las Vegas, Nevada and Employee's eligibility for reimbursement for travel and other out-of-pocket expense shall be based on such primary residence.

5.4 Automobile and Housing Allowance.

While serving as President, additional perquisites consisting of an automobile allowance and a housing allowance shall be provided in recognition of the requirements of this position and paid in lieu of furnishing an automobile and a house to Employee as follows:

5.4.a Automobile.

An automobile allowance of \$8,000.00 per fiscal year paid in equal monthly installments and prorated for partial months of service, which shall be in lieu of reimbursement for use of a private vehicle on official business within a fifty-mile radius of Employee's primary residence.

5.4.b Housing.

An annual housing allowance of \$24,000.00 per fiscal year paid in equal monthly installments and prorated for partial months of service. The annual housing allowance is the only amount paid for housing no matter the number or location of houses or residences utilized by Employee.

5.5 Host Account.

The appointee shall have the use of an annual host account of \$5,000.00 per fiscal year only while serving as the President. The host account for partial fiscal years of service as the President will be prorated. Expenditures from the host account must conform to policies established by the Board of Regents and the Chancellor. Host account funds may be used to pay for transportation, lodging, and meal expenses (in accordance with the standard state reimbursement rates) of appointee's spouse, companion or domestic partner when appointee's spouse, companion or domestic partner is expected to accompany appointee to events outside the fifty-mile radius from home for the purpose of assisting appointee in representing the Desert Research Institute. Out-of-state travel by appointee's spouse, companion or domestic partner will require prior approval by the Chancellor.

5.6 Intentionally Omitted.

5.7 Outside Activities/Conflicts of interest/Competing Organizations.

5.7.a Chancellor's Approval Required.

Employee acknowledges that NSHE and Institution Conflict of Interest/Compensated Outside Services Policies and all related rules and procedures apply to Employee during the Term. Consistent with such policies, Employee agrees for the Term not to serve, directly or indirectly, as an employee or otherwise, as a director, personnel executive, advisor and/or consultant, nor perform related services for any organization, club or group, with or without compensation, without the prior written consent of the Chancellor, which consent can be withheld in the Chancellor's sole and absolute discretion. During the Term of employment hereunder, Employee shall not make or continue to hold any investment in

or be associated with any enterprise, which could be deemed to be competitive or in conflict with the objectives and philosophies of the Board of Regents, NSHE or the Desert Research Institute, without first having obtained the written approval of the Chancellor, which approval may can be withheld in the Chancellor's sole and absolute discretion.

5.7.b. NSHE is Not Liable.

ANY ARRANGEMENTS FOR OUTSIDE COMPENSATION OR OUTSIDE ACTIVITIES ARE INDEPENDENT OF EMPLOYEE'S NSHE EMPLOYMENT, AND EMPLOYEE HEREBY RELEASES NSHE, ITS REGENTS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY LIABILITY, DAMAGES OR CLAIMS IN ANY WAY RELATED TO ARISING FROM ANY OUTSIDE ACTIVITIES, FOR ANY PAYMENT OF OUTSIDE COMPENSATION OR FOR ANY CLAIMS ARISING THEREFROM UNDER ANY CIRCUMSTANCES WHATSOEVER. EMPLOYEE HEREBY EXPRESSLY RELEASES NSHE, ITS REGENTS, OFFICERS, EMPLOYEE'S AND AGENTS FROM ANY AND ALL CLAIMS FOR THE LOSS OF ANY COLLATERAL BUSINESS OPPORTUNITIES OR ANY OTHER BENEFITS, PERQUISITES OR INCOME RESULTING FROM ANY OUTSIDE ACTIVITIES OF EMPLOYEE.

5.8 Compliance with State and Federal Laws.

Employee is subject to and must comply with all applicable state and federal laws and regulations, including but not limited to the financial disclosure requirements in accordance with NRS 281.559, and the provisions of the State of Nevada Code of Ethical Standards set forth in NRS 281A.400-NRS 281A.440.

ARTICLE 6 – DISCIPLINE AND TERMINATION

6.1 Discipline and Termination.

Employee recognizes that his promise to remain as President of the Desert Research Institute through the entire Term is of the essence of this Agreement to the Board of Regents. It is also recognized, however, that certain circumstances may make it appropriate for Board of Regents to terminate this Agreement prior to the completion of its entire term, as follows:

6.1.a. Termination Without Cause.

