

**NEVADA SYSTEM OF HIGHER EDUCATION  
PROCEDURES AND GUIDELINES MANUAL**

**CHAPTER 5**

**FISCAL PROCEDURES**

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# NEVADA SYSTEM OF HIGHER EDUCATION PROCEDURES AND GUIDELINES MANUAL

## CHAPTER 5

### FISCAL PROCEDURES

#### Section 1. Management of Host Accounts/Expenditures

These procedures are in addition to the Board of Regents' policies on host expenditures defined in the *Handbook*, Title 4, Chapter 10.

1. Authority. The authority to incur host expenditures is delegated by the NSHE Board of Regents to the Chancellor (for System Administration) and to the Presidents (for each institution). Due to the sensitive nature of hosting expenditures, the President may not delegate authority below the level of vice president, deans, or direct reports to the President.

Host expenditures incurred by a President must be submitted to the Chancellor for approval. The President's hosting expenditures cannot be approved by employees subordinate to the President. Similarly, the Chancellor must request approval from the Board Chair for host expenditures incurred by the Chancellor.

Employees delegated authority from the institution President for host expenditures may not approve their own hosting expenditures whether incurred directly or indirectly.

2. Accountability. System-wide procedures for the management of host expenditures within the guidelines of this section are established by the Chancellor. Institutions may adopt more restrictive standards and should include them in their administrative procedures manual. The Chancellor and Presidents are responsible for management of the host expenditures created under their respective authority.
3. Restrictions. All host expenditures (both President's Host funds and Institutional Host funds) must conform to Board of Regents' policy and Chancellor's procedures established herein. Host expenditures may not be used to circumvent state or institutional regulations that restrict reimbursement rates for state-funded activities.
  - a. Host funds shall not be used to reimburse employees for expenses incurred while in travel status in excess of state-approved lodging and/or per diem rates.
  - b. Per diem will not be reimbursed to an employee or contractor for meals that have been otherwise paid as a host expense.
4. Participants. Host expenditures are warranted for business events and functions where personnel external to an institution are necessarily in attendance. Where the only participants at a business event or function are institutional employees, host expenditures may be approved by the person with account-signature authority if:
  - a. It is a special event, such as a retreat, retirement or annual recognition or award ceremony, or

- b. It is a business meeting or workshop, scheduled for a specific agenda that runs through normal meal or break times and whose schedule permits the efficient gathering of employees from different offices or units across the institution.
  - c. The costs associated with the attendance of a spouse, partner or significant other, including travel related expenditures (in accordance with the standard reimbursement rates) when appropriate, are allowed if approved by the President of the institution, the Chancellor or the Board Chair.
  - d. The primary beneficiaries/attendees are medical or dental residents whose duties restrict the resident to the premises.
5. Documentation. Hosting expenditures should be documented in accordance with Internal Revenue Service guidelines for expense substantiation. This includes, but is not limited to, person(s) hosted, amount, date, time, place, business purpose, and business relationship of those hosted. This is referred to as the “who, what, when, where and why” substantiation. In the case of large gatherings, identification of groups of people invited may be satisfactory. All receipts submitted for payment must clearly indicate the vendor and date of purchase and detailed descriptions of the items procured.
6. Annual Review Required. Each institution’s host expenditure will be reviewed annually by the institution’s Chief Business Officer or designee to determine that host expenditures are reasonable and necessary.
7. Table Purchases. The purchasing of tables, including individual attendee tickets and event sponsorship that includes a table or ticketed entrance to charity events, fundraising events, or other public functions by the System institutions shall be limited:
  - a. The decision to purchase a table shall be governed by the following standards, with an assumption that the decision to purchase a table would normally be made on the basis of affirmative answers to two or more of these standards:
    - I. Is it an event at which individuals are likely to be present with whom the Chancellor, institutional President, or an appropriate representative wishes to interact on pressing System or institutional business? Will attendance at the event enable or advance such interaction, either at the event or later?
    - II. Is it an event at which individuals are likely to be present with whom the Chancellor, institutional President, or an appropriate university representative wishes to interact in order to advance fund-raising or community relations goals? Will attendance at the event enable or advance such interaction, either at the event or later?
    - III. Is it such a high-profile event that attendance by the Chancellor, institutional President, or appropriate university representative is important to the recognition of the NSHE or System institution as an important corporate citizen in Nevada?
    - IV. Is it an event at which students and/or faculty from the System institution can meet and interact with special guests for educational purposes?

- V. Will the event honor an individual who is – or has been – a significant donor to or supporter of the System institution? Will attendance by System or institutional representatives either convey thanks for such private support in an important and meaningful way or advance the institution’s conversations with the individual about additional future support?
- b. No tables will be purchased by System institutions at events hosted by other institutions within the NSHE.
- c. No tables will be purchased by System institutions at events hosted by organizations officially registered as political action committees.
- d. System institutions shall be limited in their expenditures of host funds for table purchases (including individual attendee ticket purchases) not to exceed \$50,000 annually:
  - I. If a private donor or corporation donates a table to a System institution, the donation value shall not count toward the institution’s annual limit.
  - II. Except when excluded under d. I. above, donations/doundation purchases are included in the above table restrictions and overall institution annual limit.
- e. On a case-by-case basis, the Chancellor may grant waivers for table purchases exceeding the annual purchase limit established in subsection 7.d. Upon request and proper documentation, the Chancellor may grant a waiver for a particular event or, if appropriate, an increase in the limit. In the latter case, the institution shall provide details on the actual expenditures in order to allow compliance with the reporting requirements of this subsection. Any request for a waiver must be copied to the Chief Financial Officer who will report all such exceptions to the Board of Regents.

(Added 6/05; A. 1/06, 4/06, 3/08, 11/12, 9/14, 4/24)

## **Section 2. Purchasing and Related Procedures**

The Business Centers conform to the following procedures:

- I. Basic Purchasing Procedure. Except for personal/consultant services involving technical, professional or specialized skills or training and as noted in Chapter 5, Section 2c, all materials, supplies, equipment, services, and construction shall be purchased from the lowest responsive and responsible bidder after giving due consideration to price, life cycle cost, quality, availability, conformance to specifications, financial capability and service. The Purchasing Department of each Business Center may develop more detailed policies and procedures for purchasing activities as long as they are in compliance with the limits and delegations defined in the Board of Regents Purchasing Policy (Title 4, Chapter 10). The Purchasing Division of each Business Center will develop specific policies for obtaining personal/consultant services involving technical, professional or specialized skills or training, including architects, engineers, and other design professionals.
  - a. Single or conglomerate purchases from a single vendor, the estimated cost of which is \$50,000 or more shall be purchased after the Purchasing Department:
    - (1) advertises for bids at least once in a newspaper of general circulation in the area of the campus to be supplied and not less than four (4) calendar days prior to opening bids;

- (2) gives written notice to pertinent vendors on the "vendors list"; and
  - (3) publicly opens, reads aloud and records sealed bids at the time and place so advertised.
- b. A contract of any nature may be entered into without advertising when the estimated amount required to perform the contract is less than \$50,000:
- (1) if the estimated amount required to perform the contract is \$25,000 or more, but is less than \$50,000, requests for quotes must be solicited from two or more responsible vendors capable of performing the contract, if available;
  - (2) the Purchasing Department shall maintain a record of all written requests for quotes and responses received, in accordance with the Nevada System of Higher Education Policy covering record retention; and
  - (3) nothing in this section prohibits the advertising for or requesting of bids for purchase of any dollar amount.
- c. Except as noted below, all other purchases shall be made by the Purchasing Department after following generally accepted purchasing procedures for the economical and timely procurement of materials, supplies, equipment, services and construction.

The Purchasing Department may grant a competitive bidding exception for the following, and if such an exception is granted, the rationale/justification for it must be in writing, approved by the Purchasing Department, and included in the Purchasing file for this transaction:

- (1) Proprietary, single, or sole source items.
- (2) Purchasing may solicit and accept advantageous trade-in allowance for personal property which has been determined to be of no further use to the Business Center and may award any bid to the bidder submitting the lowest net bid after deduction of such trade-in allowance.
- (3) In the case of supplies, materials or equipment which can be purchased at any court-ordered auction, closeout, bankruptcy or other similar sale may be made by the Purchasing Department or their authorized representative and at a reasonable savings over the cost of like merchandise and below market cost of the area, a contract or contracts may be let or purchase made without complying with the requirements for competitive bidding. Documentation for such purchase or acquisition must be made for record and approved by the Chief Business Officer of the institution.
- (4) Once Purchasing has advertised for or requested formal bids or proposals in letting a contract and no responsive and responsible bids or proposals were received, Purchasing may negotiate a contract with reasonably interested parties without further need for competitive bidding.
- (5) Contracts which by their nature are not adapted to award by competitive bidding including contracts for such items or services which may only be contracted from a single or sole source; conventions; workshops; seminar rooms; special functions, purchase of perishable goods; books; subscriptions; library materials; and

- (6) Nothing in this section prohibits advertising for or requesting bids.
- d. With the written permission of the Chief Business Officer of the institution involved, a contract may be instituted in an "emergency" situation by waiving the necessary advertising or bidding requirements of this chapter. In any such case, a full written record shall be made of the circumstances. An emergency is defined as one which:
- (1) results from the occurrence of a disaster such as, but not limited to, fire, flood, hurricane, riot, power outage or disease; or
  - (2) may endanger the health, safety or welfare of the students, faculty, staff or public if not immediately resolved.
- e. Livestock purchases for College of Agriculture programs may be made by the Dean of the College without reference to the Purchasing Department.
- f. Purchases in excess of \$10,000 of specially selected hay for use by the College of Agriculture in research or experimental tests may be made after solicitation of three written quotes.
- g. Capital Construction.

Any new construction, repair, improvement, or reconstruction on land, appurtenances and buildings of the Nevada System of Higher Education (NSHE), the estimated cost of which is \$250,000 or more, which is intended for long-term, continued use or which extends the useful life of a capital asset, is deemed a capital construction project.

This does not apply to deferred maintenance projects, repair or maintenance projects, or remodeling projects of internal rooms of a building even if these projects extend the useful life of a capital asset and that are under \$250,000. These will be referred to as repair and maintenance projects.

Institutions will establish a fund for capital projects. The institutional business officer will be required to review requests for capital projects and repair and maintenance projects to ensure they are classified properly. Annually, institutions will provide a report to the Board identifying all capital project accounts separated by those with State funds of greater than 25 percent and all others.

The respective institutional department responsible for capital construction (i.e., Facilities or Planning and Construction) must provide direct oversight for all capital construction projects, including repair and maintenance projects. Project management staff and if applicable, the department staff who will be the user of the project, will be sufficiently involved in the project planning, review, approval, and management of all capital construction projects to ensure compliance with all internal and external requirements.

Upon the request of an institution, the State Public Works Board may delegate to that campus any of the authority granted to the State Public Works Board pursuant to *Nevada Revised Statutes* (NRS) 341.141 to NRS 341.148, inclusive. Delegation by the State Public Works Board shall be documented in the project records; otherwise, capital projects shall comply with NRS 341.141 through NRS 341.148.

A contract for a capital construction project may be entered into without advertising for sealed bids if the estimated cost to perform the contract is less than \$100,000.

- (1) If the estimated amount for performing the contract is more than \$25,000, but is less than \$100,000, requests for firm written quotations must be solicited from not less than three responsible bidders capable of performing the contract. The Nevada System of Higher Education may award the contract to the lowest bidder or reject all quotations. Nothing in this section prohibits the advertising for or requesting of bids for purchase of any dollar amount.
- (2) Such projects over \$100,000 shall be advertised in a newspaper of general circulation in the area of the campus where the work is to be performed and not less than four (4) calendar days prior to opening bids.
- (3) Separate sealed bids for each capital construction project are required.
- (4) Approved plans and specifications for the capital construction project must be on file at a place and time stated in the advertisement for the inspection of all persons desiring to bid thereon and for other interested persons.
- (5) The institution may accept bids on either the whole or part of the construction, equipment and furnishings, and may let separate contracts for different and separate portions of any project, or a combination contract for structural mechanical and electrical construction if savings will result to the lowest bidder.
- (6) The provisions of subsection (g) apply to all capital construction projects funded in whole or in part by state appropriations.
- (7) An agreement for a capital construction project, funded totally from non-appropriated sources, may be entered into with a contractor that satisfies any qualifications required by the NSHE institution.
- (8) Before any contract for a capital construction project exceeding \$100,000, or as otherwise specified in *Nevada Revised Statutes* 339.025, is awarded to any contractor, he shall furnish to the contracting body the following bonds which become binding upon the award of the contract to the contractor:
  - a. A performance bond in an amount to be fixed by the contracting body, but not less than 50 percent of the contract amount, conditioned upon the faithful performance of the contract in accordance with the plans, specifications and conditions of the contract. The bond must be solely for the protection of the NSHE, which awarded the contract.
  - b. A payment bond in an amount to be fixed by the NSHE, but not less than 50 percent of the contract amount. The bond must be solely for the protection of claimants supplying labor or materials to the contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract.
- (9) One or more surety companies authorized to do business in the State of Nevada must execute each of the bonds required pursuant to this section. If the contracting body is the State of Nevada or any officers, employee, board, bureau, commission, department, agency or institution thereof, the bonds must be payable to the contracting body.
- (10) Each of the bonds must be filed in the office of the NSHE institution that awarded the contract for which the bonds were given.

- (11) Nothing in this section prohibits a contracting body from requiring bonds.
- (12) Contracts for Design-Build; Lease-Purchase; Installment-Purchase; or similar approaches to procure facilities must also follow appropriate public solicitation procedures, which at a minimum provide vendors with an appropriate opportunity to respond to institutional needs. Projects of these types shall be subject to an appropriate public solicitation process, which must be approved by the appropriate Purchasing Department and consistent with applicable NRS Chapter 338 provisions pertaining to design professionals. Based on the results of legislation adopted during the 2007 Session pursuant to the recommendations of the Senate Bill 426 Advisory Group to Conduct an Interim Study on Lease-Purchase and Installment Purchase Agreements by Public Entities (Chapter 508, *Statutes of Nevada 2007*), NSHE institutions will adopt specific procedural language for projects of this type on or before December 31, 2007.
- (13) A Purchase Order (PO) alone cannot be used for any construction contracts. Construction contracts exceeding \$100,000 must be properly approved and key clauses as stated in the System's contract policy must be included in the construction contracts. If a PO is used for construction activity under \$100,000, it must be supplemented by appropriate information (required clauses and information) and properly approved.
- (14) Except as otherwise provided, change orders will be approved in the same manner as the original contract.
- a. For capital construction contracts greater than \$5,000,000, the respective NSHE institutions shall provide notification to the Business, Finance and Facilities Committee at least seven (7) calendar days prior to authorizing any change in the scope of the design or construction of a project if the change increases or decreases the total square footage by 10 percent or more or increases the cost of the project by 10 percent or more.
  - b. Changes to a capital construction contract must document compliance with contract terms and include, if applicable, detailed labor, material, equipment, or overhead and profit markup fees and include documentation that the change was reviewed for compliance of the contract terms by a qualified institutional staff member. Individual NSHE institutions may authorize change orders, except for changes that require prior approval pursuant to paragraph 14.a, before or during construction as follows:
    - i. In any amount, where the change represents a reduction in the total awarded contract price.
    - ii. Except as otherwise provided in subparagraph (iii.), not to exceed in the aggregate 15 percent of the total awarded contract price, where the change represents an increase in that price.
    - iii. In any amount, where the total awarded contract price is less than \$100,000.
    - iv. In any amount, where additional money was authorized or appropriated by the Legislature and issuing a change order is in the best interests of the State or the respective NSHE institution.

- c. The respective institutions shall notify the Business, Finance and Facilities Committee at least seven (7) calendar days prior to canceling a project authorized by the Business, Finance and Facilities Committee or delaying the commencement or completion of such a project beyond the period for which money for the project was authorized.
  - d. Reporting. A report shall be submitted by the institution in question at the next regularly scheduled Board of Regents meeting. In acting upon a proposed change in the scope of the design or construction of a project pursuant to paragraph 14.a or a proposed cancellation or delay of a project pursuant to paragraph 14.c, the Business, Finance and Facilities Committee shall consider, among other things:
    - i. The amount and reason provided by the institution for the proposed change in the scope of the design or construction or the cancellation or delay of the project;
    - ii. The current need for the project; and
    - iii. The intent of the institution in originally approving the project.
- (15) Each institution will collect, maintain, and report upon request, reliable capital construction project information.
- (16) Capital Project Management Procedures
- a. The respective institutional department responsible for construction at the institution (i.e., Facilities or Planning and Construction) shall document attendance of all project scoping planning meetings in the project files. Meeting participants shall include representation from the entities that will be the users of the project.
  - b. The institution managing the construction project shall report the completion of all work performed under the contract to the Labor Commissioner before the final payment of money due to the contractor by the institution. The institution shall document the reporting to the Labor Commissioner in the project files.
  - c. The institution which awarded the contract shall verify project close-out documentation is obtained before the final payment of money due the contractor is paid by the institution. Documentation includes but may not be limited to certificates of substantial completion and as-built drawings. Institutions shall ensure all required close-out documents are identified in construction agreements and project management staff are trained in close-out procedures. In the event project close-out documentation is timely requested, but not timely received by the institution due to circumstances beyond the control of the institution and the contractor, the institution may release final payment with approval by the institution's business officer.
  - d. All institutions are required to develop policies and procedures to monitor project balances and to ensure unused project funds are reverted timely. Project accounts should be closed and unused funds should be returned to source within six months of project completion. When projects are funded from multiple sources, in the absence of a documented funding source priority, funds are allocated to expenditures from restricted sources followed by unrestricted sources, without regard for the timing of project funding deposits.

- h. Joinder (or Mutual Use of Contract) Capability – With the agreement of the vendor, the NSHE may join, or mutually use, the contracts or pricing agreements of appropriate federal, state, and local entities and consortiums. Where the NSHE uses the original contract in order to obtain quantity pricing or other competitive discounts, the original contract is not liable for the obligations of the NSHE. The requirements for competitive quotations and/or formal bidding may be considered satisfied through the use of the joinder contracts, including federal/state/local contracts, consortium agreements, and the educational pricing agreements.

## II. Tier 2 & Subcontractor Reporting Requirements

- a. The Nevada System of Higher Education supports equal opportunity for minority-owned, women-owned, and other small disadvantaged business enterprises (MWDBE) to compete for contracts awarded by NSHE institutions. The NSHE also supports efforts to encourage local businesses to compete for NSHE contracts. In addition, the NSHE supports finding opportunities for such MWDBE and local business concerns to participate as subcontractors or Tier 2 suppliers in large contracts. A “Tier 2 supplier” or subcontractor is a supplier who is contracted for goods or services with the prime contractor, and may include, but is not limited to MWDBE and local business enterprises.
- b. Bid Evaluations for Prime Contractors. NSHE institutions shall require bid documents and resulting prime contracts for the purchase of goods or services that exceed \$1,000,000 include the bidder's historical and anticipated commitment to Tier 2 MWDBE and local business enterprises, including but not limited to indication of certification as a minority or women-owned business enterprise, and local subcontractor/local supplier spending. The bid documents and resulting contracts must contain a list of the Tier 2 businesses or suppliers, including any MWDBE or local business enterprises that will be given the opportunity to bid as subcontractors.
- c. Annual Reporting by Prime Contractor. Bid documents and resulting contracts for the purchase of goods or services that exceed \$1,000,000 must, at a minimum, contain a requirement for the prime contractor/supplier to annually report expenditures with MWDBE business concerns, and to also annually report expenditures with local subcontractors. These annual reports pertain only to expenditures that are directly attributable to the NSHE prime contract. This provision is not applicable to contracts for utilities or sponsored projects. The annual report should contain the following information for the most recently completed fiscal year:
  - (1) The name, city and state; type of each local, women-owned, minority and/or disadvantaged subcontractor (Tier 2 supplier or local subcontractor); and any certification awarded as a local, women-owned, minority or disadvantaged subcontractor, including the entity that awarded the certification. If a business concern meets more than one definition (e.g. local and women-owned, or minority and women owned), that should be identified;
  - (2) A description of the goods or services purchased; and
  - (3) The amount of expenditures with the subcontractor attributed to the prime contract for the 12 month period.

Exceptions to this reporting requirement may be established by the Chief Financial Officer in situations where the contract is unlikely to generate Tier 2 or local subcontractor spending, or if there are legal impediments. Institutions or business centers may adopt more detailed requirements and may also apply similar reporting requirements for contracts under \$1,000,000. Federal contracts and grants may also have more detailed requirements for MWDBE spending.

- d. Definition of Local Subcontractor. "Local subcontractor" is intended to mean a business concern that is a) owned 51 percent or more by Nevada residents, b) is headquartered in Nevada, or c) a majority of employees of the business are Nevada residents.
- e. Definition of Disadvantaged Business Enterprise (DBE). "Disadvantaged Business Enterprise" is intended to mean a business concern owned by a minority or woman that is at least fifty-one percent (51%) unconditionally owned by one or more minority or women individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.
- f. Definition of Minority Business Enterprise (MBE). "Minority Business Enterprise" is intended to mean a business concern owned by one or more minority individuals that is at least fifty-one percent (51%) unconditionally owned by one or more minority individuals, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.
- g. Definition of Women-Owned Business Enterprise (WBE). "Women-Owned Business Enterprise" is intended to mean a business concern owned by one or more women that is at least fifty-one percent (51%) unconditionally owned by one or more women, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals.

### III. Supply Chain Diversity (Tier I):

In an effort to diversify the NSHE supplier base and engage local and MWDBE vendors when possible, NSHE institutions will utilize the following supplier outreach process:

All formal solicitations must be distributed through one or more approved vendor outreach channels. The Chief Financial Officer will prepare and maintain a list of outreach channels.

Each purchasing center will designate a supplier outreach coordinator. The supplier outreach coordinator will be identified on the institution's website and in procurement documents and will assist local and disadvantaged vendors with solicitations, questions, and vendor training.

NSHE institutions will report annually the Tier I MWDBE vendor expenditures for the most recently completed fiscal year.

#### IV. State Business License Requirements

A person conducting business for profit in Nevada is required to have a current Nevada business license pursuant to NRS 76.100(1) unless the entity is either a) a non-profit corporation or b) meets the requirements for an exemption and has filed the appropriate notice of exemption with the Nevada Secretary of State. All purchase orders and contracts for business services to be provided in Nevada should, at a minimum, contain a verification by the vendor that the organization has a current Nevada business license, is a non-profit corporation or has filed for an appropriate exemption. For contracts in excess of \$25,000, a business license number and information demonstrating good standing with the State of Nevada is required. If necessary, a contract may be initiated with a business that has an application for a state business license pending.

#### V. Presidential Office Expense

Furniture expenses for presidential offices in excess of \$10,000 annually require the Chancellor's approval. The Chancellor should also be consulted with regard to significant remodeling expenses for presidential offices.

(B/R 6/91, 9/99, 10/02, 8/04; Added 6/05; A. 7/06, 3/07, 12/07, 12/10, 6/12, 9/12, 3/13, 9/23)

### **Section 3. Preparation and Approval of Contracts (formerly CM 02-04)**

The Nevada System of Higher Education annually enters into many contractual agreements. The efficient execution (signature) of contracts is often of critical importance. However, the processing and execution of a contract is sometimes delayed because of errors or omissions in its form.

The requirements and procedures stated in this policy have been established for the preparation and processing of proposed NSHE contracts. These requirements and procedures will result in the efficient processing of contracts and in documents that are consistently sound, correct in format, and that limit the potential liability to the System.

