

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.c 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 and Section 5, as amended from time to time. In addition to the prohibited activities set forth in Title 1, Article 7, Section 3.14 and Section 5, 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 and Section 5 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.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 Post-Presidency Employment Upon Expiration of Term or Termination Without Cause.

Upon the expiration of the Term of this Agreement set forth in Article 3.1, 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, option (b).

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 any third party outside of NSHE or to any other institution, its employees, agents or representatives when the institution does not have authority to receive said confidential information. A breach of this section by Employee shall constitute cause to terminate this Agreement under Section 6.1.d.

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.

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 Entire Agreement.

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 of the Nevada System of Higher Education 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 regents, 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 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

And
Office of the Chancellor
4300 Maryland Parkway Las
Vegas, Nevada 89119

With a copy to:

Chief of Staff to the Board of Regents
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. Any amendments to the Code after this Agreement is executed shall be incorporated into this Agreement and binding upon the Employee.

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 of the Nevada System of Higher Education.

EMPLOYER

EMPLOYEE

BOARD OF REGENTS OF THE NEVADA SYSTEM
OF HIGHER EDUCATION

DR. KUMUD ACHARYA

By: _____
Patricia Charlton, Chancellor

By: _____
Dr. Kumud Acharya

Date: _____

Date: _____