Employee serves at the pleasure of the Board of Regents and at any time after commencement of this Agreement, the Board of Regents, for its own convenience, may terminate this Agreement. Employee may be removed by the Board of Regents at any time, with or without cause, and this Agreement terminated. Upon termination, Employee shall not be entitled to any remaining compensation or allowances under this Agreement, including payments for host account, other perquisites, salary supplements, accrued annual leave, bonuses, deferred compensation, or any payments funded by a Foundation.

Employee is a full-time faculty member of the Desert Research Institute and prior to entering this Agreement served as Interim President and Interim Vice President for Research. In the event Employee is terminated without cause from the position of President, Employee shall retain all rights and privileges as a full-time faculty member of the Desert Research Institute and shall be reassigned from the President position to a position as a full-time member of the faculty of the Desert Research Institute at the Rank of IV for a period of two years from the date of Employee's termination ("Transition Period") in order to reestablish a research portfolio. Employee's salary during the Transition Period shall be equal to that of the position of Interim Vice President for Research on the date Employee entered this Agreement.

During the Transition Period, Employee may be disciplined or terminated for cause as provided in Section 6.1.d of this Agreement or pursuant to any applicable provision of the NSHE Code, the Board of Regents' Handbook, or any Desert Research Institute policy. Employee may be terminated at the expiration of the Transition Period without any notice of nonrenewal or non-reappointment notwithstanding any provision of the NSHE Code, the Board of Regents' Handbook, or Desert Research Institute policy. In the event Employee accepts employment with any third-party during the Transition Period, Employee's right to any compensation from the Board of Regents shall immediately cease upon such employment.

6.1.b Intentionally Omitted.

6.1.c Automatic Termination upon Death or Disability of Employee.

This Agreement terminates upon Employee's death. Notwithstanding any provision of the NSHE Code to the contrary, in addition to any benefits which may be paid to the estate of the deceased Employee from insurance,

retirement or any other source, the Board of Regents shall pay to Employee's estate Employee's base salary through the day death occurred, plus any earned, accrued but unused annual leave, if applicable under NSHE policies, together with one-twelfth of Employee's base salary.

Upon total or permanent disability of Employee, within the meaning of the NSHE's disability insurance for employees, Employee is required to first use all unused, accrued sick leave and, if applicable, annual leave or other leave authorized under NSHE policies. Upon the expiration of such leave or the period of six (6) months, whichever comes last, this Agreement shall automatically terminate.

6.1.d Employee Subject to Discipline and Termination for Cause.

Employee is subject to disciplinary action, up to and including termination for cause, by the Board of Regents or the Chancellor in accordance with the provisions of this Agreement and/or the provisions of the Board of Regents Bylaws, Title 1, Article 7, Section 3.14, as amended from time to time. In addition to the prohibited activities set forth in Title 1, Article 7, Section 3.14, Employee acknowledges and agrees that discipline may also be based upon any breach of the terms of this Agreement, and any violation of the policies and procedures of the Board of Regents, NSHE or the Desert Research Institute. Employee further acknowledges and agrees that the administrative process provided in Title 1, Article 7, Section 3.14 constitutes legal due process, and that no further administrative process is required.

6.1.d Employer's Obligations Upon Termination for Cause.

In the event this Agreement is terminated for cause, as of the effective date of such termination, all of Employer's obligations to Employee under this Agreement subsequent to that date shall cease. Employee shall not be entitled to payment for accrued and unused annual leave. In no case shall Employer be liable to Employee for the loss of any collateral or outside business opportunities or any other benefits, perquisites or income resulting from activities such as, but not limited to, consulting relationships or from any other source whatsoever.

6.2 Termination by Employee.

6.2.a. Termination for Convenience of Employee.

Employee understands that his promise to remain employed as President for the entire Term is of the essence of this Agreement to Employer. Employee also understands that the Board of Regents is making a highly valuable investment in Employee's continued employment by entering into this Agreement and that its investment would be lost were Employee to resign or otherwise terminate employment with the Board of Regents prior to the expiration of this Agreement. In recognition of these understandings, the Parties agree that while Employee may, nevertheless, terminate this Agreement prior to its normal expiration, such termination shall be only upon the following terms and conditions:

6.2.a.1. Written Notice of Termination.