The six most common problems involving contracts are:

- The failure of a contract to state that the Board of Regents is the contracting party on behalf of an NSHE institution;
- The inclusion of a "hold harmless" clause holding the other party harmless without including language holding NSHE harmless;
- The inclusion of language that mandates NSHE carry commercial general or business automobile liability insurance;
- The failure of an institution to provide clear oversight of the terms and language of any sub-contracts that may be executed;
- The failure of an institution sending a contract to the Chancellor to ensure that the President has reviewed and recommended it; and
- Failing to require the other party to have appropriate commercial general, business automobile, or professional liability coverage and limits.

This procedure contains the following elements:

- Policy guidelines and procedures presented in a question-and-answer format to 33 commonly asked questions;
- Checklist to be followed for each contract;
- Insurance Requirements for Information Technology Agreements;
- NSHE Standard Form Contract for Services of an Independent Contractor;

- NSHE Standard Form Lease;
- NSHE Standard Form Instructional Facility Agreement;
- NSHE Standard Form Education Affiliation Agreements (Clinical and General);
- NSHE Standard Form Inter-institutional Agreement.

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# NSHE CONTRACT POLICY

## FREQUENTLY ASKED CONTRACT QUESTIONS

The Board of Regents has given the Chancellor of the Nevada System of Higher Education the authority to enter into contracts on behalf of the Nevada System of Higher Education subject to limited exceptions that are reserved for approval of the Board of Regents, such as certain real estate matters, and employment contracts of longer than one year.

The purpose of this question and answer format is to state in plain terms the NSHE policy on contracting, including any delegation of authority from the Chancellor to the NSHE institutions. Where authority has been delegated from the Chancellor to an institution that authority resides in the President of the institution. While the President may delegate that authority in writing to other administrative officers at the institution, the President ultimately remains responsible for all contracts entered into by the institution. Therefore the institution should have policies in place that provide for appropriate levels of internal review, including legal and financial review, pertaining to the economic and liability risks associated with the transaction. With respect to System Office contracts, the Chancellor may establish additional policies and delegation authority within the System Office and its units.

### **Q 1 What is a contract?**

**A** A contract is an agreement between two or more persons (or entities) that creates an obligation to do or not to do a particular thing. Its essential components are competent parties (persons or entities legally capable of contracting), subject matter (the purpose of the contract), a legal consideration (the inducement to contract, usually money or something of value, but also including mere promises to perform something or refrain from doing something), mutuality of agreement (all parties must voluntarily enter the contract) and mutuality of obligation (all parties are obligated to do something or not to do something they otherwise have a right to do).

Labels do not control whether a contract exists or not. The following, which are not meant to be all-inclusive, are all contracts if they constitute an agreement between two or more persons that creates an obligation to do or not to do a particular thing:

- a contract;
- an agreement;
- a lease;
- a rental agreement;
- a letter or memorandum of intent;
- a letter or memorandum of agreement;
- a letter or memorandum of understanding;
- an employee separation agreement;
- a facility use agreement;
- an education affiliation agreement;
- a purchase order;
- a grant;
- a grant agreement.

It is generally preferable to obtain original signatures on at least one copy of the contract as such original signatures may be useful in establishing the validity of signatures in the event of a dispute. However, circumstances such as exigency, location of parties, form of the contract and size of the contract may make acceptance of a facsimile or an electronic signature acceptable. Any exception to obtaining original signatures must be expressly approved and documented by the institution General Counsel's Office.

**Q 2 Why must these procedures be followed?**

**A** A contractual obligation is a legal obligation. Signing a contract is a very serious step which, depending on the terms of the contract, could put NSHE in a position of considerable liability—sometimes political, sometimes from a public relations standpoint, but most often of a financial nature. The policies contained in this procedure have been developed in order to limit financial liability from lawsuits that might arise from improperly written contracts. The procedures serve important interests of the Board of Regents, and it is essential they be followed by NSHE officers and employees.

**Q 3 Are student government contracts governed by these requirements and procedures?**

**A** Yes. Student governments are an integral part of NSHE and the institutions in which they are established and, therefore, contracts they may enter into are subject to the contract policies established by the Board of Regents, the Chancellor, and the Presidents of their institutions.

**Q 4 Are contracts with performing artists governed by these requirements and procedures?**

**A** Yes. Contracts with performing artists are contracts with NSHE and, therefore, are subject to the same policies and procedures established by the Board of Regents, the Chancellor, and the Presidents of the institutions. If a standard form contract is used that has been approved by the System General Counsel's Office, it may be approved at the institutional level.

**Q 5 Are employment contracts for head coaches of athletic teams governed by these requirements and procedures?**

**A** Yes. Contracts with head coaches are contracts with NSHE and, therefore, are subject to the same policies and procedures established by the Board of Regents, the Chancellor, and the Presidents of the institutions. Often Board of Regents approval is required of athletic coach contracts because such contracts frequently exceed one year or contain certain perquisite/bonus provisions that require Board approval. Due to NCAA requirements, there are additional clauses in the employment contracts for head coaches that are not found in other employment contracts. Additional governing policy is contained in NSHE Code, Section 5.4.2 (b) and (c).

**Q6 Are internal contractual agreements between NSHE entities subject to these requirements and procedures?**

**A** As NSHE is a single legal entity, the need for oversight regarding agreements or understandings between units within the System is lessened in comparison to contractual agreements between NSHE and external legal entities. Accordingly, internal agreements between units within NSHE do not require the Chancellor’s signature, unless otherwise required by Board of Regents’ policies. These agreements, nevertheless, are subject to any policies that have been adopted at the institution level for the review and approval of contracts. Please note, however, that *Procedure & Guidelines Manual*, Chapter 6, Section 11 Basic Agreement for Inter-Institutional Cooperation in Sponsored Programs sets guidelines for inter-institutional agreements related to sponsored programs.

**Q 7 Why should I have to send my contract to the Chancellor’s Office at all? Why can’t the President sign it?**

**A** As the Board of Regents Bylaws state (Article III, Section 1), “The exclusive control and administration of the Nevada System of Higher Education is vested by the Constitution of the State in an elected Board of Regents.” One corollary of this is that the contracting party for any NSHE contract is the Board of Regents – not the universities, community colleges, state college, Desert Research Institute, or schools, colleges, centers, departments, or any other administrative sub unit of an institution of NSHE.

To be valid, the agreement should state that it is entered into by the **BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of \_\_\_\_\_** (*insert name of institution, followed by specific college or other subunit of the institution, if necessary*).

Similarly, the signature block should read:

**THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, on behalf of**  
**(name of institution and college or sub unit, if necessary)**

**By:** \_\_\_\_\_  
Chancellor (*or appropriate title if signature authority has been delegated*)

The Chancellor signs the contract as the contracting officer for the Nevada System of Higher Education. The Chancellor’s authority is derived from the Board of Regents Bylaws, Article VII, Section 3, which states that:

“The Chancellor is the Chief Executive Officer and Treasurer of the Nevada System of Higher Education, and is responsible for the financial management and coordination of the administration of the Nevada System of Higher Education and for the implementation of the Board’s policies. The Chancellor may delegate any of the duties of the office unless expressly prohibited by Board policy.

“Duties are prescribed by the Board of Regents and include the following:

\* \* \*

“(h) To serve as contracting officer for the Nevada System of Higher Education and to execute all contracts and other instruments on behalf of the University unless authority has been expressly retained by the Board of Regents or delegated elsewhere.”

Thus, the Chancellor has the sole authority to execute contracts unless such authority is delegated to an institution.

**Q 8 Does the President of an NSHE institution and legal counsel have to review a contract before it is sent to the Chancellor for signature?**

**A** Yes. It is the policy of the Chancellor that any contract sent to the Chancellor for signature must first be recommended by the President of the appropriate institution or the President’s designee. The purpose of this policy is to ensure that no institution will commit the Board of Regents or the institution to a binding contract without the knowledge of the institution’s chief administrative officer.

In addition, due to the nature of contracts that are sent by an institution to the System Office for Chancellor signature, all such contracts must be reviewed by the institution’s General Counsel’s Office. In connection with that review, the General Counsel’s Office is responsible for ensuring that the contract complies with Board and System policies, and should specifically identify any departure from those policies, along with the rationale for the departure.

**Q 9 If a contract has been sent to the Chancellor for signature and the Chancellor is absent, is there a way for the contract to be signed anyway?**

**A** Yes. During an absence from the office, the Chancellor delegates signature authority pursuant to written memoranda. The Chief Counsel’s Office may be contacted to determine the party to whom such authority has been delegated.

**Q10 What process must be followed in sending a contract to the Chancellor for approval?**

**A** All contracts submitted for approval must contain the following:

- 1) A signature block for the Chancellor
- 2) Flags on all pages requiring the Chancellor’s signature
- 3) One extra, flagged copy marked “Chancellor’s copy” or “System copy.” (Please note that it is time consuming to sign multiple originals, particularly with initials on each page. Generally, the System Office will retain one fully signed original with initials. If the institution or other parties want an original copy, it is recommended that such additional originals not include original initial blocks.)
- 4) An addressed return envelope (with postage if campus mail is not used);
- 5) Three initial blocks on each page, except the signature page. Initials are for the use of: 1) the President or designee 2) the party representative with whom NSHE is contracting, and 3) the Chancellor or designee. The failure to include initials on each page does not affect the validity of the contract, but it is cause for the Chancellor’s Office to reject the contract; and

- 6) An appropriately prepared cover sheet, in a form approved by the Chancellor's Office that, among other things, identifies any departures from NSHE or Board rules.

**Q 11 How much time should generally be provided for review and signature by the Chancellor?**

**A** Contract officers should normally anticipate a one week time period for processing at the System Office. When a contract is received by the Chancellor's Office, it undergoes tracking and summary review by the Chief Counsel's Office prior to signature by the Chancellor. Questions about the status of a particular contract should be directed to the Chief Counsel's Office.

**Q 12 Which contracts MUST ALWAYS be sent to the Chancellor for signature?**

**A** Contracts that must always be sent to the Chancellor for signature are:

1. All contracts that must be approved by the Board of Regents by law or policy. These include, but are not necessarily limited to:

- (a) the sale or purchase of real property or the long-term lease of real property owned by NSHE, including most easements over real property (See NRS 396.430 and Board Handbook, Title 4, Chapter 10, Section 1(9)). "Long-term" is defined as a demising period of greater than five (5) years, or alternatively, where the total consideration is greater than \$500,000.

NOTE A: The lease of NSHE property for specific, one-time events need not be approved by the Board of Regents and is excluded from the requirements of this paragraph, but may otherwise be subject to the requirements set forth hereinafter.

NOTE B: Contracts as described in (a) above must be placed on a Board of Regents Business, Finance and Facilities Committee agenda for approval with final approval by the Board of Regents.

NOTE C: All contracts that require consideration (cash, property, or services) valued in excess of five million dollars (\$5,000,000), calculated by adding the total cumulative payments, delivery, or performance over the entire term of the contract, require notice of intent to execute the contract be given to the members of the Business, Finance and Facilities Committee of the Board of Regents at least seven (7) calendar days prior to the execution of the agreement by the Chancellor.

2. All contracts with an open-ended or indefinite term. Except as provided in Q 13 A.8 below, contracts with an open-ended or indefinite term are construed as contracts longer than five years. Likewise, contracts with "evergreen" clauses, i.e. clauses that automatically renew the agreement if no action is taken, or options that unilaterally allow one party to extend the term of the agreement beyond a five year term, are also construed as contracts with a term in excess of five years. In contrast, a contract that requires both parties to mutually agree upon or assent, in writing, to continue the relationship is essentially a new contract, and such a clause is not an open-ended or indefinite term.<sup>1</sup> Irrespective of this interpretation, institution's should still be mindful of any applicable purchasing rules or bid requirements before exercising such an extension.

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<sup>1</sup> An example of this type of contract clause is as follows: "The parties may mutually agree, in writing, to extend the contract for an additional term of two years on the same or different terms."

3. Contracts that provide for the hiring of outside attorneys for legal services do not require Chancellor approval, but do require written approval of the Chief Counsel's Office. Chief Counsel's Office approval is not required for the retention of outside attorneys as hearing officers or administrative code officers under Title 2, Chapter 6.
4. Except for standard form federal grants and contracts (including private and state contracts that are funded with federal funds and therefore require compliance with federal grant requirements) and for NSHE purchase orders, all contracts:
  - (a) which require consideration (cash, property, or services) valued in excess of three million dollars (\$3,000,000), calculated by adding the total cumulative payments, delivery, or performance over the entire term of the contract,<sup>2</sup> OR
  - (b) which are for terms in excess of five years or which provide the automatic right to renew for terms that exceed five years in the aggregate.

**NOTE:** The presence of either condition is enough to require that the contract be signed by the Chancellor.

5. All contracts which, in the judgment of the President of an NSHE institution, have such a serious political, social, or financial impact on NSHE or the public that the Board of Regents' or the Chancellor's review is necessary.
6. All other contracts for which signature authority has not been delegated by the Chancellor as provided herein.

### **Q 13 What contracts can be signed by the President?**

**A** As noted previously in Question 7, the Board of Regents Bylaws authorize the Chancellor to delegate certain contract-related responsibilities.

Except for those contracts identified in Question 12 which must always be sent to the Chancellor for signature, and except as may be otherwise provided herein, the Chancellor hereby delegates signature authority for the following contracts to the Presidents of NSHE institutions or to the Presidents' designee, subject to the institution's reasonable judgment, at the time of entering into the contract, that the threshold limits set forth below will not be exceeded.

#### 1. Consideration of Three Million Dollars (\$3,000,000) or Less and Terms of Five Years or Less

Except as otherwise provided in Q 13 A.4 below (sponsored project contracts), all contracts (including interlocal cooperative agreements, interlocal contracts, and standard form contracts):

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<sup>2</sup> For example: a contract for \$60,000 per month for a five-year term would cumulatively exceed \$3,000,000 and, therefore, would require the Chancellor's signature.

- (a) which require consideration (cash, property or services) valued at three million dollars (\$3,000,000) or less, calculated by adding the total cumulative payments, delivery or performance over the entire term of the contract,<sup>3</sup> AND
- (b) which are for terms of five years or less or which provide the automatic right of either party to renew for terms that do not exceed five years in the aggregate.

**NOTE:** Both conditions must be present before the contract can be signed at the institutional level.

2. Cost Overruns, De Minimus Changes and Change Orders

Cost overruns or change orders which in the aggregate do not exceed 10 percent of the base contract amount, or de minimus changes that do not materially increase the risks of the contract such as brief extensions for time of performance and the like. If there is any question about whether a change is de minimus, the institution should obtain the advice of the Chief Counsel's Office.

3. Standard Form Federal Grants and Contracts (including private and state contracts funded with federal grant funds)

Except as otherwise provided in Q 13 A.4 below, all standard form federal grant applications, grants, contracts, modifications, and release forms, including private and state contracts funded with federal grant funds that therefore require compliance with federal grant requirements.

**NOTE:** Sub-contracts under approved federal grants and contracts are sometimes entered into with third parties to perform portions of the work or to provide materials. Because subcontracts are executed at the institution level and are not subject to review and approval by the Chancellor, it is the institution's responsibility to maintain proper administrative oversight over the terms of any subcontract.

4. Sponsored Project and Sponsored Program Contracts – Consideration of Three Million Dollars (\$3,000,000) or Less and Terms of Five Years or Less

All sponsored project and sponsored program contracts:

- (a) Which require consideration (cash, property or services) valued at three million dollars (\$3,000,000) or less, calculated by adding the total cumulative payments, delivery or performance over the entire term of the contract, AND
- (b) Which are for terms of five years or less or which provide the automatic right of either party to renew for terms that do not exceed five years in the aggregate.

**NOTE:** Both conditions must be present before the contract can be signed at the institutional level.

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<sup>3</sup> For example, a contract for \$45,000 per month for a five-year term would cumulatively total \$2,700,000 and, in conjunction with the fact that the contract is for five years or less, would therefore be a contract that could be signed by the President or designee. Please remember, however, the real estate contracts and leases of NSHE property have different contracting requirements that may trigger Board approval. (See Question 12(A)(1)).

5. Education Affiliation Agreements

All education affiliation agreements that do not exceed \$3,000,000 and/or five years in duration. All education affiliation agreements must have insurance and indemnification clauses that have been approved by the institution Risk Manager and General Counsel's Office. The insurance and indemnification clauses contained in NSHE standard form Education Affiliation Agreements are approved for use by all institutions and units.

6. Purchase Orders Issued by NSHE

All purchase orders in which the purchase contract is awarded to the "lowest responsive and responsible bidder," in accordance with the purchasing policy set forth in Title 4, Chapter 10, of the Board of Regents Handbook are delegated to the Vice President for Finance at the appropriate institution or his or her designee.

7. Intra-Institutional Contracts or Agreements

Agreements between NSHE entities that do not exceed \$3,000,000 and/or five years in duration. These agreements are, however, subject to any policies that have been adopted at the institutional level pertaining to the review and approval of contracts/agreements.

8. Schedules For Master Agreements

For some contracts, the institution may enter into a master agreement that contemplates that schedules may subsequently be developed under the terms of the master agreement. Whether Chancellor approval of an addendum or schedule is required is first determined by the process stated in the master agreement. For example, if the Chancellor approves a master agreement that specifies that the institution will sign all schedules, the contract controls. If the master agreement is silent, then the same rule applies as that for modifications, meaning that Chancellor approval is required if the schedule(s) individually or collectively exceed five years in duration or \$3,000,000 in amount.

9. Transfer Agreements for Biological Material Used in Research

Agreements to obtain the following biological materials used in research that exceed five years may be approved by the President or designee:

Material transfer agreements involving biological materials which are used in research, such as animals, reagents, cells, cell lines, antibodies, funguses, bacteria, viruses, antigens, cultures, nucleotides, proteins, pharmaceuticals, plasmids, vectors, embryos, tissues, fluids, and clinical specimens.

NOTE: The approval of such material transfers is subject to all other applicable contracting policies and procedures. At the end of each fiscal year, the institutions shall provide a report to the Chancellor regarding the approval of any such transfer agreements.

**Q 14 How does the President delegate his or her signature authority to another person?**

**A** The President may delegate his or her signature authority on contracts, including employment contracts, providing such delegation is made in writing and is specific to a position rather than to a person. A copy of the written delegation of signature authority shall be kept by the institution in a secure and accessible location or established archive for inspection and audit purposes.

In the case of System units housed on NSHE campuses – such as System Computing Services – the delegation of signature authority for applicable contract documents shall be delegated by the Chancellor to the appropriate Vice Chancellor in charge of the System unit.

**Q 15 What is the policy on delegated signature authority when standard form contracts are used?**

**A** Attached hereto are several NSHE standard form contracts. These contract forms may be used by all NSHE institutions. Electronic copies of the forms may be obtained from the Chancellor's Office. The form contracts are for convenience purposes and the same rules apply as to approval requirements.

**Q 16 If an institution's President or the President's designee is absent, is it possible to have another person in the institution sign a contract which has been otherwise delegated for signature authority to the President or the President's designee?**

**A** In cases where the person who has been delegated signature authority for a particular type of contract may be absent from the institution, he or she may redelegate signature authority to another person for the period of his or her absence. Such re-delegation must be in writing and designate a specific time frame.

**Q 17 If there is any doubt as to who has authority to sign a contract, what should be done?**

**A** When there is doubt as to who has the authority to sign a contract, the contract should be sent through appropriate channels to the President for transmittal to the Chancellor for signature.

**Q 18 Who must sign modifications to existing contracts?**

**A** Any modification to a contract should be in writing and signed by an appropriate officer. If the contract contains language specifically permitting authority to modify a contract, the contract provision controls. Otherwise, the modification should be signed by the highest ranking position signing the original agreement<sup>4</sup>, except that Chancellor approval is not required if the modification does not exceed the authority granted in Question 13(A)(2) or the modifications do not raise the contract amount in excess of \$3,000,000 and/or extend the term of the contract to more than five years.

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<sup>4</sup> For example, if the President and the Chancellor signed the original agreement, and the modification is de minimus or does not exceed the authority granted for cost overruns, only the President must sign the modification.

**Q 19 Who is authorized to sign notices of termination on behalf of the System for contracts that contain a provision that they are cancelable upon written notice to the other party?**

**A** The person who was authorized in the original contract to send or receive notices. If no one is so designated, then the person who signed the contract on behalf of NSHE may sign a notice of termination, except that a notice of termination for an institution contract may be signed by the institution President, even if the contract required Chancellor approval. The institution President should send the System Office notice of cancellation of contracts approved by the Chancellor.

**Q 20 Must employee separation agreements be sent to the Chancellor for review?**

**A** No, unless the agreements exceed the contracting authority of the institution President. Nevertheless, any such agreements must be reviewed by institution counsel to ensure that such agreements have the proper release language contained in them before they are executed.

**Q 21 What is the effect of a contract that is signed without the proper signature authority?**

**A** Any contract which is signed in violation of the policies stated herein is void and of no effect whatever. Any person who signs a contract in violation of these policies is subject to discipline up to and including termination and any other available remedies at law.

**Q 22 What are “hold harmless” clauses and why are they potentially dangerous?**

**A** Many private contractors or state or local governmental agencies routinely insert a clause in their contracts that is worded something like this:

“The University of Nevada agrees to indemnify and hold harmless the John Doe Company (or the city of Gotham) from any and all claims and losses arising from the performance of this contract.”

However, the State’s self-insurance program, to which NSHE belongs, protects only against acts or omissions of NSHE employees that occur within the scope of public duty or employment and that are performed or omitted in good faith. By agreeing to a clause like the one above, NSHE would be agreeing to defend the John Doe Company or the City of Gotham from any and all claims and losses, whether or not caused by any fault of any NSHE employee. In effect, by signing such a clause, NSHE would become the insurer of the other contractor. This is not permitted by the State of Nevada.

In addition, under Nevada law (NRS 41.035), NSHE’s liability for personal or property injury is one-hundred and fifty thousand dollars (\$150,000) per cause of action. By signing such a hold-harmless clause without reference to this limitation, NSHE may open itself up to the argument that it has waived its one-hundred and fifty thousand dollar (\$150,000) limitation on personal or property damage claims.

It is not necessary to have an indemnification clause in System contracts as such clauses seek to contractually allocate responsibility when existing state laws typically already provide a mechanism for such allocation. Nonetheless, system institutions may choose to require such a clause or the other party may request such a clause. If the other contracting party insists upon a hold-harmless clause, the statement that is acceptable to NSHE and the State of Nevada is one that states:

“To the extent limited in accordance with NRS 41.0305 to NRS 41.039, (Institution\*) shall indemnify, defend, and hold harmless (name of other party) from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by (Institution) or any of its officers or employees, which may occur during or which may arise out of the performance of this Agreement. (Institution) will assert the defense of sovereign immunity as appropriate in all cases, including malpractice and indemnity actions. (Institution’s) indemnity obligation for actions sounding in tort is limited in accordance with the provisions of NRS 41.035 to \$150,000.00 per cause of action.”

\*Or other appropriate term representing the Board of Regents, NSHE, or one of the institutions of NSHE as used in the contract.

It is recognized that contracts that are written by the other party may not have a “hold-harmless” clause that follows exactly the required form. Provided such hold-harmless clauses state that they are conditioned “To the extent limited in accordance with NRS 41.0305 to NRS 41.039,” and provided they are limited to the acts or omissions in the course and scope of the public duties of NSHE and its officers, employees or agents, such language is acceptable. If a hold-harmless clause does not have this language, then it must be added before the contract is signed, and any language to the contrary stricken.

Except as provided below, no other form of hold-harmless clause than the statement provided above shall be authorized or accepted by NSHE. Contracts containing hold-harmless clauses using language other than that stated above will not be approved or signed by the Chancellor or the Chancellor’s designee, nor should such other hold-harmless clauses be placed in the contracts signed at the institutional level except as provided herein. Other persons who have been delegated contract signature authority as provided herein are not authorized to sign any contracts containing a hold-harmless clause that is not in the form stated herein or as otherwise approved as provided below. The attached standard form agreements have indemnity language that is approved for use.

**There will be no exceptions to this policy except as stated herein and except as specifically authorized by the institution General Counsel or System counsel for good cause shown.**

**NOTE:** It is not generally the policy of NSHE to volunteer to put a hold-harmless clause in a contract that benefits the other party to the contract. Only where the other party requests such a clause should it be included. Also, whenever a hold-harmless clause is required by the other party, then NSHE must insist on a mutual hold-harmless clause that benefits NSHE, its officers, and employees. Such a mutual hold-harmless clause should be in the following form:

“(Contracting party) shall indemnify, defend, and hold harmless NSHE, its officers, employees, and agents from and against any and all liabilities, claims, losses, costs or expenses to the person or property of another, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by (contracting party) or any of its officers or employees, which may occur during or which may arise out of the performance of this Agreement.”

**Q 23 How does insurance present a problem for NSHE contracts?**

**A** Contracts should typically include standard insurance requirements for any party doing business with NSHE appropriate to the risks involved. Any exceptions should only be with the approval of the institution/Risk Manager and the institution/System counsel as the case may be.

Other parties may likewise require insurance. Unless an institution is prepared to pay expensive commercial insurance coverage, a contract provision that requires NSHE to have commercial general, business automobile, or professional liability insurance (other than medical malpractice) or to add the entity as an additional insured is generally not possible, as NSHE is self-insured for these coverages in accordance with the provisions of NSHE Chapter 41. The contractor should be informed of this and, if needed, a certificate of self-insurance may be supplied by the institution Risk Manager. Contract terms that require NSHE to have commercial general and business automobile liability insurance must either be deleted from NSHE contracts or, alternatively, the following language may be added in lieu of such provisions:

“The (Board of Regents, University, College or other appropriate name) is self-insured in accordance with the limitations of NRS 41.0305 to NRS 41.039.”

However, if the entity insists on general liability coverage and additional insured status, the institution should contact the institutional Risk Manager for assistance, as options may be available.

The purchase of insurance by an institution should always be coordinated through the institutional Risk Manager to ensure that duplicate coverage is not obtained and that the most cost-effective option is obtained if additional insurance is needed.

Education Affiliation Agreements. The insurance and indemnification clauses in all education affiliation agreements must be approved by the institution Risk Manager and the institution General Counsel’s Office. The language contained in NSHE standard form Education Affiliation Agreements is approved for use by all institutions and units. **NOTE:** The language for medical school and allied health affiliation agreements is not the same. Be sure the correct insurance or indemnification clauses are selected.

Independent Contractor Agreements. NSHE standard form Contract for Services of Independent Contractor includes an Insurance Schedule setting forth various types of insurance that may be required of contractors with NSHE. The insurance requirements for workers’ compensation, commercial general, and business automobile liability are generally mandatory in all independent contractor agreements, unless waived in writing by the institutional Risk Manager or designee. Whether other insurance should be required will depend on the subject matter and circumstances of each contract. Contact your institution/Risk Manager with any questions regarding insurance provisions.

**Q 24 What is NSHE policy on determining which state’s law applies to a contract?**

**A** Contracts frequently provide that a contract is subject to the law of a particular state. It is NSHE’s policy that if a contract is to be performed in Nevada, the contract must be subject to Nevada law. If a contract is to be performed outside the State of Nevada, NSHE would still prefer that Nevada law apply to the contract, but has no objection if the law of the state where the contract is to be performed is applicable to the contract. The application of this section shall be subject to the guidance and approval of the institution General Counsel’s Office’s as to whether this clause can be revised or eliminated in appropriate cases. It is preferable to eliminate the clause altogether, rather than to agree to have the laws of another state apply to the contract. The following language is recommended for choice of law:

The parties agree that the laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this contract. Any and all disputes arising out of or in connection with the contract shall be litigated only in the \_\_\_Judicial District

Court in and for the County of \_\_\_\_, State of Nevada, and (*name of contractor*) hereby expressly consents to the jurisdiction of said court.

**Q 25 Is there special language that must be included in nuclear waste repository research grants or contracts?**

**A** Yes. The location of a nuclear waste repository in Nevada is a highly controversial and politically charged issue. A number of highly placed public officials, as well as news media organizations, have criticized NSHE for entering into these contracts. The Board of Regents, however, has strongly supported the academic freedom of NSHE institutions and faculty to contract to perform research in this field.

The matter is complicated by the opinion of the Nevada Attorney General that by contracting with the United States Government or its contractors for research on the nuclear waste repository site, NSHE, as an instrumentality of the State of Nevada, may indirectly waive the State of Nevada's objections to the location of a nuclear waste repository in Nevada. Although the System General Counsel's Office is not persuaded by this argument, nevertheless, as a matter of prudence, the issue must be addressed in NSHE's contracts.

Therefore, the following language must be included in every nuclear waste repository research contract (or grant) entered into between NSHE and the United States government or a contractor of the United States government:

"The parties to this contract expressly agree that neither the making or entering into of this contract, nor the terms, conditions or performance of this contract, shall be considered by the United States, the State of Nevada or any of their agencies, officers, employees or agents, either expressly or impliedly, directly or indirectly, or in any way whatsoever, as constituting the consent, permission or agreement of the State of Nevada or its legislature, agencies, officers, employees and agents to the location, establishment or creation of a nuclear waste repository site in Nevada."

**Q 26 Is there any provision which must be included in an open-ended or indefinite term contract?**

**A** Yes. Every open-ended or indefinite term contract must contain a mutual no-cause cancellation or termination clause. An appropriate notification period should be included as part of the cancellation or termination clause.

It is also recommended that NSHE institutions periodically review open-ended or indefinite term contracts on a regular basis to determine if the continuation or the cancellation of the contract is in order.

**Q 27 Is there special language that must be included in the event of non-appropriation of funds?**

**A** Yes. Every contract with a term beyond the current biennial budget cycle that may be paid in whole or in part with state funds must have a clause allowing termination without penalties in the event the Legislature fails to provide funding for the contract obligation. The reason for such a clause is grounded in state law because if a clause is not included, the contract may impact the constitutional debt limitations of the State of Nevada. The following language is recommended:

“In the event no funds or insufficient funds are appropriated and budgeted or are otherwise unavailable in any fiscal period for payments due under this Agreement, then this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to (Institution) of any kind whatsoever.”

Minor modifications of this language may be approved by institution/System counsel as long as the intent of such a clause is satisfied.

If a contract provides that the NSHE may terminate the contract for convenience (i.e. without cause) with a short notice period (suggested no more than 90 days), then an appropriation clause is not required as NSHE may simply use that clause to terminate a contract that has not received legislative funding.

**Q28 What is “HIPAA?”**

A “HIPAA” is an acronym for the federal Health Insurance Portability and Accountability Act of 1996. Contracts with certain health care entities or providers must contain provisions to ensure compliance with HIPAA healthcare privacy requirements. Contact the institution General Counsel’s Office or the System General Counsel’s Office to determine what language is needed.

**Q 29 What are some of the other frequent problems that arise with NSHE contracts?**

A Sometimes a contract is simply ambiguous in its terms, indefinite as to time of performance, fails to state the consideration, fails to identify the parties, or fails in some other necessary element. No contract may be signed without resolving these matters.

Contract review exists for the purpose of protecting NSHE and its employees, not for the purpose of delaying a project or blocking payment for work already done. In this connection, it should be emphasized that work on a project should not be begun prior to the signing of a contract for that work.

**Q 30 Can work begin on a project before a contract is formally signed?**

A No, except with prior approval as discussed below, because it is possible beginning work on a proposed contract would be interpreted by a court as constituting acceptance of the contract and, thus, binding upon NSHE, especially if the other party was aware work was proceeding. Only the Chancellor, however, or the Chancellor’s designee in the specific instances defined in this policy document, has the authority to enter into contracts on behalf of the System. Therefore, such de facto acceptance of the offer of the other contracting party may place the employee who thus accepts the offer in the position of being in violation of the Board of Regents Bylaws and policies.

There is, in addition, the risk that the other party did not understand the verbal agreement exactly as the NSHE negotiator did and that, in the absence of a written instrument, disputes might arise as to some aspect of the work to be performed. Anyone who performs work without a valid contract runs the risk of not being paid.

The only exception to this policy is in specific instances where it is in the best interests of the institution to initiate the work before the contract is fully executed and where the institution has adopted a procedure for approval of the commencement of work before the contract is fully executed. In such cases, the institution must accept full financial responsibility should the contract not be executed or should payment from the outside source be denied. In situations where work has begun prior to the formal contract

execution, it is appropriate to commence the contract effective on the date the parties began to mutually comply with its provisions, irrespective of the date of execution of signatures.

**Q 31 Where must copies of NSHE contracts be filed?**

**A** Copies of all contracts entered into by an NSHE institution pursuant to a delegation of authority must be kept in a secure and accessible location at the institution in question or at an established archive. In addition, a copy of any contract signed by the Chancellor shall be kept at the Chancellor's Office or at an established archive.

**Q 32 How many copies must be made of each contract?**

**A** Institutions sending a contract to the Chancellor for signature must include one extra copy of the contract for the Chancellor's Office files that is marked "Chancellor's copy" or "System copy." Both copies must contain flags on all pages requiring the Chancellor's signature.

**Q 33 How long must copies of NSHE contracts be kept?**

**A** Copies of NSHE contracts must be kept for a period of no less than six years after the expiration of the contract.

**End of Procedure Text  
Appendices Follow**

# NEVADA SYSTEM OF HIGHER EDUCATION CONTRACT POLICY

## CHECKLIST TO BE FOLLOWED FOR EACH CONTRACT:

1. Does the contract reflect the Board of Regents as the contracting party, especially in the signature block?
2. Does the contract identify its purpose, the parties, the term of the contract, and the consideration to be paid, performed or promised?
3. Is the contract free of hold-harmless clauses or—if not—have you used, or obtained the consent of the other contracting party to use, the substitution of NSHE's wording of the hold-harmless clause?
4. Is the contract free of a commercial general and business automobile liability insurance requirement for NSHE or—if not—have you used, or obtained the consent of the other contracting party to use, the addition of NSHE's self-insurance language? Have the insurance and indemnity clauses been approved by the institution Risk Manager and General Counsel/System General Counsel?
5. Does the contract require workers' compensation, commercial general, and business automobile liability insurance from the other party for at least the limits specified herein?
6. If the contract deals with nuclear waste repository research, does the contract contain the mandatory non-consent language required by Question 25?
7. If the contract's term is open-ended or for an indefinite term, does the contract contain a mutual cancellation or termination clause with a stated time period for notice of cancellation?
8. Does the contract stipulate that it is subject to Nevada law?
9. If a contract is authorized to be signed by an NSHE institution's President and the President has delegated his or her signature authority to another person, is there a written delegation of signature authority on file?
10. If a contract has been sent to the Chancellor for signature, has the contract been recommended for signature by the President or designee of the NSHE institution? Have you included an extra copy of the contract for the Chancellor's Office files? Have you flagged all pages requiring the Chancellor's signature including initials on each page? Have you included an addressed return envelope?
11. If the contract term exceeds the biennial budget period and is paid in whole or in part with state funds, has a non-appropriation clause been included (or is there a short notice of termination for convenience)?

## Information Technology Agreements

Information Technology Agreements. The insurance and indemnification clauses in all information technology agreements must be approved by the institution Risk Manager and the institution General Counsel's Office. The minimum insurance limits required shall include:

### Technology Errors and Omissions Liability

- a. \$5,000,000 Each claim.  
\$5,000,000 Annual aggregate.
- b. The retroactive coverage date shall be no later than the effective date of the contract.
- c. Contractor shall maintain an extended reporting period for not less than three (3) years after termination of this contract.

### Network Security (Cyber) and Privacy Liability

- a. \$5,000,000 Each claim.  
\$5,000,000 Annual aggregate.
- b. This errors and omissions insurance shall include coverage for third party claims and losses including with respect to network risks (such as data breaches, transmission of virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information., direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties.
- c. The retroactive coverage date shall be no later than the effective date of the contract.
- d. Contractor shall maintain an extended reporting period for not less than three (3) years after termination of this contract.

### Fidelity Bond or Crime Insurance

- a. \$1,000,000 Bond or policy limit.
- b. The bond or policy shall include coverage for all directors, officers, agents and employees of the Contractor.
- c. The bond or policy shall include coverage for third party fidelity and name the Nevada System of Higher Education as loss payee.
- d. The bond or policy shall include coverage for extended theft and mysterious disappearance.
- e. The bond or policy shall not contain a condition requiring an arrest and conviction.
- f. Policies shall be endorsed to provide coverage for computer crime/fraud.

### Performance Security

- a. Security may be in the form of surety bond; Certificate or Deposit or Treasury Note (payable to the NSHE only).
- b. Vendors submitting performance security to the NSHE in the form a surety bond must utilize a company that meets the below listed requirements:
  - i.) A.M. Best A- rated insurance company.
  - ii.) Certified by the Department of Treasury, Financial Management Services for Nevada.
  - iii.) Licensed by the Nevada Department of Business and Industry, Insurance Division.
- c. The security shall be deposited with the contracting Department no later than ten (10) working days following award of the Contract to Contractor.
- d. Upon successful Contract completion, the security and all interest earned, if any, shall be returned to the Contractor.

ADDITIONAL INSURANCE REQUIREMENTS: (Review with institution Risk Manager during RFP process). The policies shall include, or be endorsed to include the following provisions:

- a. On insurance policies where the NSHE Is named as an additional insured, the NSHE shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
- b. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

# Standard Form Contract

## CONTRACT FOR SERVICES OF INDEPENDENT CONTRACTOR

A contract between the Board of Regents of the Nevada System of Higher Education on behalf of (Name of Institution), hereinafter referred to as ("Board, University, College or other appropriate name"), and (Name of Contractor), hereinafter referred to as "Contractor."

### PREAMBLE

WHEREAS, NRS 333.700 authorizes elective officers, heads of departments, boards, commissions or institutions to engage the services of persons as independent contractors; and

WHEREAS, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interests of the (Board, University, College or other appropriate name); and

WHEREAS, Contractor represents that it is duly qualified and able to render the services as hereinafter described;

NOW, THEREFORE, in consideration of the aforesaid premises, the parties hereto mutually agree as follows:

1. This contract shall be effective from \_\_\_\_\_, to \_\_\_\_\_, unless sooner revoked by either party as set forth in Paragraph (2).

2. This contract may be revoked without cause by either party prior to the date set forth in Paragraph (1) provided that a revocation shall not be effective until \_\_\_\_\_ days after a party has served written notice of revocation upon the other party.

3. The parties agree that the services to be performed are as follows:

(Specifically describe in this space the services to be performed; or, when appropriate, describe in this space the finished product or result to be provided; or attach an exhibit or exhibits containing this information, label the exhibit or exhibits as Exhibit A, Exhibit B, etc., and then place the following statement in this space):

See Exhibit A (or B, etc.) attached hereto and which is made a part of this contract by reference thereto.

### (Alternate Paragraphs No. 4 - Choose Only One)

4. Contractor agrees to provide the services set forth in Paragraph (3) for a total cost not to exceed \$\_\_\_\_\_, which cost includes travel and all other expenses incurred by Contractor in performance of this contract. (Board, University, College or other appropriate name) agrees to pay Contractor in installments as follows: \_\_\_\_\_

4. Contractor agrees to provide the services set forth in Paragraph (3) at a cost of \$ \_\_\_\_\_ per \_\_\_\_\_ (here set forth the hourly, daily, etc. rate at which the contractor agrees to perform the services exclusive of travel expenses) with the total cost not to exceed \$ \_\_\_\_\_. (Board, University, College or other appropriate name) (agrees/does not agree: choose one) to reimburse Contractor for travel expenses reasonably incurred in the performance of this contract plus a per diem allowance of \$ \_\_\_\_\_ per day while on travel status in performance hereof. (Board, University, College or other appropriate name) agrees to pay Contractor in installments as follows: \_\_\_\_\_

5. The parties agree that the laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this contract. Any and all disputes arising out of or in connection with the contract shall be litigated only in the \_\_\_\_\_ Judicial District Court in and for the County of \_\_\_\_\_, State of Nevada, and Contractor hereby expressly consents to the jurisdiction of said court.

6. The Contractor shall neither assign, transfer, nor delegate any rights, obligations, or duties under this agreement without the prior written consent of the (Board, University, College or other appropriate name).

7. The books, records, documents, and accounting procedures and practices of the Contractor relevant to this agreement shall be subject to inspection, examination, and audit by the (Board, University, College or other appropriate name).

8. Any reports, studies, photographs, negatives, computer discs, or other documents or drawings prepared by Contractor in the performance of its obligations under this agreement shall be the exclusive property of the (Board, University, College or other appropriate name) and all such materials, if any, shall be remitted to the (Board, University, College or other appropriate name) by Contractor upon completion, termination, or cancellation of this contract. Contractor shall not use, willingly allow, or cause to have such materials, if any, used for any purpose other than the performance of Contractor's obligations under this agreement without the prior written consent of the (Board, University, College or other appropriate name).

9. Contractor agrees to indemnify and save and hold harmless the Board of Regents of the Nevada System of Higher Education, the Nevada System of Higher Education, (the University, College, or other appropriate name), their agents, officers, and employees harmless from any and all claims, causes of action, or liability arising from the performance of this agreement by Contractor or Contractor's agents, officers, or employees.

10. Insurance Coverage: Contractor shall, at Contractor's sole expense, procure, maintain, and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by the (Board, University, College or other appropriate name), the required insurance shall be in effect on or prior to the commencement of work by Contractor and shall continue in force as appropriate until the latter of:

a. Final acceptance by the (Board, University, College or other appropriate name) of the completion of this contract; or

b. Such time as the insurance is no longer required by the (Board, University, College or other appropriate name) under the terms of this contract.

Any insurance or self-insurance available to the (Board, University, College or other appropriate name) shall be in excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the (Board, University, College or other appropriate name), Contractor shall provide the (Board, University, College or other appropriate name) with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the contract, an insurer or surety shall fail to comply with the requirements of this contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the (Board, University, College or other appropriate name) and immediately replace such insurance or bond with insurance or bond meeting the contract's requirements.

#### Workers' Compensation and Employer's Liability Insurance

Contractor shall provide proof of workers' compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of *Nevada Revised Statutes*, Chapter 616A-D and all other related chapters, is not required. If work occurs outside of the State of Nevada, by employees who do not live and work in Nevada, proof of applicable statutory state's workers' compensation insurance must be provided.

#### Employers' Liability

- a. Minimum limits required:  
\$100,000 Per accident or disease.

#### Commercial General Liability Insurance

- a. Minimum limits required:  
\$2,000,000 General aggregate.  
\$1,000,000 Products & completed operations aggregate.  
\$1,000,000 Personal and advertising injury.  
\$1,000,000 Each occurrence to include bodily injury and property damage.
- b. Coverage shall be on an occurrence basis and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract.

#### Business Automobile Liability Insurance

- a. Minimum limit required:  
\$1,000,000 Each occurrence.  
\$5,000,000 Each occurrence for charter services.
- b. Coverage shall include owned, non-owned, and hired vehicles.

#### Professional Liability/Errors & Omissions Insurance

Professional liability insurance is required only if the Contractor is performing work of a professional nature.

- a. Minimum limit required:  
\$1,000,000 Per claim.  
\$3,000,000 Annual aggregate.
- b. Retroactive date: Prior to commencement of the performance of this contract.
- c. Discovery period: Three (3) years after termination date of contract.

#### Umbrella or Excess Liability Insurance

- a. May be used to achieve the above minimum liability limits.
- b. Shall be endorsed to state it is "As Broad as Primary Policies."

#### Technology Errors and Omission/Cyber Liability

Required when services include software/financial programs.

- a. Minimum limit required:  
\$5,000,000 Per claim.  
\$5,000,000 Per aggregate.
- b. The retroactive coverage date shall be no later than the effective date of the contract.
- c. Contractor shall maintain and extended reporting period for not less than three (3) years after termination of this contract.

#### General Requirements

- a. Additional Insured: By endorsement to all liability policies, except Professional Liability, the (Board, University, College or other appropriate name) shall be named as additional insureds for all liability arising from the contract using the applicable ISO endorsement CG Form. The endorsement form must be included with the Certificate of Insurance.
- b. Waiver of Subrogation: Each liability insurance policy, including workers' compensation, shall provide for waiver of subrogation against the (Board, University, College or other appropriate name).
- c. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the (Board, University, College or other appropriate name). Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$100,000.00 per occurrence, unless otherwise approved by NSHE or institution's Risk Manager.
- d. Approved Insurer: Each insurance policy shall be:
  - i) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
  - ii) Currently rated by A.M. Best not less than A-

#### Evidence of Insurance

Prior to the start of any work, Contractor must provide the following documents to the (Board, University, College or other appropriate name):

- a. Certificate of Insurance: The Accord form certificate of insurance (or equivalent) to evidence insurance policies and coverage required by this Contract. The certificate for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies or to provide evidence of renewal as required by this Contract is a material breach of contract.
- b. Additional Insured Endorsement: An original Additional Insured Endorsement using the applicable ISO endorsement CG form, signed by an authorized insurance company representative, must be submitted to the (Board, University, College or other appropriate name), by attachment to

the Certificate of Insurance, to evidence the endorsement of the (Board, University, College or other appropriate name) as additional insured.

- c. Notice of Cancellation: Should any of the insurance policies required by the insurance provisions of this Contract be suspended, voided, or cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

11. Access: Contractor agrees to provide (Board, University, College or other appropriate name) and its insurer access and authority to investigate on site and to obtain such information from Contractor as may be required to defend the (Board, University, College or other appropriate name) and its officers or employees from claims or litigation arising from activities under this contract.

12. The parties agree that Contractor is an independent contractor and that this contract is entered into in accordance with NRS 333.700, which statute in pertinent part provides that the contractor is not an employee of the (Board, University, College or other appropriate name), and:

There shall be no:

- 1. Withholding of income taxes by the (Board, University, College or other appropriate name);
- 2. Workers' compensation insurance provided by the (Board, University, College or other appropriate name);
- 3. Participation in group insurance plans which may be available to employees of the (Board, University, College or other appropriate name);
- 4. Participation or contributions by either the Contractor or the (Board, University, College or other appropriate name) to the public employees retirement system;
- 5. Accumulation of vacation leave or sick leave;
- 6. Unemployment compensation coverage provided by the (Board, University, College or other appropriate name) if the requirements of NRS 612.085 for independent contractors are met.

It is further agreed that Contractor is not an employee of the (Board, University, College or other appropriate name) and is not entitled to any of the compensation, benefits, rights, or privileges of employees of the (Board, University, College or other appropriate name).

13. This contract constitutes the entire agreement between the parties and may only be modified by a written amendment signed by the parties.

14. Written notices required under this contract shall be sent certified mail, return receipt requested, to:

(Insert name and address of contractor and name of contact person, if any)

(Insert name and address of institution and name of contact person)

IN WITNESS WHEREOF, the parties hereto have executed this contract.