Employee, for Employee's own convenience, may terminate this Agreement during its term by giving prior written notice to the Chancellor and the Board of Regents. Such termination shall be effective no earlier than ten (10) calendar days after receipt of the written notice unless otherwise agreed to by the Parties in writing.

6.2.a.2. Intentionally Omitted.

6.2.a.3. Not a Penalty.

The Parties have both been represented by, or had the opportunity to consult with, legal counsel in the negotiation of this Agreement and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that Employer will incur administrative and recruiting costs in obtaining a replacement for Employee, that Employer will lose the benefit of its investment in Employee, and that Employer may face potentially increased compensation costs if Employee terminates this Agreement for convenience, all of which amounts are extremely difficult to determine with certainty. The Parties further agree that the payment of such liquidated damages by Employee is Employer's sole remedy and the acceptance thereof by Employer shall constitute adequate and reasonable compensation to Employer for any and all damages and injury suffered by it because of such termination by Employee. The liquidated damages are not, and shall not be construed to be, a penalty.

6.2.b. Effect of Termination by Employee.

If Employee terminates this Agreement prior to its expiration, all compensation and other obligations owed by Employer to Employee under this Agreement will be terminated on the effective date of Employee's termination, except such sums as are earned by and are still owing to Employee prior to the effective date of Employee's termination. The

provisions of this Article 6.2 shall be without prejudice to any right Employer may have under applicable law. In no case shall Employer be liable to Employee for the loss of any collateral business opportunities or any other benefits, perquisites or income resulting from activities, contracts, consulting relationships or from any other sources whatever, that may ensue as a result of Employee's termination of this Agreement.

6.3 Expiration of Term

If at the conclusion of the Term of this Agreement set forth in Article 3.1 the Board of Regents does not appoint Employee to the position of President of the Desert Research Institute, or if the position of President of the Desert Research Institute is offered to Employee at any time during the Term by the Board of Regents and he declines it, Employee shall be entitled to return to a full-time faculty position at the Desert Research Institute at Rank IV for a two-year period consistent with the provisions set forth in Article 6.1.a.

ARTICLE 7 – RESTRICTIVE COVENANTS

7.1 Confidential Information.

The Parties agree that in the course of employment, Employee will have access to confidential information regarding the Institution and its programs, including donor lists and donor information, which could be used by other institutions to the disadvantage of the Institution. Employee shall not provide, and is prohibited from providing, any such confidential information to other institutions, their employees, agents or representatives.

7.2 Other Employment Opportunities.

The Parties agree that should another employment opportunity be presented to Employee or should Employee be interested in another position as a President at any institution of higher education, Employee shall immediately notify the Chancellor in writing of such opportunity or interest.

ARTICLE 8 – MISCELLANEOUS

8.1 Choice of Law and Venue.

It is the intent of the Parties hereto that this Agreement shall be governed by and construed in accordance with the laws of the State of Nevada and the laws of the State of Nevada shall govern the validity, performance and enforcement of this Agreement. Any and all disputes arising out of or in connection with this Agreement shall be litigated in a court of competent jurisdiction in Clark County, State of Nevada, and the Parties hereby expressly consent to the jurisdiction of said court.

8.2 Assignment of Agreement.

Employee's rights and interests under this Agreement may not be assigned, pledged or encumbered by Employee.

8.3 Merger Clause.

THIS AGREEMENT CONSTITUTES THE FULL AND COMPLETE UNDERSTANDING OF THE PARTIES WITH RESPECT TO THE EMPLOYMENT OF EMPLOYEE AND SUPERSEDES ALL PRIOR UNDERSTANDING AND AGREEMENTS, ORAL OR WRITTEN, REGARDING EMPLOYEE'S EMPLOYMENT BY THE BOARD OF REGENTS.

8.4 Amendments to Agreement.

This Agreement may be amended at any time only by a written instrument duly approved by the Board of Regents and executed on behalf of the Board of Regents by the Chancellor or designee and Employee.