Dated: This \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

BOARD OF REGENTS OF THE  
NEVADA SYSTEM OF HIGHER  
EDUCATION  
acting on behalf of (Insert name of Institution)

(Name of Contractor)

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title)

By: \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title)

Distribution:           1 copy for Institution  
                              1 copy for Contractor

# Standard Form Lease

## LEASE

THIS AGREEMENT, made by and between the Board of Regents of the Nevada System of Higher Education, on behalf of (Name of Institution), hereinafter referred to as "Lessee," and (Full Name and Address of other Contracting Party), hereinafter referred to as "Lessor";

### WITNESSETH:

WHEREAS, Lessor is the owner of the premises described below; and

WHEREAS, Lessee desires to lease the described premises for the purposes contained herein;

NOW, THEREFORE, Lessor and Lessee agree as follows:

#### 1.0 Premises:

For and in consideration of the premises, the rents reserved herein, the covenants and agreements herein contained, and other valuable consideration, Lessee does hereby hire and take from Lessor, and Lessor does hereby grant and lease to Lessee, that office and building space described in Exhibit A [**Note:** Use the following phrase only if applicable -- and the equipment and personal property described in Exhibit B], upon the terms and agreements and conditions following. Exhibit A (and Exhibit B are) is attached hereto and by this reference made a part hereof.

#### 2.0 Terms:

The terms of this Lease shall be for a period of \_\_\_\_\_, beginning \_\_\_\_\_ and ending \_\_\_\_\_

#### 3.0 Governing Law:

Lessor and Lessee agree that the laws of the State of Nevada shall govern the validity, construction, interpretation and effect of this lease. Any and all disputes arising out of or in connection with the lease shall be litigated only in the \_\_\_\_\_ Judicial District Court in and for the County of \_\_\_\_\_, State of Nevada, and (name of other party) hereby expressly consents to the jurisdiction of said court.

#### 4.0 Rent:

4.1 Lessor reserves and Lessee agrees to pay as rent for the premises and equipment without notice or demand, to Lessor annual rent to the Lessor in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), in advance on the first day of every month covered by the terms of this lease, commencing \_\_\_\_\_, 20\_\_\_\_. If any month of the lease term is less than a full calendar month, the rent for such month shall be prorated according to the number of days in that month.

4.2 During the term hereof Lessee may relinquish space [Note: Use the following phrase only if applicable - and associated equipment]. If space is relinquished, rent will be reduced on a pro rata basis according to the number of square feet occupied before and after such relinquishment.

5.0 Use of the Premises:

Lessee will use and occupy the premises for the purpose of \_\_\_\_\_. Use for any other purpose is prohibited without first obtaining the written consent of Lessor therefor. Lessee will conform to and comply with all applicable municipal, state, and federal laws in using the premises, and will not use or suffer to be used the premises in any manner in contravention of any applicable municipal, state or federal law, nor in such a manner that will increase the existing rate for property insurance for the premises.

6.0 Condition of Premises and Repairs:

Lessee has examined the premises prior to the execution hereof, knows the condition thereof, and acknowledges that Lessee has received the premises in good order and condition, and that no representation or warranty as to the condition or repair of the premises has been made by Lessor. At the expiration of the term of this Lease, or any renewal or extension thereof, Lessee will yield up peaceably the premises to Lessor in as good order and condition as when the same were entered upon by Lessee, loss by fire or inevitable accident, damage by the elements, and reasonable use and wear excepted.

7.0 Alterations, Additions and Improvements:

7.1 Lessee shall not make, or suffer or permit to be made, any alterations, additions, or improvements whatsoever in or about the premises without first obtaining the written consent of Lessor therefore; provided, however, that such consent, if given, will be subject to the express condition that any and all alterations, additions, and improvements shall be done at Lessee's own expense, and that no liens of mechanics, material men, laborers, architects, artisans, contractors, subcontractors, or any other lien of any kind whatsoever shall be created against or imposed upon the premises or any part thereof.

7.2 Alterations, additions, or improvements on or in the leased premises at the commencement of the lease term, and that may be thereafter erected or installed therein, shall become part of the premises and the sole property of Lessor, except that all moveable nonfixtures installed by Lessee shall be and remain Lessee's property and shall not become the property of Lessor.

8.0 Service to the Premises:

8.1 Where a check mark is placed in the box of the column under a party below, it is that party's responsibility to pay for those services to the premises. Items not checked shall not be the responsibility of either party.

8.1.2	<u>Lessor</u> ( )	<u>Lessee</u> ( )	Water
	( )	( )	Sewer
	( )	( )	Refuse Removal
	( )	( )	Gas
	( )	( )	Electricity
	( )	( )	Heating and Cooling Systems
	( )	( )	Janitorial Service and Supplies Outside the Premises
	( )	( )	Chilled Drinking Water
	( )	( )	Maintenance and Upkeep
	( )	( )	Carpeting
	( )	( )	Lighting Fixtures
	( )	( )	Intra-Institutional Telephone Service
	( )	( )	Telephone Installation, Service, Billing and Long Distance Charges
	( )	( )	Provide Fixtures and Equipment Necessary for the Conduct of Lessee's Business
	( )	( )	Redecorating and Painting

8.2 Lessee shall furnish and pay for any services or supplies not itemized above.

9.0 Lessor's Right of Entry:

Lessor shall have the right, at any reasonable time, to enter upon the premises to inspect the same and to make any and all improvements, alterations, and additions of any kind whatsoever upon the premises, providing such improvements, alterations, and additions are reasonably necessary or convenient to the use to which the premises are being put at the time, but at no time shall Lessor be compelled or required to make any improvements, alterations, or additions.

10.0 Assignment and Subletting:

This Lease shall not be assigned, subleased, or mortgaged in whole or in part without the written consent of Lessor.

#### 11.0 Holding Over:

Lessee's holding or continued use or occupancy beyond the term of this Lease shall be construed as a tenancy from month to month at the same monthly rent and subject to the same conditions set forth in this Lease.

#### 12.0 Condemnation:

12.1 In the event the premises, or any part thereof, are taken, damaged consequentially or otherwise, or condemned by public authority, this Lease shall terminate as to the part so taken, as of the date title shall vest in said public authority, and the rental reserved shall be adjusted so that Lessee shall be required to pay for the remainder of the term of that portion of the rent reserved in the proportion that the premises remaining after the taking, damaging, or condemnation bears to the whole of the premises before the taking, damaging, or condemnation. All damages and payments resulting from said taking, damaging, or condemnation of the premises shall accrue to and belong to Lessor, and Lessee shall have no right to any part thereof.

12.2 In the event only a part of the premises is taken and the portion remaining is unsuitable or insufficient for Lessee's purposes, Lessee has the right or option to terminate the Lease as to the remaining portion by giving written notice to Lessor specifying the date of termination.

#### 13.0 Destruction:

13.1 If at any time during the term of this Lease, or any extension or renewal thereof, the premises shall be totally or partially destroyed by fire, earthquake, or other calamity, then Lessor shall have the option to rebuild or repair the same, provided written notice of such intent to rebuild or repair shall be sent to Lessee within the period of 30 days after the damaging event; and to rebuild or repair the same in as good condition as they were immediately prior to such calamity. In such case, a just and proportionate part of the rental herein specified shall be abated until such premises shall have been rebuilt and repaired. In case, however, Lessor elects not to rebuild or repair said premises, Lessor shall so notify Lessee by written notice within the period of 30 days after the damaging event, and thereupon this Lease shall terminate.

13.2 In the event of termination of this Lease under the terms of clause 13.1, the Lessee shall have a reasonable period of time to vacate the premises.

13.3 All notices sent under the terms of this provision shall conform to the provisions of Section 20.0, "Modification," and Section 21.0, "Notice."

#### 14.0 Code and Regulations:

Lessor shall be required to meet all federal, state, and local codes and regulations, including but not limited to OSHA. In addition, Lessor shall be required to:

14.1 Respond in writing to Lessee complaints within five (5) working days after receipt of a written complaint from Lessee.

14.2 Determine the cause of and remedy any building deficiencies.

14.3 Keep records of inspection, maintenance, and remedial actions and make such records available upon written request to Lessee management and the applicable regulatory agency.

15.0 Termination:

In the event Lessee fails to pay rent as required herein, Lessee shall be in default of this lease, which default must be cured or removed without notice within 15 days from the date of the rental payment as due and payable, or else Lessor may terminate this Lease forthwith in accordance with applicable law.

16.0 Default:

Lessor shall, on default with respect to any of the provisions of this Lease by Lessee except for the payment of rent, provide Lessee with a written notice of any breach of the Lease terms or conditions and Lessee shall then have 30 days either to correct the condition or commence corrective action if the condition cannot be corrected in 30 days. If the condition cannot be corrected in 30 days, Lessee shall have a reasonable time to complete the correction. Lessor may elect to enforce the terms and conditions of the Lease by any other method available under the law.

17.0 Waivers:

The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed to be a waiver of such rights, nor shall the same be deemed to be a waiver of any subsequent breach, either of the same provision or otherwise.

18.0 Binding on Heirs, Successors, and Assigns:

This Agreement shall be binding upon and inure to the benefit of their heirs, personal representatives, and permitted assigns, as applicable, of the Lessor and the Lessee.

19.0 Entire Agreement:

This Agreement (with its attachments, if any) constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior understandings and agreements, oral and written, relating hereto. Any amendment hereof must be in accord with the following Section 20.0 on "Modification."

20.0 Modification:

This Lease may be amended at any time only upon mutual agreement in writing of the parties.

21.0 Notice:

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be served either personally or by registered or certified mail addressed as follows:

TO THE LESSEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TO THE LESSOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

22.0 Access:

Lessee has the right of reasonable ingress and egress and to parking facilities.

23.0 Discrimination:

In the use or occupancy of the premises Lessee will not discriminate unlawfully against any person on the basis of race, color, national origin, religion, sex, or handicap.

24.0 Quiet Enjoyment:

On payment of rents and performance of the covenants and agreements on the part of Lessee to be paid and performed hereunder, Lessee shall peaceably have and enjoy the leased premises and all of the rights, privileges, and appurtenances granted herein.

25.0 Lessee's Insurance and Indemnification Provisions:

25.1 During the term of this Lease and any extension thereof, Lessee shall maintain in force Commercial General Liability insurance in the amount of \$\_\_\_\_\_ per occurrence and \$\_\_\_\_\_ Annual Aggregate or self insurance sufficient to cover the Lessee's liability under NRS Chapter 41. Coverage shall include liability arising out of bodily injury, wrongful death, and property damage.

25.2 In accordance with the limitations of NRS 41.0305 to NRS 41.039, the Lessee agrees to indemnify and hold Lessor harmless from any loss, damage, liability, cost or expense to the person or property of another which was caused by an act or omission of the Lessee, its officers, employees, and agents under this Lease. Lessee's indemnity obligation in tort is limited to \$150,000 per cause of action in accordance with NRS 41.035. Lessee will assert the defense of sovereign immunity in all legal actions.

25.3 Lessee shall not be liable for claims arising out of the use of the common areas and parking lots.

25.4 Lessee agrees to provide property insurance on the building and contents if Lessee occupies the entire building, otherwise Lessor shall provide property insurance for the building and Lessor's contents. Property insurance shall be written on an all risk form with replacement cost coverage, including coverage for flood and earth movement.

25.5 Lessee shall carry and provide proof of workers' compensation insurance if such insurance is required of Lessee by NRS 616B.627 or proof that compliance with the provisions of *Nevada Revised Statutes*, Chapters 616A-D and all other related chapters, is not required.

## 26.0 Lessor's Insurance and Indemnification Provisions:

26.1 The Lessor agrees to indemnify and hold Lessee harmless from any loss, damage, liability, cost or expense to the person or property of another which was caused by an act or omission of the Lessor, its officers, employees, and agents under this Lease.

26.2 Lessor shall, at Lessor's sole expense, procure, maintain, and keep in force for the duration of the Lease the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by the Lessee, the required insurance shall be in effect at commencement of the Lease and shall continue in force as appropriate until the lease expires and Lessee vacates the premises.

### Workers' Compensation and Employer's Liability Insurance

Lessor shall carry and provide proof of workers' compensation insurance if such insurance is required of Lessor by NRS 616B.627 or proof that compliance with the provisions of *Nevada Revised Statutes*, Chapter 616A-D and all other related chapters, is not required. If work occurs outside of the State of Nevada, by employees who do not live and work in Nevada, proof of applicable statutory state's workers' compensation insurance must be provided.

### Employers' Liability

- a. Minimum limits required:  
\$100,000 Per accident or disease.

### Commercial General Liability Insurance

- a. Minimum limits required:
  - \$2,000,000 General aggregate.
  - \$1,000,000 Products & completed operations aggregate.
  - \$1,000,000 Personal and advertising injury.
  - \$1,000,000 Each occurrence to include bodily injury and property damage.
- b. Coverage shall be on an occurrence basis and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract.

26.3 Deductibles and Self-Insured Retentions: Insurance maintained by Lessor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by the Lessee. Such approval shall not relieve Lessor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$100,000.00 per occurrence, unless otherwise approved by the NSHE or institution's Risk Manager.

26.4 Approved Insurer: Each insurance policy shall be:

- a. Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
- b. Currently rated by A.M. Best not less than A-.

26.5 Evidence of Insurance: Prior to the start of the Lease, Lessor must provide the following documents to the Lessee:

- a. Certificate of Insurance: The Accord form certificate of insurance (or equivalent) submitted to the Lessee to evidence insurance policies and coverage required of Lessor. The certificate for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. Each insurance policy required by this Lease must be in effect at or prior to start of the Lease and remain in effect for the duration of the

Lease. Failure to maintain the insurance policies or to provide evidence of renewal as required by this Lease is a material breach of contract.

- b. Notice of Cancellation: Should any of the insurance policies required by the insurance provisions of this Contract be suspended, voided or cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- c. Additional Insured Endorsement: An original Additional Insured Endorsement using the applicable ISO endorsement CG form, signed by an authorized insurance company representative, must be submitted to the (Board, University, College or other appropriate name) by attachment to the Certificate of Insurance to evidence the endorsement of the (Board, University, College or other appropriate name) as additional insured.

26.6 Waiver of Subrogation: Lessor and Lessee shall have no liability to one another, or to any insurer, by way of subrogation or otherwise, on account of any loss or damage to their respective property, the premises or its contents, or the building regardless of whether such loss or damage is caused by the negligence of Lessee or Lessor, arising out of the peril or casualties insured against by the property insurance policies carried, or required to be carried, by the parties pursuant to this Lease. The insurance policies obtained by Lessor or Lessee pursuant to this Lease shall permit waivers of subrogation which the insurer may otherwise have against the non-insuring party. In the event the policy or policies do not allow waiver of subrogation prior to loss, either Lessor or Lessee shall, at the request of the other party, deliver to the requesting party a waiver of subrogation endorsement in such form and content as may reasonably be required by the requesting party or its insurer.

26.7 Access: Lessor agrees to provide (Board, University, College or other appropriate name) and its insurer access and authority to investigate on site and to obtain such information from Lessor as may be required to defend the (Board, University, College or other appropriate name) and its officers or employees from claims or litigation arising from activities under this Lease.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

LESSEE:

LESSOR:

BOARD OF REGENTS OF THE  
NEVADA SYSTEM OF HIGHER  
EDUCATION  
on behalf of (Name of Institution)

(Full legal name of Lessor)

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_ (signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(title)

Distribution: 1 copy for Institution  
1 copy for Lessor

**Standard Form Lease, continued**

**Exhibit A**

**Description of Office or Building Space**

Building Name  
and Location: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Room Number(s): \_\_\_\_\_

Description:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## Standard Form Lease, continued

(Use only if applicable)

### Exhibit B

#### **Description of Equipment or Personal Property**

The following described equipment or personal property is leased to Lessee:

# Standard Form Instructional Facility Agreement

## INSTRUCTIONAL FACILITY AGREEMENT BETWEEN

(Name of Institution)

(Name of Contractor)

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
by and between the Board of Regents of the Nevada System of Higher Education, on behalf of  
(Name of institution), hereinafter referred to as ("University, College, or appropriate name"), and  
(Name of other Contracting Party Contractor) hereinafter referred to as "Contractor."

WHEREAS, the parties hereto desire to enter an agreement whereby the  
Contractor provides the facilities and instructors for the following program, course/courses or  
workshop of the (University, College or appropriate name):

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IT IS HEREBY AGREED AS FOLLOWS:

I.

The (University, College, or appropriate name) and the Contractor will, through the  
appropriate department, jointly plan for the establishment of the (University's, College's, or  
appropriate name) aforementioned program(s) and/or course(s) with the Contractor. The  
establishment of accepted standards of education, setting the (University, College or appropriate  
name) semesters of instruction, preparation of all instruction schedules and regulations, and the  
enrollment of students shall be the responsibility of the (University, College, or appropriate name)  
and shall be communicated to the Contractor in accordance with the above.

II.

The above referenced program(s) and/or course(s) will be scheduled  
from \_\_\_\_\_, 20\_\_ through \_\_\_\_\_, 20\_\_.

Contractor contracts with the (University, College, or appropriate name) to provide  
the facilities, equipment and qualified instructors for the purpose of conducting the above-  
mentioned program(s) or course(s) during such times as the Contractor and the (University,  
College, or appropriate name) jointly agree to schedule such program(s) and/or course(s).

The instruction period of each group of students shall be jointly determined.

III.

The maximum number of students assigned shall be jointly determined after consideration  
of the facilities, equipment, and of methods of instructions to be used.

#### IV.

All reasonable efforts will be made to insure that the (University, College, or appropriate name) complies with all applicable rules and regulations of the Contractor and observes professional ethics of the Contractor and its clients.

#### V.

Insurance Requirements: Contractor shall, at Contractor's sole expense, procure, maintain, and keep in force for the duration of the Contract the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by the (University, College or other appropriate name), the required insurance shall be in effect on or prior to the commencement of work by Contractor and shall continue in force as appropriate until the latter of:

- a. Final acceptance by the (University, College or other appropriate name) of the completion of this contract; or
- b. Such time as the insurance is no longer required by the (University, College or other appropriate name) under the terms of this contract.

Any insurance or self-insurance available to the (University, College or other appropriate name) shall be excess of and non-contributing with any insurance required from Contractor. Contractor's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by the (University, College or other appropriate name), Contractor shall provide the (University, College or other appropriate name) with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the contract, an insurer or surety shall fail to comply with the requirements of this contract, as soon as Contractor has knowledge of any such failure, Contractor shall immediately notify the (University, College or other appropriate name) and immediately replace such insurance or bond with insurance or a bond meeting the contract's requirements.

#### Workers' Compensation and Employer's Liability Insurance

Contractor shall provide proof of workers' compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapters 616A-D and all other related chapters, is not required. If work occurs outside of the State of Nevada, by employees who do not live and work in Nevada, proof of the applicable statutory state's workers' compensation insurance must be provided.

#### Employers' Liability

- a. Minimum limits required:  
\$100,000 Per accident or disease.

#### Commercial General Liability Insurance

- a. Minimum limits required:  
\$2,000,000 General aggregate.  
\$1,000,000 Products & completed operations aggregate.  
\$1,000,000 Personal and advertising injury.  
\$1,000,000 Each occurrence to include bodily injury and property damage.
- b. Coverage shall be on an occurrence basis and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, and liability assumed under contract.

### Business Automobile Liability Insurance

- a. Minimum limit required:  
\$1,000,000 Each occurrence.  
\$5,000,000 Each occurrence for charter services.
- b. Coverage shall include owned, non-owned, and hired vehicles.

### Umbrella or Excess Liability Insurance

- a. May be used to achieve the above minimum liability limits.
- b. Shall be endorsed to state it is "As Broad as Primary Policies."

### General Requirements

- a. Additional Insured: By endorsement to all liability policies, except Professional Liability, the (University, College or other appropriate name) shall be named as additional insureds for all liability arising from the contract using the applicable ISO endorsement CG form. The endorsement form must be included with the Certificate of Insurance.
- b. Waiver of Subrogation: Each liability insurance policy, including workers' compensation, shall provide for waiver of subrogation against the (University, College or other appropriate name).
- c. Deductibles and Self-Insured Retentions: Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by (University, College or other appropriate name). Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$100,000.00 per occurrence, unless otherwise approved by the NSHE or institution's Risk Manager.
- d. Approved Insurer: Each insurance policy shall be:
  - i) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made, and
  - ii) Currently rated by A.M. Best not less than A-.

### Evidence of Insurance

Prior to the start of any work, Contractor must provide the following documents to the (University, College or other appropriate name):

- a. Certificate of Insurance: The Accord form certificate of insurance (or equivalent) to evidence insurance policies and coverage required by this Agreement. The certificate for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies or to provide evidence of renewal as required by this Agreement is a material breach of contract.
- b. Additional Insured Endorsement: An original Additional Insured Endorsement using the applicable ISO endorsement CG form, signed by an authorized insurance company representative, must be submitted to the (University, College or other appropriate name), by attachment to the Certificate of Insurance, to evidence the endorsement of the (University, College or other appropriate name) as additional insured.
- c. Notice of Cancellation: Should any of the insurance policies required by the insurance provisions of this Contract be suspended, voided or cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

VI.

Access: Contractor agrees to provide (University, College or other appropriate name) and its insurer access and authority to investigate on site and to obtain such information from Contractor as may be required to defend the (University, College or other appropriate name) and its officers or employees from claims or litigation arising from activities under this agreement.

VII.

There shall be no payment nor considerations, other than those provided in the agreement between the (University, College, or appropriate name) and the Contractor in connection with this education program.

VIII.

The (University, College or appropriate name) does not discriminate on the basis of race, religion, national origin, sex, marital status, status with regard to public assistance or disability in the admissions, employment, or operation of its educational programs.

IX.

It is agreed that the (University, College, or appropriate name) and the Contractor will derive the greatest benefit from this agreement by promoting the interests of each other, by evaluation, consultation and cooperation, and by interpreting the provisions of this agreement in the manner which shall best promote the interest of the student's educational program.

X.

The (University, College, or appropriate name) and the Contractor agree to the following charges as indicated below:

The Contractor agrees to furnish the space, equipment (if needed), and qualified instructor(s) for the specified time.

XI.

This agreement may be amended to include additional programs with notification and mutual consent of the participating parties. Such amendments must be in writing.

XII.

The Contractor shall neither assign, transfer nor delegate any rights, obligations, or duties under this agreement without the prior written consent of the (University, College, or appropriate name).

XIII.

The parties agree that the Contractor is an independent contractor and that this agreement is entered into in accordance with NRS 333.700, which statute in pertinent part provides that the Contractor is not a state employee. Employees of the Contractor shall not be considered employees of the State of Nevada nor of the (University, College, or appropriate name) and shall not be entitled to the employment benefits accorded to State employees in general and (University, College, or appropriate name) employees in particular.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first set forth above.

BOARD OF REGENTS OF THE  
NEVADA SYSTEM OF HIGHER EDUCATION  
Acting on behalf of (Name of Institution)

By: \_\_\_\_\_  
President (Name of Institution)

CONTRACTOR

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Name and Title

Distribution: 1 copy for Institution  
1 copy for Contractor

# Standard Form Clinical Education Affiliation Agreement

## Education Affiliation Agreement for Placement of Institution Students in a Clinical Experience at a Hospital/Facility or Other Facility

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This Agreement is made between (Full name and address of Institution), hereinafter referred to as "Institution," and (Full name and address of the Hospital/Facility or Facility), hereinafter referred to as "Hospital/Facility."

### RECITALS

- A. Hospital/Facility is the operator of an acute care Hospital/Facility; and
- B. Hospital/Facility has the capability to provide a site for (medical/nursing) teaching and practical experience; and,
- C. Hospital/Facility has made it a professional responsibility to assist in the educational experience of medical students by providing a medical Clinical Program; and,
- D. Institution is currently conducting (medical/nursing/other) programs for which it desires to obtain the assistance of Hospital/Facility to further the training and experience Institution's students can receive toward their educational objectives; and,
- E. Institution employs physicians/faculty interested in working at Hospital/Facility while retaining their status as employees of Institution.

### TERMS

In consideration of the mutual promises and conditions contained in this Agreement, Institution and Hospital/Facility agree as follows:

#### 1.0 Purpose, Term, and General Policy of the Affiliation.

1.1 Institution and Hospital/Facility agree to affiliate and cooperate for their mutual benefit in order to provide a high standard of health and medical services to the public and to provide research and training programs for medical students, as well as greater service than would be possible without affiliating, through this Clinical Program. Each party may continue to provide professional or Hospital/Facility services outside of this affiliation.

1.2 This Agreement is for a term of \_\_\_ years beginning on \_\_\_\_\_, 20 \_\_, and may be renewed by mutual written consent of the parties for an unlimited number of renewal terms of \_\_\_ years each.

1.3 Hospital/Facility seeks to achieve the following goals with this Agreement:

1.3.1 To improve the quality of care while providing an environment conducive to education;

1.3.2 To improve its recruitment ability;

1.3.3 To establish an affiliate clinical program consistent with the values and needs of Hospital/Facility.

1.4 Institution seeks to achieve the following goals with this Agreement:

1.4.1 To provide its students with the necessary clinical experience to prepare them for (medical/nursing/other) careers;

1.4.2 To provide its students and faculty with the opportunity to stay current in the (medical/nursing/other) field; and

1.4.3 To enhance and maintain strong ties to local Hospital/Facility.

1.5 Neither party intends for this Agreement to alter in any way their respective legal rights or their legal obligations to one another, the students and Faculty assigned to Hospital/Facility, or to any third party.

1.6 Hospital/Facility retains final responsibility for all aspects of patient care and assumes the responsibility to perform procedures that a student has not performed if the faculty cannot assume the responsibility.

1.6.1 Hospital/Facility may permit Institution faculty members to provide such patient services at Hospital/Facility as deemed necessary by Hospital/Facility for teaching purposes.

1.7 Both parties and their employees shall conduct themselves in compliance with all applicable federal, state, and local laws, rules, and regulations and in compliance with the standards, rulings, and regulations of the Joint Commission on Accreditation of Health Care Organizations, the Department of Health and Human Services, and the State Department of Health and Rehabilitative Services, as well as their own respective institutional rules and regulations.

2.0 Annual Operating Plan.

2.1 The parties agree that each year they shall set forth a written operating plan which shall include:

2.1.1 The names and a table of organization showing all Institution and Hospital/Facility physicians and employees who are participating in this Clinical Program;

2.1.2 The duties of all persons providing services for the Clinical Program listed in section 2.1.1;

2.1.3 A description of all resources of Hospital/Facility to be utilized by Institution;

2.1.4 A description of all resources of Institution to be utilized by Hospital/Facility;

2.1.5 Billing procedures for the departments and divisions covered by this Agreement;

2.1.6 A list of the reports and records which the parties determine must be prepared for the Clinical Program;

2.1.7 Description of the quality assurance program to be followed by Institution and Hospital/Facility;

2.1.8 The clinical education programs to be provided and the starting and ending dates for each program;

2.1.9 The number, names, clinical assignment opportunities, and clinical assignment schedule for the students;

2.1.10 The name of the individual for each party who shall have authority to act for and on behalf of each party in all matters relevant to this Affiliation Agreement.

3.0 Curriculum.

3.1 It shall be Institution's responsibility to:

3.1.1 Establish and maintain for this clinical placement, curriculum standards and educational policies that meet Institution standards (and applicable \_\_\_\_\_ licensing and accreditation requirements);

3.1.2 Administer, organize, and operate the overall clinical placement educational program;

3.1.3 Provide course outlines to Hospital/Facility that include objectives, goals, and classes for each course providing clinical experience;

3.1.4 Provide Hospital/Facility with a copy of the Student Handbook, if any, that sets forth the rules governing student behavior.

3.2 It shall be Hospital/Facility's responsibility to:

3.2.1 Allow faculty and students to select and arrange Hospital/Facility learning experiences that meet clinical objectives;

3.2.2 Orient Hospital/Facility staff to the curriculum and encourage an atmosphere conducive to learning;

3.2.3 Provide Institution faculty with written policies, procedures, standards of care and protocols of Hospital/Facility, which Institution acknowledges shall govern Institution students and faculty involved in the clinical program;

3.2.4 Maintain its operating license and accreditation by the Joint Commission on Accreditation of Health Care Organizations and \_\_\_\_\_.

4.0 Program Coordination.

4.1 Institution and Hospital/Facility agree to work together to establish and maintain a quality Clinical Program. Hospital/Facility agrees to take an active role in suggesting or establishing education policy, curriculum, and course content.

4.2 Institution shall provide a faculty member who will serve as liaison with Hospital/Facility personnel.

4.3 Institution and Hospital/Facility agree to provide representatives to form a Liaison Committee to meet (monthly/bi-monthly) to fashion, discuss, evaluate, and make recommendations to revise the Clinical Program experience at Hospital/Facility. Institution agrees upon request to provide representatives from Institution faculty to serve on Hospital/Facility committee(s) relevant to the Clinical Program.

4.3.1 Institution representatives on the Liaison Committee shall be: (insert titles of officials to serve on committee).

4.3.2 Hospital/Facility's representatives on the Liaison Committee shall be: (insert titles of officials to serve on committee).

4.4 Institution and Hospital/Facility agree to cooperate in planning hours of practice and selecting areas of clinical services so that all programs can benefit.

4.5 Neither party, nor any joint committee, shall have the power to obligate Institution or Hospital/Facility resources, or commit either to any particular action.

5.0 Clinical Faculty and Staff.

5.1 It shall be the responsibility of Institution to:

5.1.2 Employ and assign to this Clinical Program only those physicians/ employees who are State-licensed;

5.1.3 Employ for this Clinical Program only administrative and instructional staff who meet the applicable qualifications;

5.1.4 Discipline, terminate, reassign, and reinstate such personnel in its reasonable discretion;

5.1.5 Provide Hospital/Facility with a faculty responsibility description;

5.1.6 Assign to the Clinical Program only faculty who agree to follow Hospital/Facility rules and regulations even though they are not Hospital/Facility employees;

5.1.7 Define a faculty dress code that meets the approval of Hospital/Facility;

5.1.8 Provide representatives from Institution's faculty to serve on Hospital/ Facility committee(s) at the request of Hospital/Facility;

5.1.9 Provide evidence of appropriate specialty certification for each of its provided physician faculty members.

5.2 It shall be the responsibility of Hospital/Facility to:

5.2.1 Provide Institution faculty with written policies, procedures, standards of care and protocols of Hospital/Facility;

5.2.2 Employ medical, administrative, and direct patient care staff who are currently licensed to practice medicine in the State and who are qualified either through experience and/or academically to uphold and demonstrate standards of medicine and medical care as established by Hospital/Facility;

5.2.3 Provide medical staff to assist students with clinical assignments.

6.0 Student Records and Student Participation in the Hospital/Facility Clinical Program.

6.1 Institution shall provide and maintain the following records and reports required by the Hospital/Facility for conducting the Clinical Program:\_\_\_\_\_.

6.2 Hospital/Facility agrees to complete the following evaluations and student records developed by Institution concerning student participation and performance in the Clinical Program:\_\_\_\_\_.

- 6.3 The parties acknowledge that many student educational records are protected by the Family Educational Rights and Privacy Act ("FERPA"), and that student permission must be obtained before releasing specific student data to anyone other than Institution. Institution agrees to provide guidance to Hospital/Facility with respect to complying with FERPA.
- 6.4 It shall be Institution's responsibility to:
- 6.4.1 Send to Hospital/Facility for clinical experience only those students who have met all Institution requirements and qualifications and who agree to follow Hospital/Facility rules and regulations;
  - 6.4.2 Submit to Hospital/Facility, \_\_\_ weeks before the Clinical Program is to begin, the names of the affiliating students, the dates and the assigned areas, and update that into the final registration list \_\_\_ weeks after Institution's add/drop registration period ends;
  - 6.4.3 Ensure that students attend a Hospital/Facility orientation session during the first month of clinical experience at Hospital/Facility;
  - 6.4.4 Notify students of their assignments with Hospital/Facility;
  - 6.4.5 Provide Hospital/Facility, Institution faculty, and the students with a copy of the written Institution rules and responsibilities that apply to the student in the Clinical Program;
  - 6.4.6 Define the mechanisms for students reporting on- and off-duty;
  - 6.4.7 Define and help enforce student dress codes that meet the approval of Hospital/Facility;
  - 6.4.8 Provide Hospital/Facility with documentation that the students have successfully completed the following prerequisites, tests, and training deemed necessary for placement in the Clinical Program:
    - 6.4.8.1 (e.g., CPR, immunizations);
  - 6.4.9 Upon request and in compliance with FERPA, provide responsible Hospital/Facility officials with such student records as will adequately disclose the prior education and related experiences of prospective student participants.
- 6.5 It shall be Hospital/Facility's responsibility to:
- 6.5.1 Advise Institution of the number of students who can be accommodated at Hospital/Facility;
  - 6.5.2 Provide orientations to acquaint students with Hospital/Facility facilities, policies, procedures, Hospital/Facility faculty and staff, and the needs of individuals and/or groups with whom the students will be working;
  - 6.5.3 Provide written evaluations to students \_\_\_ weeks into the academic term and \_\_\_ weeks after the conclusion of the academic term;
  - 6.5.4 Provide emergency treatment in the event of accident or illness to students while in Hospital/Facility for the Clinical Program, such care to be provided at the students' expense;
  - 6.5.5 Maintain administrative and professional supervision of students insofar as their presence and program assignments affect the operations of the Facility and its care, direct and indirect, of patients.
- 6.6 Institution and Hospital/Facility agree:
- 6.6.1 That any student who becomes injured or ill shall receive medical diagnosis and attention;
  - 6.6.2 That any Student who does not meet the health criteria established by Hospital/Facility cannot be assigned to Hospital/Facility. Hospital/Facility has the right, at any time, to request health status reports on students;
  - 6.6.3 That Institution will not be responsible for the ultimate performance of students at Hospital/Facility.
- 6.7 Student participation in Clinical Program shall be for \_\_\_ academic terms.
- 6.8 The students shall not be compensated for their participation in the Clinical Program.

7.0 Clinical Facilities.

7.1 The Hospital/Facility agrees to provide:

7.1.1 Adequate facilities for the Clinical Program;

7.1.2 Space for reference materials for students;

7.1.3 An area where students may gather together for social and educational meetings, including meals, status conferences, etc;

7.1.4 With its best efforts, conference rooms, classrooms, dressing rooms, and locker space for students and Institution faculty involved in the Clinical Program.

8.0 Relationship Between the Parties.

8.1 Institution and its employees (physician and non-physician) shall not be employees of Hospital/Facility, and shall not hold themselves out as employees of Hospital/Facility. Nothing in this Agreement is intended or shall it be construed to create a joint venture relationship, a lease, or a landlord/tenant relationship.

8.2 Employees of Hospital/Facility shall not be considered and shall not hold themselves out to be employees of Institution.

8.3 Each party shall be solely liable for its own debts, obligations, acts and omissions, including the payment of all required withholding, social security, and other taxes or benefits on behalf of its employees.

8.4 Neither party shall engage in direct purchasing or otherwise contract any liability on behalf of, or charge the credit of, the other.

8.5 Should the Internal Revenue Service or any other governmental agency question or challenge the independent contractor status of Institution, Hospital/Facility, or its employees, both Hospital/Facility and Institution, upon receipt by either of them of notice, shall promptly notify the other party and afford the other party the opportunity to participate in any government agency discussion or negotiations irrespective of whom or by whom such discussions or negotiations are initiated.

8.6 Hospital/Facility shall retain and exercise the final authority in the appointments, reappointments, revocations, amendments to, and suspensions of practicing privileges and of membership on Hospital/Facility staff.

8.7 Institution shall retain and exercise the final authority in the appointments, reappointments, revocations, amendments to, and suspensions of its faculty/employees, in accordance with Institution policies and procedures.

8.8 The parties acknowledge that each participates in various third-party payment programs and agree to fully cooperate with the other by providing assistance to meet all requirements for participation and payment.

9.0 Insurance.

9.1 Hospital/Facility shall, at Hospital/Facility's sole expense, procure, maintain, and keep in force for the duration of this Agreement the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by Institution, the required insurance shall be in effect prior to the commencement of work by Hospital/Facility and shall continue in force as appropriate until the latter of:

9.1.1 Final acceptance by Institution of the completion of this Agreement; or

9.1.2 Such time as the insurance is no longer required by Institution under the terms of this Agreement.

9.2 Any insurance or self-insurance available to Institution shall be excess of and non-contributing with any insurance required by Hospital/Facility. Hospital/Facility's insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by Institution, Hospital/Facility shall provide Institution with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by this Agreement, an insurer or surety shall fail to comply with the requirements of this Agreement, as soon as Hospital/Facility has knowledge of any such failure, Hospital/Facility shall immediately notify

Institution and immediately replace such insurance or bond with insurance or bond meeting the Agreement's requirements.

9.2.1 Workers' Compensation and Employer's Liability Insurance

Hospital/Facility shall provide proof of workers' compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapters 616A-D and all other related chapters, is not required. If work occurs outside of the State of Nevada, by employees who do not live and work in Nevada, proof of the applicable statutory state's workers' compensation insurance must be provided.

Employers' Liability

- a. Minimum limits required:  
\$100,000 Per accident or disease.

9.2.2 Commercial General Liability Insurance

- a. Minimum limits required:  
\$2,000,000 General aggregate.  
\$1,000,000 Products & completed operations aggregate.  
\$1,000,000 Personal and advertising Injury.  
\$1,000,000 Each occurrence to include bodily injury and property damage.
- b. Coverage shall be on an occurrence basis and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, and liability assumed under contract.

9.2.3 Business Automobile Liability Insurance

- a. Minimum limit required: \$5,000,000 combined single limit per Occurrence for bodily injury and property damage.
- b. Coverage shall include owned, non-owned, and hired vehicles.

9.2.4 Professional Liability/Errors & Omissions Insurance

- a. Minimum limit required:  
\$1,000,000 Per claim.  
\$3,000,000 Annual aggregate.
- b. Retroactive date: Prior to commencement of the performance of this Agreement.
- c. Discovery period: Three (3) years after termination of Agreement.

9.2.5 Umbrella or Excess Liability Insurance

- a. May be used to achieve the above minimum liability limits.
- b. Shall be endorsed to state it is "As Broad as Primary Policies."

9.2.6 General Requirements

- a. Deductibles and Self-insured Retentions: Insurance maintained by Hospital/Facility shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by Institution. Such approval shall not relieve Hospital/Facility from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$100,000.00 per occurrence, unless otherwise approved by the NSHE or institution's Risk Manager.
- b. Approved Insurer: Each insurance policy shall be:
  - i) Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and
  - ii) Currently rated by A.M. Best not less than A-.

9.3 Institution shall maintain, at its own cost and expense, professional liability insurance covering Institution as an entity and each of its provided physicians/employees and students against professional liability (malpractice) claims, in the minimum amount of one million dollars (\$1,000,000.00) per incident and three million dollars (\$3,000,000.00) aggregate. Evidence of such insurance shall be provided to Hospital/Facility upon request. This provision shall in no way be considered a waiver of Institution's right to raise the defense of sovereign immunity under NRS 41.0305 to NRS 41.039, which right Institution specifically reserves.

9.4 Institution shall carry Workers' Compensation and Employer's Liability Insurance as required by NRS 616B.627 or provide proof that compliance with the provisions of *Nevada Revised Statutes*, Chapters 616A-D and all other related chapters, is not required.

9.5 During the term of this Agreement and any extension thereof, Institution shall maintain in force Commercial General Liability Insurance in the amount of \$\_\_\_\_\_ per occurrence and \$\_\_\_\_\_ Annual Aggregate or self-insurance sufficient to cover the Institution's liability under NRS Chapter 41. Coverage shall include liability arising out of bodily injury, wrongful death, and property damage.

#### 10.0 Access.

Contractor agrees to provide Institution and its insurer access and authority to investigate on site and to obtain such information from Contractor as may be required to defend the Institution and its officers or employees from claims or litigation arising from activities under this Agreement.

#### 11.0 Indemnification

11.1 Hospital/Facility shall indemnify, defend, and hold harmless Institution, its governing board, officers, faculty, agents, employees and from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by Hospital/Facility or any of its medical staff, employees, or the residents which may occur during or which arise out of the performance of this Agreement.

11.2 To the extent limited in accordance with NRS 41.0305 to NRS 41.039, Institution shall indemnify, defend, and hold harmless Hospital/Facility, its governing board, officers, faculty, agents, and employees from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by Institution, its officers or employees, which may occur during or which may arise out of the performance of this Agreement, and limited to the extent of the professional liability insurance limits set forth in paragraph 9.3 hereinabove. In accordance with NRS Chapter 41, Institution will assert the defense of sovereign immunity as appropriate in all cases, including malpractice and indemnity actions.

11.3 In the event each of the parties is found to be at fault, then each shall bear its own costs and attorney's fees and its proportionate share of the judgment or settlement based on its percentage of fault, as determined by a procedure established by the parties.

11.4 This Article shall continue beyond termination or expiration of this Agreement.

#### 12.0 Termination of the Agreement.

12.1 This Agreement may be terminated without cause upon providing at least \_\_\_ days' written notice to the other party prior to the beginning of the next academic term. Such termination must not affect students affiliated with Hospital/Facility for the academic term in which notice is given.

12.2 This Agreement may be terminated for cause by the non-offending party, as follows:

12.2.1 In the event Institution or Hospital/Facility fails by omission or commission in any substantial manner to provide the services in accordance with this Agreement;  
or

12.2.2 In the event either party becomes insolvent or has a bankruptcy petition filed against it; or,

12.2.3 In the event either Institution or Hospital/Facility or their staff fail to perform their duties hereunder causing imminent danger to patients or materially and adversely affecting the licensure or accreditation status of Hospital/Facility or Institution.

12.2.4 Such termination shall be effective upon written notice to the other.

12.3 This Agreement may be terminated by either party if the other party has substantially defaulted in the performance of any other obligation under this Agreement, if the terminating party first gives thirty (30) days written notice of the default, and the defaulting party has an additional ninety (90) days to cure the default, provided the defaulting party is proceeding to cure with diligence and has given written assurances to the non-defaulting party of the intent to cure.

12.4 Upon termination of this Agreement, neither party shall have any further obligations hereunder except for obligations accruing prior to the date of termination, obligations that are expressly extended beyond the term of this Agreement, including indemnification, and obligations made by Hospital/Facility with respect to any student.

### 13.0 Non-Discrimination and Compliance with Laws.

13.1 The parties agree in this clinical program to comply with all the federal, state, local, and institutional laws, ordinances and rules applicable to Institution, and specifically agree not to unlawfully discriminate against any individual on the basis of race, creed, color, sex, religion, age, disability, or national origin, and to comply with all anti-discriminatory laws and policies which Institution promulgates and to which Institution is subject.

13.2 The parties agree to comply with all state, federal, and local laws, including but not limited to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Family Educational Rights and Privacy Act of 1974. The parties agree to enter into any supplementary agreement that may be required pursuant to the provisions of HIPAA.

### 14.0 Withholding.

With respect to employee compensation for services provided in connection with this Agreement, each party shall indemnify the other for their own employees' withholding taxes, workers' compensation, and other employment-related taxes.

### 15.0 Entire Agreement; Modification.

This Agreement contains all the terms between the parties and may be amended only in writing signed by both parties.

### 16.0 Severability.

Each paragraph of this Agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph of the agreement is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

### 17.0 Governing Law.

The parties agree that the laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this agreement. Any and all disputes arising out of or in connection with the agreement shall be litigated only in the \_\_\_\_\_ Judicial District Court in and for the County of \_\_\_\_\_, State of Nevada, and Hospital/Facility hereby expressly consents to the jurisdiction of said court.

### 18.0 Assignment.

Nothing in this Agreement shall be construed to permit the assignment by Hospital/Facility or Institution of any rights or obligations hereunder, and such assignment is expressly prohibited without the prior written consent of either Institution or Hospital/Facility.

19.0 Notice.

Any notice to either party hereunder must be in writing signed by the party giving it and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or express mail, or other overnight mail service, or hand delivered, when addressed as follows:

To Institution:

To Hospital/Facility:

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

20.0 Paragraph Headings.

The paragraph headings in this Agreement are used only for ease of reference and do not limit, modify, construe, or interpret any provision of this Agreement.

IN WITNESS WHEREOF, the authorized representative(s) of Hospital/Facility and of Institution execute this Agreement on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

INSTITUTION:  
(Full Legal Name of Institution)

HOSPITAL/FACILITY:  
(Full Legal Name of Hospital/Facility)

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_ (signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(title)

# Standard Form Education Affiliation Agreement

## Education Affiliation Agreement

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This Agreement is made between (Full name and address of Institution) hereinafter referred to as "Institution," and (Full name and address of Placement Site), hereinafter referred to as "Placement Site."

### RECITALS

- A. Placement Site is capable of providing a site for teaching and practical experience; and,
- B. Placement Site has made it a professional responsibility to assist in the educational experience of (university/college) students and is interested in providing assistance in particular to Institution with its curricula; and,
- C. Institution is currently conducting (teaching/other) programs granting the degree(s) of \_\_\_\_\_ for which it desires a Placement Site to further the training and experience of Institution's students.

### TERMS

In consideration of the mutual promises and conditions contained in this Agreement, Institution and Placement Site agree as follows:

#### 1.0 Purpose of the Affiliation.

1.1 Institution and Placement Site agree to affiliate and cooperate for their mutual benefit. Placement Site will provide a facility for Institution students to obtain appropriate, high quality (practical/clinical) training and experience ("[name] Program"), and Institution will provide students to support the mission and efforts of Placement Site. The overall intention is to provide training and service with greater success than would be possible without affiliating.

1.2 In particular, Institution seeks to achieve the following goals with this Agreement:

1.2.1 Provide its students with the necessary experience to prepare them for careers in \_\_\_\_\_;

1.2.2 Provide its students and faculty with the opportunity for professional interaction with practitioners to learn the newest techniques in the \_\_\_\_\_ field; and

1.2.3 Enhance and maintain strong ties to local (type of Placement Site, e.g., schools).

1.3 Placement Site seeks to achieve the following goals with this Agreement:

1.3.1 Improve the quality of (teaching) while providing an environment conducive to program and experiential training;

1.3.2 Improve its recruitment ability; and

1.3.3 Establish an affiliate (clinical/other) program consistent with the values and needs of Placement Site.

#### 2.0 Responsibilities for the Academic Curriculum.

2.1 It shall be Institution's responsibility to:

2.1.1 Establish and maintain for this placement, curriculum standards and educational policies that meet Institution standards (and applicable \_\_\_\_\_ licensing and accreditation requirements).