8.5 Severability.

If any provision or provisions hereof shall be deemed invalid or unenforceable, either in whole or in part, this Agreement shall be deemed amended to delete or modify, as necessary, the offending provision or provisions or to alter the bounds thereof in order to render it valid and enforceable.

8.6 No Waiver of Default.

No waiver by the Parties hereto of any default or breach of any covenant, term or condition of this Agreement shall be deemed to be a waiver of any other default or breach of the same or any other covenant, term or condition contained herein.

8.7 Acknowledgement.

Employee acknowledges that Employee has read and understands the provisions of this Agreement and that such provisions are reasonable and enforceable, and Employee agrees to abide by this Agreement and the terms and conditions set forth herein. Employee acknowledges having had the opportunity to consult with counsel of Employee's choice regarding the provisions of this Agreement prior to signing it.

8.8 Indemnification

Employee agrees to hold harmless and indemnify the Board of Regents, and its officers, employees and agents from any and all suits, claims, demands, damages, liability, costs and expenses, including attorneys' fees and costs, arising out of Employee's performance of acts outside the scope of this Agreement, or for acts in pursuit of outside income as permitted by this Agreement, except such suits, claims or demands in which Employee seeks to compel Employer to comply with its obligations hereunder or in which Employee seeks to enforce any remedies Employee may have hereunder. This Article 8.8 shall survive the termination for any reason of this Agreement.

8.9 Employer Retains All Materials and Records.

All materials or articles of information including, without limitation, all documents, records, material or data, furnished to Employee or developed by Employee in connection with Employee's employment hereunder, are and shall remain the sole property of the Board of Regents. This Article 8.9 shall survive the termination for any reason of this Agreement.

8.10 Employee Will Not Incur Indebtedness.

It is mutually agreed and understood that Employee shall not incur any indebtedness for or on behalf of the Institution except in accordance with the policies and procedures established by the Board of Regents.

8.11 Government Immunity Not Waived.

It is expressly agreed and understood between the Parties that the Board of Regents is an entity of the State of Nevada and that nothing contained herein shall be construed to constitute a waiver or relinquishment by the Board of Regents of the right to claim such exemption, privileges and immunities as may be provided by law.

8.12 Notice.

Any notice or communication which may or is required to be given under this Agreement shall be in writing and shall be deemed to have been given on the earlier of either the day actually received or on the close of business on the third business day next following the day when deposited in the United States Mail, postage prepaid, registered or certified, addressed to the party at the address set forth at its name below or such other address as may be given by such party in writing to the other:

If to Employee:

Dr. Kumud Acharya
2215 Raggio Parkway
Reno, Nevada 89512

With a copy to:

Dr. Kumud Acharya
755 East Flamingo Road
Las Vegas, Nevada 89119

If to the Board of Regents:

Office of the Chancellor
2601 Enterprise Road
Reno, Nevada 89512

With a copy to:

Chief of Staff and Special Counsel
4300 Maryland Parkway
Las Vegas, Nevada 89119

8.13 Applicability of Nevada System of Higher Education Code.

Except as expressly stated herein, the provisions of the NSHE Code, Title 2 of the Board of Regents' Handbook, as may be amended from time to time during the Term, are incorporated in this Agreement.

8.14. Force Majeure.

Neither party shall be considered in default in the performance of its obligations under this Agreement if such performance is prevented or delayed by Force Majeure. Force Majeure shall be understood to be any cause which is beyond the reasonable control of the party affected and which is forthwith, by notice from the party affected, brought to the attention of the other party, including but not limited to war, hostilities, revolution, civil commotion, strike, lockout, epidemic, pandemic, accident, fire, wind or flood or because of any law, order, proclamation, ruling, regulation or ordinance of any government or subdivision of government or because of any act of God.

8.14 Captions.

All captions in this Agreement are included for convenience only and do not constitute, nor are incorporated in, the terms and conditions of this Agreement.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement or caused this Agreement to be executed, intending to be legally bound by its provisions upon approval of the Board of Regents, Employee acknowledging that he has had an opportunity to review this Agreement with his own attorney.

BOARD OF REGENTS OF THE NEVADA SYSTEM
OF HIGHER EDUCATION

DR. KUMUD ACHARYA

By: _____
Chancellor

By: _____
Dr. Kumud Acharya

Date: _____

Date: _____