2.1.2 Administer, organize, and operate the overall placement educational program;

- 2.1.3 Provide course outlines to Placement Site that include objectives, goals, and classes for each course providing (clinical/other) experience;
  - 2.1.4 Provide Placement Site with a copy of the Student Handbook, if any, that sets forth the rules governing student behavior.
  - 2.2 It shall be Placement Site's responsibility to:
    - 2.2.1 Allow faculty and students to select and arrange Placement Site learning experiences that meet program objectives;
    - 2.2.2 Orient Placement Site staff to the curriculum and encourage an atmosphere conducive to learning;
    - 2.2.3 Provide Institution faculty with written policies, procedures, standards of care, and protocols of Placement Site, which Institution acknowledges shall govern Institution students and faculty involved in the (clinical/other) Program.
- 3.0 Program Delivery and Supervision.
- 3.1 It shall be Institution's responsibility to:
    - 3.1.1 Employ administrative and instructional staff who meet the qualifications;
    - 3.1.2 Provide Placement Site with a description of Institution faculty responsibilities;
    - 3.1.3 Use only faculty who agree to follow Placement Site rules and regulations.
  - 3.2 It shall be Placement Site's responsibility to:
    - 3.2.1 Employ administrative and (direct service/teaching) staff who are currently licensed and who are qualified either through experience and/or academically to uphold and demonstrate standards of the Program as established by Placement Site;
    - 3.2.2 Provide learning experiences under the supervision of qualified personnel that meet the experience standards of the following recognized professional accrediting agencies, State agencies, and the stated objectives of Institution's educational program:\_\_\_\_\_;
    - 3.2.3 Provide Institution and participating students with current operational policies and procedures manuals relevant to the Program;
    - 3.2.4 Provide staff to assist students with (clinical/other) assignments;
    - 3.2.5 Provide opportunities for observations and practical experience conducive to the learning process of the students and to meeting the learning objectives of the Program and overall curriculum;
    - 3.2.6 Provide time for Placement Site professionals to attend supervisory meetings and conferences called by Institution as part of the educational program;
    - 3.2.7 Permit, as possible, the students to attend Placement Site regular, operational, and policy-making meetings.
- 4.0 Program Coordination.
- 4.1 Institution and Placement Site agree to work together to establish and maintain a quality Program. Placement Site agrees to take an active role in suggesting or establishing education policy, curriculum, and course content.
  - 4.2 Institution shall provide a faculty member who will serve as liaison with Placement Site personnel.
  - 4.3 Institution and Placement Site agree to provide representatives to form a coordinating committee to fashion, discuss, evaluate, and make recommendations to revise the Program experience at Placement Site. Institution agrees upon request to provide representatives from Institution faculty to serve on Placement Site committee(s) relevant to the Program.
  - 4.4 Institution and Placement Site agree to cooperate in planning the hours of practice and selecting the areas of services so that all programs can benefit.
  - 4.5 Neither party, nor any joint committee, shall have the power to obligate Institution or Placement Site resources or commit either to any particular action.

5.0 Term, Renewal, and Termination of the Agreement.

5.1 This Agreement is for a term of one (1) year beginning on \_\_\_\_\_, 20\_\_.

5.2 This Agreement shall be renewed by mutual written consent of the parties, (executed before the end of the one-year term set forth in 5.1) for an unlimited number of renewal terms of year(s) each.

5.3 This Agreement may be terminated upon providing at least \_\_\_\_ days' written notice to the other party prior to the beginning of the next academic term. Notwithstanding any such termination, any student already enrolled and participating in the Program shall have the right to fully complete the course.

6.0 Student Participation in Placement Site Program.

6.1 It shall be Institution's responsibility to:

6.1.1 Send to Placement Site for experience only those students who have met all Institution requirements and qualifications and who agree to follow Placement Site rules and regulations;

6.1.2 Submit to Placement Site, \_\_\_\_ weeks before the Program is to begin, the names of the affiliating students, the dates and the assigned areas, and update that into the final registration list \_\_\_\_ weeks after Institution's add/drop registration period ends;

6.1.3 Notify students of their assignments with Placement Site;

6.1.4 Provide Placement Site, Institution faculty, and the students with a copy of the written Institution rules and responsibilities that apply to the students in the Program;

6.1.5 Define the mechanisms for students reporting on- and off-duty;

6.1.6 Define and help enforce student dress codes that meet the approval of Placement Site;

6.1.7 Ensure that students attend a Placement Site orientation session during the first month of experience at Placement Site;

6.1.8 Provide Placement Site with documentation that the students have successfully completed the following prerequisites, tests, and training deemed necessary for placement in the Program:

6.1.8.1 (e.g., CPR, immunizations, specified courses.)

6.2 It shall be Placement Site's responsibility to:

6.2.1 Advise Institution of the number of students who can be accommodated at Placement Site;

6.2.2 Provide orientation sessions so all students can become acquainted with Placement Site facilities, policies, procedures, Placement Site faculty and staff, and the needs of individuals and/or groups with whom the students will be working;

6.2.3 Provide written evaluations to students \_\_\_\_ weeks into the academic term and \_\_\_\_ weeks after the conclusion of the academic term;

6.2.4 Provide emergency treatment in the event of accident or illness to students while in Placement Site for the program, such care to be provided at the students' expense.

6.3 Institution and Placement Site agree that:

6.3.1 Any student who does not meet the health criteria established by Placement Site cannot be assigned to Placement Site. Placement Site has the right, at any time, to request health status reports on students;

6.3.2 Institution will not be responsible for the ultimate performance of students at Placement Site.

6.4 Student participation in Program shall be for \_\_\_\_ academic term(s).

7.0 Facilities.

7.1 Placement Site agrees to provide:

7.1.1 Adequate facilities for the Program;

7.1.2 Space for reference materials for students;

7.1.3 An area where students may gather together for social and educational meetings, including meals, status conferences, etc.;

7.1.4 Whenever necessary, available conference rooms, dressing rooms, and locker space for students and Institution faculty involved in the Program.

#### 8.0 Standards of Conduct; Discipline.

8.1 Institution and Placement Site agree that all students and faculty assigned to Placement Site must adhere to all the rules, regulations, and standards applicable to Institution and Placement Site, including rules of ethical and professional conduct as set forth in Institution's Student Handbook, the written policies, procedures, standards of care, and protocols of Placement Site, and

8.2 Placement Site has the right to require Institution to withdraw a Program student in circumstances where:

8.2.1 Student's achievement, competence, progress, adjustment, or health does not warrant continuation at Placement Site; or,

8.2.2 Student's behavior fails to conform with the applicable regulations of Placement Site; and,

8.2.3 Placement Site provides the student with notice of the problem and an opportunity for the student individually to be heard before a final decision is made.

8.3 Placement Site, in any event, reserves the right to exclude from its premises any student whose conduct or state of health is deemed detrimental to the proper administration of Placement Site, provided Placement Site consults with and advises Institution's liaison prior to such exclusion.

#### 9.0 Authority for Placement Site Operations.

Placement Site retains final responsibility for all aspects of Placement Site operations.

#### 10.0 Student Records.

10.1 Institution shall provide and maintain the following records and reports required by Placement Site for conducting the Program: \_\_\_\_\_.

10.2 Placement Site agrees to complete the following evaluations and student records developed by Institution concerning student participation and performance in the Program: \_\_\_\_\_.

10.3 The parties acknowledge that many student educational records are protected by the Family Educational Rights and Privacy Act ("FERPA"), and that generally student permission must be obtained before releasing specific student data to anyone other than Institution. Institution agrees to provide Placement Site with guidance with respect to compliance with FERPA.

#### 11.0 Insurance Requirements.

11.1 Placement Site shall, at Placement Site's sole expense, procedure, maintain, and keep in force for the duration of the Agreement the following insurance conforming to the minimum requirements specified below. Unless specifically noted herein or otherwise agreed to by Institution, the required insurance shall be in effect on or prior to the commencement of work by Placement Site and shall continue in force as appropriate until the latter of:

11.1.1 Final acceptance by Institution of the completion of this Agreement; or

11.1.2 Such time as the insurance is no longer required by Institution under the terms of this Agreement.

11.2 Any insurance or self-insurance available to Institution shall be excess of and non-contributing with any insurance required from Placement Site. Placement Site insurance policies shall apply on a primary basis. Until such time as the insurance is no longer required by Institution, Placement Site shall provide Institution with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance. If at any time during the period when insurance is required by the Agreement, an insurer or surety shall fail to comply with the requirements of this Agreement, as soon as Placement Site has knowledge of any such failure, Placement Site shall immediately notify Institution and immediately replace such insurance or bond with insurance or bond meeting the Agreement's requirements.

11.3 Placement Site shall provide proof of Workers' Compensation and Employer's Liability Insurance as required by NRS 616B.627 or proof that compliance with the provisions of *Nevada Revised Statutes*, Chapters 616A-D and all other related chapters, is not required. If work occurs outside of the State of Nevada by employees who do not live and work in Nevada, proof of the applicable statutory state's workers' compensation insurance must be provided.

11.3.1 Minimum limits required:

\$1,000,000 Per accident or disease for employer liability.

11.4 Commercial General Liability Insurance

11.4.1 Minimum limits required:

\$2,000,000 General aggregate.

\$1,000,000 Products and completed operations aggregate.

\$1,000,000 Personal and advertising injury.

\$1,000,000 Each occurrence to include bodily injury and property damage.

11.4.2 Coverage shall be on an occurrence basis and shall cover liability arising from premises, operations, independent contractors, completed operations, personal injury, products, civil lawsuits, and liability assumed under contract.

11.5 Business Automobile Liability Insurance

11.5.1 Minimum limit required:

\$1,000,000 Each occurrence.

\$5,000,000 Each occurrence for charter services.

11.5.2 Coverage shall include owned, non-owned, and hired vehicles.

11.6 Umbrella or Excess Liability Insurance

11.6.1 May be used to achieve the above minimum liability limits.

11.6.2 Shall be endorsed to state it is "As Broad as Primary Policies."

11.7 General Requirements

11.7.1 Deductibles and Self-insured Retentions: Insurance maintained by Placement Site shall apply on a first dollar basis without application of a deductible or self-insured retention unless otherwise specifically agreed to by Institution. Such approval shall not relieve Placement Site from the obligation to pay any deductible or self-insured retention. Any deductible or self-insured retention shall not exceed \$100,000.00 per occurrence, unless otherwise approved by the NSHE or institution's Risk Manager.

11.7.2 Approved Insurer: Each insurance policy shall be:

i) Issued by insurance companies authorized to do business in the State of Nevada; or eligible surplus lines insurers acceptable to the State and having agents in Nevada upon whom service of process may be made; and

ii) Currently rated by A.M. Best not less than A-

11.8 Evidence of Insurance

Prior to the start of any work, Placement Site must provide the following documents to Institution:

11.8.1 Certificate of Insurance: The Accord form certificate of insurance (or equivalent) to evidence insurance policies and coverage required by this Agreement. The certificate for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. Each insurance policy required by this Agreement must be in effect at or prior to commencement of work under this Agreement and remain in effect for the duration of the Agreement. Failure to maintain the insurance policies or to provide evidence of renewal as required by this Agreement is a material breach of contract.

11.8.2 Notice of Cancellation: Should any of the insurance policies required by the insurance provisions of this Agreement be suspended, voided or cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

12.0 Access.

Placement Site agrees to provide Institution and its insurer access and authority to investigate on site and to obtain such information from contractor as may be required to defend Institution and its officers or employees from claims or litigation arising from activities under this Agreement.

13.0 Withholding.

With respect to employee compensation for services provided in connection with this Agreement, each party shall indemnify the other for their own employees' withholding taxes, workers' compensation, and other employment-related taxes.

14.0 Non-Discrimination.

The parties agree to comply with all the federal, state, local, and institutional laws, ordinances and rules applicable to Institution, and specifically agree not to unlawfully discriminate against any individual on the basis of race, creed, color, sex, religion, age, disability, or national origin, and to comply with all anti-discriminatory laws and policies which Institution promulgates and to which Institution is subject.

15.0 Indemnification.

15.1 Placement Site shall indemnify, defend, and hold harmless Institution, its governing board, officers, faculty, agents, and employees from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by Placement Site or any of its officers, employees, or agents which may occur during or which arise out of the performance of this Agreement.

15.2 To the extent limited in accordance with NRS 41.0305 to NRS 41.039, Institution shall indemnify, defend, and hold harmless Placement Site, its officers, agents, and employees from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by Institution, its officers or employees, which may occur during or which may arise out of the performance of this Agreement. In accordance with NRS Chapter 41, Institution will assert the defense of sovereign immunity as appropriate in all cases, including malpractice and indemnity actions.

16.0 Relationship of the Parties.

Placement Site is performing the services and duties required under this Agreement as an independent contractor and not as an employee, agent, partner or joint venturer with Institution.

17.0 Severability.

Each paragraph of this Agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph of this Agreement is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

18.0 Governing Law.

The parties agree that the laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this contract. Any and all disputes arising out of or in connection with the contract shall be litigated only in the \_\_\_\_ Judicial District Court in and for the County of \_\_\_\_\_, State of Nevada, and Placement Site hereby expressly consents to the jurisdiction of said court.

19.0 Assignment.

This Agreement may not be assigned by either party without the advance written consent of the other. This Agreement shall be binding upon the heirs, personal representatives, successors, and permitted assigns of both parties.

20.0 Notice.

Any notice to either party hereunder must be in writing signed by the party giving it, and shall be deemed given when mailed postage prepaid by U.S. Postal Service first class, certified or express mail, or other overnight mail service, or hand delivered, when addressed as follows:

To Institution:

To Placement Site:

or to such other addressee as may be hereafter designated by written notice. All such notices shall be effective only when received by the addressee.

21.0 Counterpart Originals.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and shall constitute the same instrument.)

22.0 Paragraph Headings.

The paragraph headings in this Agreement are used only for ease of reference and do not limit, modify, construe, or interpret any provision of this Agreement.

23.0 Intellectual Property.

Should any intellectual property be generated out of this Program or related research activities (such as patents, copyrights, and trade secrets), Placement Site agrees that the ownership and control of such property shall be controlled by Institution policies which are appended hereto as Attachment \_\_\_ and incorporated into this Agreement.

24.0 Entire Agreement; Modification.

This Agreement contains all the terms between the parties and may be amended only in writing signed by both parties.

IN WITNESS WHEREOF, the authorized representative(s) of Placement Site and of Institution execute this Agreement on this \_\_\_ day of \_\_\_\_\_, 20\_\_.

INSTITUTION:  
(Full Legal Name of Institution)

PLACEMENT SITE:  
(Full Legal Name of Placement Site)

By: \_\_\_\_\_  
(signature)

By: \_\_\_\_\_ (signature)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(printed name)

\_\_\_\_\_  
(title)

\_\_\_\_\_  
(title)

**Distribution:** 1 copy for Institution  
1 copy for Placement Site

# Standard Form Inter-Institutional Agreement

(See Procedure #97-1 for guidelines and forms for inter-institutional agreements related to sponsored projects)

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## COOPERATIVE AGREEMENT

This cooperative agreement is made and entered into this by and between the (name of institution) and the (name of institution), both entities within the Nevada System of Higher Education.

## WITNESSETH

**WHEREAS**, \_\_\_\_\_ desires for the \_\_\_\_\_ to provide \_\_\_\_\_ and \_\_\_\_\_

**WHEREAS**, the \_\_\_\_\_ is duly qualified and able to render the services as hereinafter described; and

**WHEREAS**, the \_\_\_\_\_ desires to provide the \_\_\_\_\_ with \_\_\_\_\_ services,

**NOW THEREFORE**, in consideration hereof, the parties hereto agree as follows:

**Term of Agreement:** The term of the agreement shall be from \_\_\_\_\_ through \_\_\_\_\_, with two (2) one-year renewals on a year-to-year basis by mutual agreement.

**Service to be Provided:** (Describe work to be performed in detail).

**Compensation:** \_\_\_\_\_ will be paid a total of \$ \_\_\_\_\_ for (describe services to be provided), which will commence \_\_\_\_\_ and end \_\_\_\_\_. Payment will be made on the first of each month (\$ \_\_\_\_\_/month).

**Assignment:** Neither the \_\_\_\_\_ nor any interest therein, nor claim there under, shall be assigned or transferred by the \_\_\_\_\_ unless expressly authorized in writing by the Director of Purchasing of \_\_\_\_\_ and the Director of \_\_\_\_\_. No such assignment or transfer shall relieve the \_\_\_\_\_ from its obligations and liabilities under the Agreement.

**Binding:** The parties agree that this Agreement shall be binding upon the \_\_\_\_\_ and upon \_\_\_\_\_, its partners, successors, executors, and administrators.

**Compliance:** \_\_\_\_\_ is required to comply with all OSHA, EPA, ADA, HIPAA, FERPA, NCAA, and other relevant state and federal standards, codes, and regulations that may apply.

**Default:** In case of default by \_\_\_\_\_, \_\_\_\_\_ reserves the right to hold the \_\_\_\_\_ responsible for any actual expenses incurred.

**Entire Agreement:** This Agreement, together with the other appendices hereto, constitutes the entire Agreement between the parties and supersedes all previous agreements, whether written or oral, between the parties with respect to the subject matter hereof, whether expressed or implied, and shall bind the parties unless the same be in writing and signed by the parties. The parties hereto further understand and agree that the other party and its agents have made no representations or promises with respect to this Agreement, except as in this Agreement expressly set forth.

**Force Majeure:** Neither party shall be liable for defaults or delays due to Acts of God or the public enemy, acts or demands of any Government or and Governmental agency, strikes, fires, floods, accidents or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party shall notify the other in writing of the cause of such delay within five (5) days after the beginning thereof.

**Headings:** The headings of this Agreement are for the purposes of convenience and reference only and shall not in any way define, limit, extend or otherwise affect the meaning or interpretation of any of the terms hereof.

**Laws:** This Agreement shall be construed in accordance with and governed by the laws of the State of Nevada.

**Non-Discrimination in Employment:** It has been and will continue to be the policy of \_\_\_\_\_ and \_\_\_\_\_ to be an equal opportunity institution. All decisions of admissions and employment are based on objective standards that will further the goals of equal opportunity. \_\_\_\_\_ is committed to assuring that all programs and activities are readily accessible to all eligible persons without regard to their race, color, religion, gender, national origin, ancestry, age, disability, Vietnam-Era and/or disabled veteran status, any protected class under relevant state and federal laws, and in accordance with University policy, sexual orientation.

**Notice:** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be deemed given upon the mailing thereof, postage prepaid, by certified or registered mail, return receipt requested, addressed to the other party at the address set forth below, or at such other address as either party shall designate to the other in writing hereafter:

Notices shall be sent to the \_\_\_\_\_ Purchasing Department as follows:  
Director of Purchasing (or other appropriate person, name and address)

With copies to:  
Director (name and address)

Notices shall be sent to the \_\_\_\_\_ as follows:  
Dean (name and address)

All such notices shall be effective when deposited in the United States Mail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective on the \_\_\_\_\_ day of \_\_\_\_\_.

(Name of Institution)

**RECOMMENDED:**

BY: \_\_\_\_\_  
(Name) Date

**APPROVED:**

BY: \_\_\_\_\_  
(Name), President Date

(Name of Institution)

**RECOMMENDED:**

BY: \_\_\_\_\_  
(Name) Date

**APPROVED:**

BY: \_\_\_\_\_  
(Name), President Date

Distribution: 1 copy to each party  
(Added 6/05; A. 4/06, 1/08, 10/09, 9/10, 6/16, 6/17, 9/21, 12/22, 3/23)

## **Section 4. General Guidelines for Physical Master Plans to be Incorporated into the NSHE Master Plan**

1. a. The Campus Master Plan should provide the Board of Regents with the means to adopt policies and make decisions allowing for the orderly development of each institution. The plan should address existing physical sites and, if appropriate, new sites.
  - b. The plan should support the educational philosophy, the missions and goals for each institution. The plan must be consistent with educational information and data furnished by the institution regarding existing and proposed curricula and programs, methods of instruction, and existing and projected student enrollment.
2. Demographic projections of the institution and the community should be considered.
3. Each plan should be consistent with NSHE space utilization standards and should include plans for the use of existing buildings and facilities.
4. Each plan should include a consideration and discussion of the site to determine the potential for development, and it should also deal specifically with the physical problem areas of the campus. It should include consideration and discussion of landscaping, utilities, communication, and computing systems.
5. Each plan should include a consideration and discussion of community planning, including an analysis of existing and proposed physical, environmental, and governmental conditions in the vicinity of the campus. The environmental impact of the plan should be addressed.
6. Each plan should include a consideration and discussion of both pedestrian and vehicle traffic, and of policies governing parking, housing, recreation, safety, and cultural and social facilities.
7. The time for each plan should encompass at least ten years.  
(B/R 10/88; Added 6/05)

## **Section 5. Capital Improvements and Facilities Management**

### **1. Life Cycle Cost Analyses**

The following general procedures and divisions of responsibility shall govern institutional requests for new buildings as they relate to quantifying the future costs to maintain and operate the facilities as required by Board policy.

- a. Effective with the 2013 capital budget cycle, each pre-award proposal for a new building shall include a standardized Life Cycle Cost Analysis as part of the total project cost estimate developed by the State Public Works Board. In order to ensure the Life Cycle Cost Analysis produces meaningful information for the Board of Regents to assess the future costs of a new building should construction be pursued, NSHE shall provide updates to the drivers used by the State Public Works Board to calculate the future cost of the facility. The updates provided by NSHE shall include current, nationally recognized standard expenses associated with operating the facility according to the size and type of building, adjusted for localized building and operational conditions.

- b. Effective with the 2013 capital budget cycle, proposals for new buildings in the post-planning and design phases shall include detailed Life Cycle Cost Analysis submitted as a supplement to the capital improvement proposal. In completing the detailed Life Cycle Cost Analysis, institutions may use third-party solutions in order to maximize the planning and scheduling of the ongoing maintenance, capital renewal, and operational expenses that may be incurred during the useful life of the new facility.

(Added 6/10)

## **Section 6. Codification of Fair Labor Practices in Contracts for Products that Bear any NSHE Logo (formerly CM 98-3)**

At its October 1-2, 1998 meeting, the Board of Regents approved language to be included in contracts with vendors supplying any entity of the NSHE with products that bear a campus or NSHE logo. Please distribute this procedure with the Board approved language that follows to appropriate staff on your campus. Please be sure that it is incorporated in the orientation and training of all current and new employees involved in the processing of contracts.

Licensee hereby certifies that it complies with all applicable labor, product safety, and occupational health laws and regulations, and that no child (under 14 years old) labor or involuntary labor is used, either domestically or abroad, in its manufacturing process, including assembly and packaging.

Licensee acknowledges and agrees that Licensor may cancel all current purchase orders, with impunity, in the event Licensee is found to not be in compliance with applicable labor, product safety, and occupational health laws and regulations, or in the event that Licensee is found to have used child or involuntary labor in its manufacturing process, including assembly and packaging.

Licensees may certify their compliance either by including the two clauses above in the contract with Licensor or by sending a separate document, in the above terms, to Licensor. The NSHE will not conduct business with vendors who do not comply with this certification.

(Added 6/05)

## **Section 7. Accounting Procedures for State Supported Summer Session Nursing and Nursing Prerequisite Courses**

State general fund support is provided through the NSHE funding formula for the undergraduate summer session nursing and science-based nursing prerequisite courses. Formula funding is determined by projecting student full time equivalent (SFTE) enrollments of nursing students registered in applicable summer session courses and by applying the enrollments in the formula to determine the budgeted revenue and expenditure levels.

Calendar year summer session reported SFTE enrollments will be added to the subsequent Fall semester reported SFTE enrollments for purposes of determining the academic fiscal year actual annualized SFTE enrollments and also for purposes of determining the three year weighted average growth rate required to apply against the most current actual annualized SFTE enrollments when projecting student FTE enrollments for the NSHE state biennial budget requests.

### Summer Session Nursing Registration Fee Determination

Summer session nursing students registered in nursing and science-based nursing prerequisite courses will be assessed the same per credit registration fee assessed for all other summer session courses, which currently is the previous spring semester Board of Regents approved per credit registration fee plus the Board approved Summer Session Registration Fee (Chapter 7, *NSHE Procedures and Guidelines Manual*).

### Summer Session Nursing Registration Fee Revenue and Expenditure Accounting

A portion of the registration fee revenue collected from 'nursing' students registered in nursing courses and from the five science-based nursing prerequisite courses needs to be transferred and distributed to the state revenue budget and the other non-state revenue budgets the same as those collected and distributed in the standard Fall and Spring terms and reflected in the *Board of Regents Handbook*, on or after December 31<sup>st</sup> each year.

To determine the registration fee revenue amount to be transferred annually, from the summer session revenue collection account to the state revenue collection account, multiply the approved summer session per credit registration fee amount, less the Board of Regents' approved Summer Session Registration Fee, against the total credit hours posted for the SFTE enrollments reported in the NSHE official summer session enrollment report.

The applicable costs associated with faculty salaries and operating costs, required to provide instructional services for the SFTE nursing enrollments reported, need to be transferred annually to the appropriate state budget account.

### Summer Session Salary Schedules - State Supported Courses

Normal academic year full-time and part-time salary schedules apply for summer session state supported instructional faculty positions.  
(Added 6/05; A. 11/05)

## **Section 8. Operating Cost-Savings Measure**

*Nevada Revised Statutes (NRS)* Chapter 333A address the requirements and procedures for operating cost-saving measure procurements including energy efficiency and Leadership in Energy and Environmental Design (LEED) project initiatives. NSHE institutions considering projects of this nature must ensure compliance with applicable statutes. For initiatives involving operating cost-saving measures, both state and non-state funded, the following procedures apply:

- a. Projects involving operating cost-saving measures must be initiated and managed by the institutional facilities management organization in accordance with applicable NRS requirements.
- b. Contracts with qualified service companies, including performance contracts, must be awarded through the institutional purchasing organization or the applicable Business Center.
- c. Contracts with a qualified service company, including performance contracts, must conform to NRS requirements outlined in the Energy Retrofit Checklist to ensure procurement steps and prevailing wage requirements are addressed. Confirmation of compliance must be demonstrated with an identifying signature and date.

- d. Performance contract modifications are not to be executed if the modifications violate the cost neutrality provisions of the NRS 333A.090(5) “unless approval of the change order is more economically feasible than termination of the operating cost-savings measure.” Determination to execute a change order will be approved by the chief business officer or Business Center upon the written recommendation of the institutional facilities officer.
- e. Multiple operating cost-savings measures may be bundled into one performance contract if the aggregate savings when compared to the aggregate costs per fund source (state and/or non-state) are in compliance with the cost-neutrality provisions of *NRS*.
- f. Multi-year contracts with qualified service companies may be permitted if the total contract term does not exceed three years. Extensions to the term of the contract for a period not to exceed six years in total may be approved by the Chancellor upon the recommendation of the institutional business officer or Business Center.
- g. NSHE institutions that employ a certified energy manager or a registered professional engineer (mechanical) may use those individuals to satisfy the *NRS* 333A.086(1) requirements for a third-party consultant “...to work on behalf of the using agency in coordination with the qualified service company.”

**NEVADA SYSTEM OF HIGHER EDUCATION**  
**Checklist to be followed for each Operating Cost-savings Measure**

(rev April 4, 2006)

This checklist certifies that the energy retrofit project described in the attached Agreement fully complies with the requirements of *Nevada Revised Statutes* Chapter 333A. It specifically certifies the following items have been accomplished:

AGENCY NAME: \_\_\_\_\_

CONTRACT TERM: \_\_\_\_\_

- \_\_\_\_\_ Identify potential operating cost savings measures.
- \_\_\_\_\_ Determine need to engage a Qualified Service Company (QSCO).
- \_\_\_\_\_ If QSCO services are required contact the State Energy Coordinator requesting permission to issue an RFP for an energy "partner".
- \_\_\_\_\_ Determine whether project scope warrants engaging a long-term (up to 3 years) energy "partner", or if the project scope is small enough to utilize a project-specific QSCO.
- \_\_\_\_\_ Engage an QSCO per requirements in NRS Chapter 333A to include:
  - 1- Measurement and verification of savings to be accomplished as follows:  
Lighting – at conclusion of project HVAC – annually for minimum of 5 years as defined by the agency Energy Coordinator or Professional Mechanical Engineer.
- \_\_\_\_\_ Review projected savings and determine whether or not savings will amortize a cash-neutral lease within the time allowed by NRS Chapter 333A (up to 15 years).
  - 1- Multiple operating cost-savings measures may be bundled into one performance contract provided the aggregate savings compared to the aggregate costs per fund source, state and/or non-state, meet the cost neutrality provisions of the NRS.
- \_\_\_\_\_ If savings result in cash-neutral lease, prepare a proposal for review by Agency Review Team.
- \_\_\_\_\_ Schedule a review meeting with the Review Team.
- \_\_\_\_\_ Determine feasibility of project and approve or disapprove.
- \_\_\_\_\_ If project is approved by Review Team, schedule a further, more detailed review with QSCO and the Review Team.

- \_\_\_\_\_ If project is further approved, proceed with the following:
- \_\_\_\_\_ Prepare bid documents with QSCO's input and review.
- \_\_\_\_\_ Advertise project for construction.
- \_\_\_\_\_ Determine successful bidder(s).
- \_\_\_\_\_ Award bid contingent on financing being approved by leasing/finance company.
- \_\_\_\_\_ Issue a "Letter of Intent" to the successful bidder(s) with a copy to the QSCO with instructions "NOT TO PROCEED" until a purchase order is issued by the Agency.
- \_\_\_\_\_ Obtain leasing/financing paperwork from the leasing/finance company, and submit with construction contract to the Purchasing Department.
- \_\_\_\_\_ Review construction and leasing/financing contracts, and forward to Chancellor's office for review and approval. (Chancellor's approval is required on all changes or additions to the Master Financing/Lease contract because of the total dollar amount of the financing/lease, and the fact that the Chancellor signed the Master Financing or Lease Agreement).
- \_\_\_\_\_ Send the financing/lease paperwork back to the finance/leasing company for signature.
- \_\_\_\_\_ Notify QSCO when signed documents have been received back from the financing or leasing company.
- \_\_\_\_\_ Issue a purchase order (authorization to proceed) to the QSCO.
- \_\_\_\_\_ Provide Agency Facilities Department with construction drawings for review and approval.
- \_\_\_\_\_ Review construction drawings and note any changes or deficiencies. Return drawings and comments to contractors.
- \_\_\_\_\_ Monitor project progress, and provide Review Team with periodic project progress reports.
- \_\_\_\_\_ Approve periodic payments based upon successful installation of equipment and systems.
- \_\_\_\_\_ Upon project completion, provide savings measurement and verification report for review by Facilities Maintenance engineering staff.
- \_\_\_\_\_ Review savings measurement and verification report and ensure that proposed savings have been achieved.
- \_\_\_\_\_ If proposed savings have been achieved, close out project.
- \_\_\_\_\_ Review annual measurement and verification reports, if applicable.
- \_\_\_\_\_ If proposed savings have NOT been achieved, determine cause and correct.

Initiated By: \_\_\_\_\_ Contract Reviewed By: \_\_\_\_\_

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Agency Representative

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Date

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NSHE Representative

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Date



## **Section 9. Purchasing Card Program Best Practices**

The following represent best practices associated with the P-card program to which each NSHE institution shall adhere:

1. Each institution shall have a specific department and personnel assigned the responsibility and authority for management of their P-Card program, with adequate staffing to support the operation.
2. Each institution shall establish an appropriate regular audit/review process for P-Card transactions to help ensure adequate operations of the program and to address errors/problems. The review process must include standard exception management reporting and other appropriate methods to regularly monitor P-card activities for potential abuses/errors, including regular reviews/evaluations of any "structured" transactions (planned and sequenced uses that circumvent existing parameters of operation for the program).
3. Each institution shall require adequate training for P-Card holders before they are issued a card. Following training P-Card holders must be issued a user's manual and sign for that manual, noting they understand their responsibilities and authority associated with the use of the P-card. Additionally, each institution shall send out regular reminders to card-holders noting key requirements and responsibilities (preferably with an updated "Quick Guide" pocket summary on proper uses of the P-Card).
4. Each institution shall establish time periods to review and update the user's manual at least annually.
5. Each institution shall ensure that all policies and procedures established are consistent with Board of Regents' and Chancellor's purchasing requirements.
6. Security provisions need to be adequate, including requiring a password change at least every 90 days.
7. Each institution must have an adequate and timely process to ensure that when employees leave the institution (voluntarily or otherwise) their card is collected and/or deactivated.
8. On at least a monthly basis a supervisory review and approval of the electronic account statement for card-holder activity shall be formally completed. If the President (or lower officer which has received delegation from the President to approve host expenses under Chapter 5, Section 1) has previously approved host expenses, the officer is not required to also review and approve P-Card statements that include hosting expenses.
9. The electronic account statement shall be used to collect the business purpose summary of purchases (as back-up to the itemized receipt or invoice).
10. Only the authorized cardholder may use their card, and it shall not be loaned to another individual. Institutions may consider "departmental" cards for specific situations where the card may be used in an effective and controlled manner.
11. Each institution shall have a process to review and control the P-card limits for each user (transaction limits and monthly limits) that match the user needs, and are balanced against existing controls. One overall institutional limit is prohibited. The institution shall have a process to review all limits on at least an annual basis, and adjust as appropriate.

12. Each P-card shall have the following printed on the face: “Tax Exempt – For Business Use Only”; the institutional Tax ID #; and the institution’s name (e.g. “UNR”).
  13. Each institution shall have an adequate policy enforcement for significant abuses to P-card uses, which may include suspension and/or deactivation of its use.
  14. Each institution must have an adequate process to ensure that equipment purchased with the P-card meets all tagging requirements.
  15. Each institution shall review the MCC codes to insure cards may not be used at inappropriate vendors/types of businesses.
- (Added 5/07, A. 6/11, 12/14)

## **Section 10. Payment Card Industry (PCI) Compliance Procedures**

1. Payment Card Industry (PCI) compliance must be completed on a consistent, System-wide basis. Annually, System staff will review transaction data with NSHE’s merchant service providers and determine which compliance level is applicable to the System. System controllers will be notified of any changes in classification or compliance procedures.
  - a. Scans are required from institutions that accept, transmit and/or store any cardholder data. The scans must be performed by a certified Qualified Security Assessor and/or a PCI approved scanning vendor. Institutions that are in scope for scan, as determined by the PCI, must upload a quarterly scan within five business days after the end of the quarter using the portal provided by the merchant services provider. A copy of the scan in PDF format must be submitted to the Banking & Investment Department at the time of upload.
  - b. All institutions must complete the appropriate Self-Assessment Questionnaire (SAQ) form annually for the prior calendar year. The completed form must be signed by the campus business officer and submitted to the Banking & Investment Department by January 25<sup>th</sup>. As NSHE functions under one tax ID number, the System will complete and submit one consolidated SAQ form for NSHE to the merchant service providers.
2. Gateways: Incorrect gateway selection or set-up can impact institutional compliance with the PCI. Prior to acquiring gateway, institutions shall provide vendor information to System staff who will verify with the merchant bank that the gateway is PCI compliant.

(Added 12/13)

## **Section 11. Travel**

### **Employee Travel**

1. NSHE follows the travel regulations for employee travel established by the State of Nevada Board of Examiners, unless otherwise stated below. Documentation is required to be attached to the expense report when exceptions are granted to the standard hotel rates as stated in *State Administrative Manual* Sections 0212.0 and 0214.0. When flying, additional fees such as an upgrade to the Business Select level, early bird check-in, flight insurance, or fees for more than one checked bag, etc. will not be reimbursed to the traveler. TSA pre-check or similar fees will not be reimbursed.

2. The State Board of Examiners requires each agency to establish regulations controlling the hours and conditions during which an employee will be allowed to claim meals. Time limitations for meal reimbursements when in travel status (both in-state and out-of-state travel) for NSHE employees, students, volunteers, and candidates are as follows:

Meal Time Frames

Breakfast: 12:01 a.m. – 10:00 a.m.  
Lunch: 10:01 a.m. – 3:00 p.m.  
Dinner: 3:01 p.m. – 12:00 a.m.  
(formerly CM 02-02)

Breakfast per diem will not be reimbursed for travelers who depart their home city after 9:00 a.m. Dinner per diem will not be reimbursed for travelers who return to their home city before 5:00 p.m.

3. When an employee travels 75 miles or less (one way), for a period of less than 24 hours, the employee is not entitled to receive reimbursement for meals for the day. The employee is entitled to reimbursement for mileage at the rates stated in the *State Administrative Manual*.
4. Overnight lodging within 50 miles or less (one way) from the employee's principal station must be justified in writing, approved by the individual authorized to approve such travel and included with the expense report. These expenses will not be allowed unless:
  - a. Inclement weather conditions make travel difficult, or
  - b. Late official meetings are required, or
  - c. Individuals involved are conference hosts responsible for meeting arrangements.
5. Unless specifically authorized in writing by the employee's supervisor for the employer's convenience, an employee who makes a single trip greater than 200 miles shall use a State Motor Pool vehicle or a rental car instead of a personal vehicle for such travel if either option is less expensive than use of a personal vehicle. If a personal vehicle is used for the employee's convenience, the employee will be reimbursed at the convenience rate as established by the State of Nevada.
6. An employee whose travel is funded by a federal grant or contract shall comply with the provisions of the Fly America Act, 49 U.S.C. § 40118, and the requirements of 41 CFR Part 301-10.

Employee Lodging:

NSHE institutions may make exceptions to the rate of reimbursement for lodging when one or more of the following applies:

1. Lodging is procured at a prearranged place such as a hotel when a meeting, conference or training session is held or;
2. Costs have escalated because of special events; lodging within prescribed allowances cannot be obtained nearby; and costs to commute to/from the nearby location exceed the cost savings from occupying less expensive lodging. If the condition(s) above exist, employee may apply the following rules to the rate of reimbursement for travel:
  - a. 150% of the standard CONUS federal per diem rate for non-surveyed in-state sites.
  - b. 175% of the federal per diem rate for surveyed out-of-state sites or;
  - c. 300% of the standard CONUS federal per diem rate for non-surveyed out-of-state sites.

3. As otherwise approved by the Chancellor, a Vice Chancellor, institution President or a person(s) delegated by him/her, or the Chief of Staff to the Board of Regents for BoR staff travel.

A request for exemption must be noted on the expense report.

Regent Travel

TRAVEL REGULATIONS – 10/01/19 – 09/30/20

## **REGENTS**

### **In-State and Out-of-State Lodging and Per Diem**

\*Reference the GSA – Domestic Per Diem Rate website - <http://www.gsa.gov/>

Receipts required for reimbursement:

- Expenses for parking or vehicle storage
- Car rental
- Gas Receipts
- Airline ticket stub (passenger receipt), airline ticket invoice or ticketless itinerary
- In and out-of-state lodging (If no receipt is turned in with the expense report, the CONUS rate will apply).
- Hosting
- Taxi fare or airport shuttle

\*\$5.00 per day is allowed for incidental expenses (receipts not required) which may include:

- Luggage carts
- Metered parking
- Subway/bus use
- Toll charges
- Tips

Meal Reimbursement Time Guidelines:

- Breakfast: 12:01 a.m. – 10:00 a.m.
- Lunch: 10:01 a.m. – 3:00 p.m.
- Dinner: 3:01 p.m. – 12:00 a.m.

Mileage:

Employees may receive reimbursement for mileage when using his/her own personal vehicle. The rate of reimbursement depends on whether the employee is using their personal vehicle for the State's convenience or for the employee's convenience. The current mileage reimbursement rates can be located on the State of Nevada Governor's Finance Office Budget Division All Agency Memos website ([www.budget.nv.gov/Policy-Directives](http://www.budget.nv.gov/Policy-Directives)).

Reimbursement for an employee using his/her own personal vehicle for the State's convenience must attach the "Personal Vehicle Mileage Reimbursement" memo to their expense report.

Reimbursement for an employee using his/her own motorcycle or airplane, rates can be found on the GSA website (<https://www.gsa.gov/travel/plan-book/transportation-airfare-pov-etc/privately-owned-vehicle-pov-mileage-reimbursement-rates>).

If traveling by private vehicle or airplane from a departure city to an arrival city, served by a commercial airline, the mileage reimbursement shall not exceed the airfare equivalent.

Regents are allowed to rent a vehicle or use state Motor Pool vehicles when traveling in-state. Arrangements are made through the Board Office.

Airmiles:		Landmiles:		
	Reno/Las Vegas	345 miles	Elko/Las Vegas	469 miles
	Reno/Elko	230 miles	Reno/Las Vegas	441 miles
	Elko/Las Vegas	330 miles	Elko/Reno	289 miles
	Reno/Ely	264 miles	Elko/Ely	187 miles
	Ely/Elko	116 miles	Reno/Yerington	81 miles
	Elko/Fallon	160 miles		

Upon completion of travel, forward all receipts and information to the appropriate administrative assistant for processing. An employee identification number is required for processing travel reimbursements through the NSHE accounting system. Reimbursement will be made to the traveler per the instructions indicated on the Travel Request.

(Added 3/08; A. 12/08, 10/09, 12/09, 12/10, 6/11, 9/11, 9/13, 1/14, 3/14, 9/14, 12/14, 6/15, 9/15, 3/16, 12/16, 3/17, 3/18, 6/18, 4/19, 12/19)

## Section 12. Intangible Asset Policy

1. An asset must possess all of the following characteristics before it is considered an intangible asset for financial reporting purposes:
  - Lacks physical substance;
  - Be nonfinancial in nature;
  - Has a useful life extending beyond a single reporting period; and
  - Has not been created or acquired primarily for the purpose of directly obtaining income or profit.

Goodwill, although intangible in nature, is not considered an intangible asset.

2. The threshold for capitalization for purchased intangible assets will be \$250,000 and the threshold for capitalization for internally generated assets will be \$500,000
1. For internally generated intangible assets other than software, only outlays incurred subsequent to meeting the criteria below will be capitalized:
  - The specific objective of the project and the nature of the service capacity that is expected to be provided by the intangible asset must be known;
  - The technical or technological feasibility for completing the project must be demonstrated so that the intangible asset will provide its expected service capacity;

- Evidence that the current intention, ability and effort will result in the completion or continuation of the development of the intangible asset.

Outlays prior to meeting all three of the above criteria will be expensed.

2. Internally generated software can include software that was developed in-house by the entity's personnel or by a third-party contractor on behalf of the entity. However, commercially generated software will be considered internally generated if it is modified using more than incremental effort before it is made operational.
3. Only outlays that meet the threshold and meet both of the following criteria will be capitalized:
  - The preliminary project stage is complete; and
  - Management implicitly or explicitly authorizes and commits to funding, at least currently, in the event of a multi-year project.
4. Costs that should not be capitalized:
  - Preliminary costs such as conceptual formulation and evaluation of alternatives and final selection of alternatives for the development of software
  - Post implementation/operational costs such as application training and software maintenance
5. Modifications of computer software must meet one of the following to be added to the cost of the original software as a betterment:
  - Increase functionality of the software which allows software to do tasks it couldn't do before
  - Increase efficiency which allows the software to increase the level of service provided by the software without the ability to perform additional tasks
  - Extend its estimated useful life

If the modification doesn't meet one of the above – then the outlay should be expensed as maintenance.

6. Land use rights assets such as easements, water rights, timber rights and mineral rights will not be reported as a separate intangible asset if the rights were purchased with the associated land.

Intellectual rights assets if acquired primarily to earn income are not intangible assets and will be reported as investments.

7. Intangible assets will be amortized over the useful life of the asset. The life should not exceed the period to which the service capacity is limited by contractual or legal provisions. Software and trademarks may have their lives limited by obsolescence.

Renewal periods may be considered when determining the useful life if there is evidence the entity will seek and be able to renew the current contract. Renewal fees must be nominal in relation to the level of service capacity expected to be obtained through the renewal.

An intangible asset will be considered to possess an indefinite useful life if there are no legal, contractual, regulative or technical factors that limit its useful life. Indefinite useful life intangible assets are not amortized. An example of an indefinite life asset is a permanent right-of-way easement.

8. Intangible assets are subject to the same impairment indicators as other capital assets and follow GASB Statement 42: Accounting Financial Reporting for the Impairment of Capital Assets and for Insurance Recoveries. In addition to those indicators, a common indicator of impairment for internally generated intangible assets is development stoppage. Internally generated assets impaired from development stoppage will be reported at the lower of carrying value or fair value.

(Added 4/11)

## **Section 13. Capital Improvement Policy**

1. NSHE capitalizes all expenditures for constructing a new building. For the purposes of this policy, capitalization is defined as the act of recording an expenditure or contribution that may benefit a future period as an asset rather than treating the expenditure as an expense of the period in which it occurs. Additionally, major improvements, additions, or major building alterations that involve an expenditure of at least \$250,000 for System institutions with net capital assets valued at \$50,000,000 or greater or \$100,000 for all other System institutions, that are not recurring in nature, and that usually increase the use value (efficiency, productivity, or use utility) or the useful life of the building beyond what it was before the alterations, are also treated as capital improvements. If any of these expenditures do not meet the definition of a capital improvement or do not reach the minimum capitalization threshold, they should be expensed.
2. For construction of new buildings or major improvements or alterations to existing buildings, the amounts to be capitalized include (1) the contract price of construction, including any contract changes; (2) architectural fees and services; (3) expenditures incurred in remodeling, reconditioning, and making the building suitable for the intended purpose; and (4) interest incurred during the period of time required to complete and prepare the asset for its intended use.
3. Major improvements should be distinguished from ordinary repairs that maintain the existing asset in normal operating condition and are expensed immediately. Ordinary repairs are recurring in nature and are normally small relative to the value of the asset; they do not materially add to the use value of the asset, and do not substantially extend its operational life.
4. Additions are new construction, acquisitions and extensions, enlargements, or expansions made to an existing asset. Additions are capitalized because they are considered to be extraordinary or major alterations. Also, work done on the existing asset to accommodate the addition should be regarded as part of the cost of the addition and capitalized.
5. Replacements and improvements are substitutions of a part of an asset for another. While replacement is the substitution of an asset of basically the same type and performance capabilities, improvement is the substitution of a better asset with superior performance capabilities. Replacements are considered as ordinary repairs and maintenance and are expensed when incurred.
6. Reinstallation and rearrangement costs are usually incurred to increase efficiency in production or reduce production costs and if their benefit extends beyond the current accounting period, they should be capitalized; otherwise they should be expensed as incurred.

7. Ancillary costs associated with preparing the property for its intended use should be capitalized.
8. A building's shell may be segregated from each building component and each item depreciated over its estimated useful life or the entire building may be treated as a single asset and depreciated over a single useful life. The component life for the shell shall be 40 years, fixed equipment shall be 15 years, systems/services shall be 15 years, finishes/fixtures shall be 10 years and the roof shall be 15 years.
9. Salvage or residual value is an estimate of the amount that will be realized at the end of the useful life of a depreciable asset through sale or other disposal. Salvage value should generally not be utilized in calculating depreciation.

(Added 4/11)

## **Section 14. Athletic Coach and Director Agreements, Checklist and Guidelines**

### **A. Athletic Coach and Athletic Director Contract Guidelines**

1. **Appointments.** Appointments of Athletic Coaches, Assistant Coaches and Athletic Directors shall be made in accordance with Title 4, Chapter 24, Section 1, Subsection 10 and these Guidelines.
2. **Changes to Template Language.** The approved templates shall be used for Athletic Coach, Assistant Coach and Athletic Director contracts that exceed the AD Threshold as that term is defined in Title 4, Chapter 24, Section 1, Subsection 10. The contract terms may be varied by negotiation only in accordance with the provisions of Title 4, Chapter 24, Section 1, Subsection 10 and these Guidelines. It is anticipated that not all of the template terms may be appropriate for assistant coach contracts. However, the institutions should try to minimize revisions. Changes to the template language must be justified in writing as an attachment to the Contract Checklist, which must be submitted to the Chancellor and the Chief of Staff to the Board of Regents within 24 hours after the execution of any employment contract.
3. **Term of the Contract.** Long term contracts create huge potential liquidated damages and other monetary liabilities for the institution. The institution must address its ability to pay for those potential liabilities as part of the certifications and disclosures required under Title 4, Chapter 24, Section 1, Subsection 10.
4. **Contract Checklist.** The Contract Checklist shall be completed and submitted to the Chancellor and Chief of Staff to the Board of Regents for coach or athletic director contracts that exceed the AD Threshold within 24 hours of the execution of a contract.
5. **Diversity Efforts.** The institution shall provide written information regarding its efforts to obtain a diverse pool of candidates as an attachment to the Contract Checklist. An outside review of the institution process may be used.

# B. Head Coach Employment Agreement

HEAD COACH EMPLOYMENT AGREEMENT  
BETWEEN

BOARD OF REGENTS OF THE

NEVADA SYSTEM OF HIGHER EDUCATION

ON BEHALF OF

THE \_\_\_\_\_

AND

\_\_\_\_\_

HEAD COACH EMPLOYMENT AGREEMENT  
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HEAD COACH EMPLOYMENT AGREEMENT  
between  
Board of Regents of the Nevada System of Higher Education,  
on behalf of  
the University of \_\_\_\_\_  
and  
\_\_\_\_\_

This Head Coach Employment Agreement (this "Agreement") is effective this \_\_\_\_ day of \_\_\_\_\_, 201\_ (the "Effective Date") by and between the Board of Regents of the Nevada System of Higher Education, on behalf of the University of \_\_\_\_\_ (the "University"), and \_\_\_\_\_ (the "Head Coach" or the "Employee").

ARTICLE 1 – PURPOSE

The University and the Head Coach have entered into this Agreement because the University desires to contract the Employee for the period set forth in Article 3 with the Employee's assurance that Employee will serve the entire term of this Agreement, a long-term commitment by the Employee being critical to the University's desire to run a stable athletic program. The University and the Employee agree that head coaches of intercollegiate athletic teams at the University conduct their professional activities under circumstances unique in the University community and among University employees, including evaluation and scrutiny of program performance by the public and the news media and control by external rules and regulations, including without limitation the rules and regulations of the National Collegiate Athletic Association ("NCAA") and the athletic conference of which the University is a member (the "Conference"). These circumstances justify job security and commitment by the Employee longer than one year but less than a continuous appointment. The Employee desires to obtain the opportunities of employment with the University which are set forth in this Agreement. For these reasons, the University has agreed to employ the Employee and the Employee has promised to be employed by the University 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 University 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

The Employee's employment hereunder shall commence on the Effective Date and shall continue until this Agreement terminates upon the close of business at the University on \_\_\_\_\_, \_\_\_\_\_, (the "Term"), provided, that this provision is subject to the terms and conditions of Article 6 hereof concerning termination and Article 7 hereof concerning restrictions on competition, and neither party shall have any right to terminate this Agreement prior to the close of business at the University on \_\_\_\_\_, \_\_\_\_\_, except as provided therein.

### 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 THE EMPLOYEE OF THE NONRENEWAL OF EMPLOYMENT AT THE UNIVERSITY AND THAT EMPLOYEE'S EMPLOYMENT WILL TERMINATE UPON THE CLOSE OF BUSINESS AT THE UNIVERSITY 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 background check to be undertaken by the University and completed within thirty (30) days of the Effective Date of this Agreement. Employee's academic degrees and credentials must be confirmed, and Employee's NCAA compliance record reviewed and accepted by Employer before the Agreement is signed. Employee's failure to pass the background check to the satisfaction of the University, in its sole reasonable 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 background check(s) at the University's discretion at any time during employment. Employee's failure to pass any background check to the satisfaction of the University, in its sole reasonable discretion, for reasons that would constitute cause for discipline under Paragraph 6.1.c 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 or continuation of 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 or maintaining employment is prohibited. Falsification or misrepresentation of education, credentials, qualifications, experience, or background and/or evidence that degrees offered in support of candidacy for or continuation of employment have been issued from non-accredited institutions, in University's sole reasonable discretion, invalidates the employment contract and voids this Agreement and results in immediate termination for cause.

## ARTICLE 4 – POSITION

### 4.1 Employment As Head \_\_\_\_\_ Coach Of University.

#### 4.1.a. Position

The Employee is hereby employed by the University. Throughout the Term, the Employee shall use Employee's best full-time energies and abilities for the exclusive benefit of the University. The Employee shall serve as the Head Coach of the University's \_\_\_\_\_ program (the "Program"), and the Employee, as Head Coach, shall also serve as the primary and responsible administrator of the Program.

#### 4.1.b. Head Coach is Administrator; Reassignment

Employee is an “administrator” as that term is defined by the policies, rules and regulations of the Board of Regents of the Nevada System of Higher Education and is subject to reassignment. In the event that Employee is reassigned to duties other than those as Head Coach of the Program 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.

OR

#### 4.1.b. Head Coach May Not Be Reassigned

Notwithstanding that Employee shall have administrative duties, Employee is not subject to reassignment from the position of Head Coach to another position at the University.

### 4.2 Description Of Employee’s Responsibilities

#### 4.2.a. Recognition Of Duties

The Employee agrees to be a loyal employee of the University. The Employee agrees to devote Employee’s best efforts full time to the performance of all duties for the University, to give proper time and attention to furthering Employee’s responsibilities to the University and to comply with all rules, regulations, policies, and decisions established or issued by NSHE, the University, the NCAA, and the Mountain West Conference (the “Conference”) or any successor conference, and to comply with all rules, regulations, policies, and decisions established or issued by the athletic department of the University (the “Athletic Department”). The Employee agrees that, notwithstanding any provision of Article 5.8 herein, during the Term, Employee 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. Subject to the provisions of Article 5.8, the Employee also agrees not to knowingly usurp any corporate or competitive opportunities of the University.

#### 4.2.b. General Duties And Responsibilities of Employee

During the Term, the Employee agrees to undertake and perform properly, efficiently, to the best of Employee’s ability and consonant with the standards of the University all duties and responsibilities attendant to the position of Head Coach of the Program as set forth in Article 4.2.c below. The Employee further agrees to abide by and comply with the constitution, bylaws and interpretations of the NCAA and all NCAA and University rules and regulations relating to Employee’s conduct and administration of the Program, including recruiting rules, as now constituted or as any of the same may be amended during the term hereof, as well as the applicable constitution, bylaws, rules and regulations of the Conference. In the event that the Employee becomes aware of, or has reasonable cause to believe that violations of any NCAA constitution, bylaws, rules or regulations, or official interpretations thereof, may have taken place, Employee shall report the same promptly (within 48 hours) to the University’s Director of Intercollegiate Athletics (“Athletic Director”) or designee.

It is further understood that Employee is individually responsible for compliance with the policies of NSHE, the University, including, but not limited to, those of its Athletic Department, and with the rules and regulations of the NCAA and the Conference and the constitution, bylaws, rules, regulations and official interpretations thereof, as may be in effect from time to time, and for reporting violations and potential violations thereof to the Athletic Director. The Employee agrees to adhere to, respect and follow the academic standards and requirements of the University in regard to the recruiting and eligibility of prospective and current student athletes for the Program.

All academic standards, requirements and policies of NSHE and University shall also be observed by the Employee and members of Employee's staff, including assistant coaches, at all times and shall not be compromised or violated at any time. It is the goal and desire of both the University and Employee that student athletes in the Program perform at the highest possible academic level. As Head Coach, the Employee will publicly support the mission and policies of the University and the Athletic Department. Employee shall not exhibit any behavior that, in the sole discretion of the Athletic Director, brings Employee or University into public disrepute, contempt, scandal or ridicule or in any behavior that is unfavorable to the reputation or ethical standards of NSHE or University. In Employee's position as Head Coach of the Program, the Employee is held directly accountable for these general responsibilities relating to the Program: implementation of the budget for the Program and the recruiting, training, supervision, evaluation and performance of student athletes and coaching staff.

As Head Coach of the Program, Employee shall be positive in supporting the Program, the Athletic Director, the Athletic Department, and the University.

#### 4.2.c. Duties and Responsibilities While Employed As Head Coach

The duties and responsibilities assigned to the Employee in connection with this position as Head Coach of the Program are as set forth below. The Employee's specific job duties and responsibilities shall be reviewed, assigned and revised from time to time, after consultation with the Employee, by the Athletic Director. The duties and responsibilities are not exclusive of the other general duties and responsibilities provided for elsewhere in this Agreement.

##### 1. Specialized Position

The position of Head Coach of the Program is a specialized professional position. The Employee is responsible for evaluating, recruiting, training and coaching student athletes to compete successfully against major college competition in a quality program and the Employee is expected to conduct the Program in a manner most beneficial to the University and its Athletic Department.

##### 2. Coaching

Employee shall participate in the instruction and coaching of student-athletes and shall effectively apply experience in recruiting, training and coaching of student-athletes.

##### 3. Recruiting

Employee shall determine evaluation schedules for high school contests and junior college contests, as appropriate, to interview and recruit prospective student-athletes.

##### 4. Rules Compliance

Employee shall comply with all rules, regulations, guidelines and policies of the Athletic Department, the NCAA and the Conference. Employee shall have complete knowledge of the rules and regulations governing intercollegiate athletics and maintain strict compliance therewith and attend all department-wide rules education meetings unless the Athletic Director or designee gives prior approval for absence from such meetings.

##### 5. Good Sportsmanship

Intercollegiate athletics contests shall be conducted in a sportsmanlike manner. Employee shall use best efforts to ensure that all student-athletes, coaches and staff who are associated with the Program conduct themselves in a sportsmanlike manner. Employee shall (and shall also ensure that that all student- athletes, coaches and staff) exhibit ethical behavior at all NCAA and Conference competitions and shall conduct themselves in accordance with the rules of the NCAA and the Conference and the playing rules of the respective sports. If Employee violates playing rules of the sport in which Employee serves as Head Coach (including, but not limited to, receipt of technical fouls or ejection from any

game), Employee may be subject to disciplinary or corrective action as set forth in the NCAA, Board of Regents' or University enforcement procedure and/or as set forth below in Article 4.3 and Article 6.1.c and d. Employee shall (and shall also use best efforts to ensure that all student-athletes, coaches and staff) refrain from making negative comments regarding an opposing institution or its players, teams, coaches/staff or game officials, and shall create a healthy environment for competition.

#### 6. Fiscal Management

Employee is responsible for all aspects of fiscal management related to the Program. The Employee, in conjunction with the Athletic Director may be required to assist in securing outside funding to meet the needs of the Program or to enhance the overall Athletic Department programs, if necessary.

#### 7. Support Academic Mission

Employee shall work towards integration of intercollegiate athletics and the experience for each student-athlete into the whole spectrum of academic life and to complement the University and its mission.

#### 8. Academic Performance

Commencing with the academic year \_\_\_\_\_, and each academic year thereafter for the Term, the Employee will use best efforts to maintain a minimum academic performance rate ("APR") of \_\_\_\_\_ or above, or as established by the NCAA or the Conference, whichever is the higher, for all athletes on the Program's team. If the said minimum APR is not achieved in any academic year, Employee shall, within thirty (30) days of the end of the academic year, prepare and submit to the Athletic Director or designee a written plan of action to achieve the minimum APR in the next academic year. Upon approval by the Athletic Director or designee, Employee shall collaborate with all applicable units to implement such plan. Employee shall require all athletes on the Program's team to follow all academic procedures established by the Athletic Department.

#### 9. Other Specific Duties and Responsibilities

The Athletic Director or designee may assign any additional duties and responsibilities that are reasonably related to the position of Head Coach for the sport in which Employee serves as Head Coach.

### 4.3 Employee Subject to Discipline/Corrective Action for Violations of Board of Regents, Institution, NCAA, and Conference Rules and Regulations

#### 4.3.a. Prior Employment

If the Employee is found to have violated NCAA rules and regulations during prior employment at another NCAA member institution, the Employee shall be subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure.

#### 4.3.b. Discipline/Corrective Action

##### 1. Warning, Reprimand, Suspension with Pay and Non-monetary Corrective Action

Notwithstanding any provisions of the NSHE Code, if the Employee is found to be in violation of Board of Regents, University, NCAA or Conference rules and regulations, or provisions of this Agreement, including, but not limited to, the prohibitions set forth in Article 6.1.c hereof, while employed by the University, the Employee, in the University's sole reasonable judgment, may be subject to disciplinary or corrective action as set forth in the NCAA, Board of Regents, University or Conference enforcement procedure and/or as set forth in this Article 4.3.b.1. The Athletic Director may issue a verbal or written warning, issue a written reprimand, suspend the Employee with pay, require the Employee to undergo additional training or education and/or impose any additional non-monetary

disciplinary or corrective actions, including those allowed under NCAA or Conference rules or regulations. Nothing in this section shall prevent the Employee from also being disciplined under Article 4.3.b.2 of this Agreement or from Employee's employment being terminated as provided in Article 6.1.c and d. hereof for such violations.

The Athletic Director shall give the Employee written notice of intent to discipline. The written notice must describe the circumstances of the alleged prohibited conduct, the alleged violations, the intended discipline and may include materials or documentation in support of the charges. The Employee may present a written response to the Athletic Director within five (5) calendar days after receipt of the written notice. The time period for the Employee's written response may be extended by the Athletic Director for good cause, as determined in the sole and absolute discretion of the Athletic Director. Under this Article 4.3.b.1, there is no right to an evidentiary hearing with regard to any proposed discipline or to an appeal of the Athletic Director's decision. The Athletic Director shall issue a written decision within a reasonable time after receiving Employee's written response, if any, and the decision of the Athletic Director is final and not subject to any appeal, grievance or reconsideration. Notwithstanding any provision of the NSHE Code to the contrary, the written decision of the Athletic Director pursuant to this Article 4.3.b.1 may be considered public and may be provided by University to the media or any other third party. Employee expressly agrees that, notwithstanding any NSHE Code provision to the contrary, the University shall be permitted to comment publicly regarding any discipline imposed pursuant to this Article 4.3.b.1 (including through public statements, press release, press conferences and in response to any public statements made by the Employee).

Employee acknowledges and agrees that the administrative process provided herein constitutes legal due process, and that no further administrative process is required.

## 2. Suspension Without Pay, Fines/Penalties

Notwithstanding any provisions of the NSHE Code, if the Employee is found to be in violation of Board of Regents, University, NCAA or Conference rules and regulations, or provisions of this Agreement, including, but not limited to, the prohibitions set forth in Article 6.1.c hereof, while employed by the University, the Employee, in University's sole reasonable judgment, may be subject to disciplinary or corrective action as set forth in the NCAA, Board of Regents, University, or Conference enforcement procedure and/or as set forth in this Article 4.3.b.2. The Athletic Director, with the approval of the University's President, may suspend the employee without pay and/or impose a fine or monetary penalty not to exceed \$10,000 per violation. Nothing in this section shall prevent the Employee from also being disciplined under Article 4.3.b.1 of this Agreement or shall prevent the Employee's employment from being terminated as provided in Article 6.1.c and d. hereof for such violations.

The Athletic Director shall give the Employee written notice of intent to discipline. The written notice must describe the circumstances of the alleged prohibited conduct, the alleged violations, the intended discipline, and may include materials or documentation in support of the charges. The Employee may present a written response to the Athletic Director within five (5) calendar days after receipt of the written notice. The time period for the Employee's written response may be extended by the Athletic Director for good cause, as determined in the sole and absolute discretion of the Athletic Director. Under this Article 4.3.b.2, there is no right to an evidentiary hearing with regard to any proposed discipline or to an appeal of the Athletic Director's decision. The Athletic Director shall issue a written decision within a reasonable time after receiving Employee's written response, if any, and the decision of the Athletic Director is final and not subject to any appeal, grievance or reconsideration. Notwithstanding any provision of the NSHE Code to the contrary, the

written decision of the Athletic Director regarding discipline imposed pursuant to this Article 4.3.b.2 may be considered public and may be provided by University to the media or any other third party. Employee expressly agrees that, notwithstanding any NSHE Code provision to the contrary, the University shall be permitted to comment publicly regarding any discipline imposed pursuant to this Article 4.3.b.2 (including through public statements, press release, press conferences and in response to any public statements made by the Employee).

Employee acknowledges and agrees that the administrative process provided herein constitutes legal due process, and that no further administrative process is required.

#### 4.4 Reporting Relationship

The Employee shall report to the Athletic Director. The Employee is expected to work closely with a variety of athletic department and University staff on all matters affecting the Program or otherwise connected with the discharge of Employee's duties as an employee of the University.

#### 4.5 Annual Personnel Evaluations

The Employee's performance of job duties and responsibilities, distinguished from Employee's win-loss record will be evaluated by the Athletic Director or the Employee's direct supervisor periodically on the duties and responsibilities set forth in this Agreement according to the responsibilities set forth in Article 4.2.

- 40% Competitiveness;
- 40% Academics and rules compliance;
- 10% Institutional goals, including diversity, and citizenship and
- 10% Program administration.

These evaluations also will take into account prior evaluations and the expectations and goals set for the Employee in such prior evaluations. Academic achievement shall include, but not be limited to, maintenance of the APR as set forth in Article 4.2.c.8. An overall "unsatisfactory" rating in two consecutive annual performance evaluations shall be cause for termination by University in accordance with Article 6.1.c and d below. Employee's evaluations are not subject to the provisions of the NSHE Code, Title 2, Chapter 5, Article 5.2.3 (statement of reasons), Article 5.3.4 (reconsideration) or Article 5.12 (evaluations). However, Employee may submit a written rejoinder to the evaluation, which will be included in the Employee's personnel file.

In addition, each year that the Employee serves as Head Coach of the Program, the Employee will be responsible for evaluating assistant coaches, who shall be evaluated on the same basis as performance evaluations are done for other administrative employees of the University or as specified in the assistant coach's contract of employment.

## ARTICLE 5 – COMPENSATION

In consideration for the promises Employee has made in entering into this Agreement, the Employee shall be entitled to the compensation as described below. All payments, including non-cash consideration and benefits, by the University 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 the 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

The base salary paid by the University to the Employee for all services and satisfactory performance of the terms and conditions of this Agreement shall be at the base rate of \$ \_\_\_\_\_ (“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 the Employee is actually employed, and payable in equal monthly installments by the University to the 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 the Nevada System of Higher Education for any fiscal year during the Term, Employee’s salary shall be reduced by the same percentage and in the same manner as other non-tenured faculty of University through the mechanisms required by the Board of Regents, such as, for example, pay cuts and unpaid leave days. If the Nevada State Legislature grants a Cost of Living (COLA) increase for state employees and if the Nevada System of Higher Education authorizes a COLA increase for its employees, Employee is not entitled to receive a COLA increase. If the Nevada State Legislature funds merit awards for Nevada System of Higher Education faculty and the Nevada System of Higher Education and University authorizes merit awards for University employees, Employee is not eligible to participate in the merit program.

## 5.2 Fringe Benefits

Except as provided herein, the Employee shall be entitled to the standard fringe benefits provided to all other professional employees of the University including, but not limited to, retirement contributions based upon the Base Salary paid pursuant to Article 5.1 of this Agreement, insurance and sick leave. The Employee is responsible for notifying the Athletic Director or designee in writing of any request to use sick leave time. Annual leave shall not be earned or accrued; however, personal leave may be taken at times and in duration approved in advance or as directed by the Athletic Director or designee, at the request of Employee or otherwise.

## 5.3 Initial Employment Allowance and Expenses

[The University shall allocate an initial employment allowance for the purpose of reimbursing the Employee for reasonable moving and related expenses for relocation which shall not exceed ten (10) percent of base compensation. Employee must submit written invoices or other documentation for such expenses and reimbursement is subject to approval by the president or designee.

OR

Within \_\_\_\_ days of beginning employment, Employee shall receive an additional one-time gross payment equivalent to one month’s base salary of \$ \_\_\_\_\_. Employee will not be eligible for reimbursement for moving, relocation or other expenses in connection with commencement of employment. Should Employee terminate employment pursuant to Section 6.2 of this Agreement within twelve (12) months of the Effective Date of this Agreement, Employee shall repay the initial employment allowance to University in full within thirty (30) days of termination. Any repaid amount shall bear simple interest at the rate of eight (8) percent annum until paid in full.]

The University will reimburse the Employee for all travel and out-of-pocket expenses reasonably incurred by him for the purpose of and in connection with the performance of Employee’s duties under this Agreement, including, but not limited to, expenses incurred while recruiting and scouting. Such reimbursement shall be made in accordance with standard reimbursement rates and procedures of the University upon presentation to the University of standard travel reimbursement forms, vouchers or other statements itemizing such expenses in reasonable detail. In addition, the University will provide the Employee’s spouse or domestic partner, and minor child(ren) with team travel privileges to all University away games and all University NCAA post-season travel at the standard state per diem rate.

#### 5.4 Automobile and Hosting Account

The University, as additional compensation to the Employee, shall make arrangements for and provide to the Employee, on a loan basis, one (1) automobile for use by Employee for so long as the Employee serves as Head Coach of the Program. The University further agrees to provide appropriate liability and comprehensive automobile insurance to cover the Employee's use and operation of said automobile. The Employee shall be responsible for all other expenses involved in the use and operation by Employee of said automobile. In addition, Employee agrees to comply with all applicable policies, guidelines and employee agreements related to the use and operation of said automobile. Employee shall have use of a hosting account in the amount of \$\_\_\_\_\_ subject to all applicable Board of Regents and institution policies and procedures.

#### 5.5 Season Tickets and Membership

The University shall make available to the Employee, upon request, for the Employee's personal and professional use and not for commercial sale, transfer or barter, a number of athletic tickets as follows:

- a. The University shall make available to the Employee, so long as Employee serves as Head Coach of the Program and for no longer, \_\_\_\_\_ Season \_\_\_\_\_ Tickets;
- b. The University shall make available to the Employee, so long as Employee serves as Head Coach of the Program and for no longer, upon request, up to \_\_\_\_\_ tickets to all other University varsity sport home games.
- c. The University will arrange for membership privileges, at no cost to Employee, at a local golf or country club for as long as Employee serves as the Head Coach of the Program and for no longer.

#### 5.6 Other Compensation

##### 5.6.a. Media and Public Appearances

In consideration for Employee's satisfactory, as evaluated in the Athletic Director's sole discretion, media and public/donor appearances (the "Appearances") scheduled by the University (on and off season) of no less than \_\_\_\_\_ radio appearances \_\_\_\_\_ television/internet appearances, and \_\_\_\_\_ public/donor appearances per [fiscal/calendar] year, the University shall pay Employee \$\_\_\_\_\_ per [fiscal/calendar] year, not subject to COLA, retirement contributions or retirement deductions ("Media and Public Appearance Fee"), only for so long as the Employee is serving as Head Coach of the Program. The Media and Public Appearance Fee shall be paid no later than \_\_\_\_\_ days after the [the month following completion of the required appearances/end of the fiscal year in which it is earned]. The Appearances may include appearances before civic, faculty, student, alumni, booster or other like groups, as may be reasonably determined by the Athletic Director. Notwithstanding the payment time stated herein, the Media and Public Appearance Fee is not earned unless and until the minimum number of satisfactory appearances set forth above has occurred.

In the event Employee earns the Media and Public Appearance Fee but the University terminates Employee's employment for its convenience pursuant to Article 6.1.a or Employee terminates employment for convenience pursuant to Article 6.2, University shall pay Employee the earned Media and Public Appearance Fee. In the event Employee earns the Media and Public Appearance Fee but the University undertakes a process under Article 6.1.c, the payment of any Media and Public Appearance Fee shall be delayed pending the outcome of the process and, in the event the process results in termination of the Employee's employment for cause pursuant to Article 6.1.c and d, Employee shall forfeit the Media and Public Appearance Fee.

5.6.b. Shoe and Apparel Contract

The University may enter into contract(s) with one or more shoe, apparel and/or equipment companies that require the Program to wear its shoes, its apparel and/or use its equipment during practice and/or competition. All payments or other consideration from any source related to use of shoes, apparel, equipment or any other product by the Program shall be made exclusively to the University, and not directly to Employee. Any contracts under this Article 5.6.c that require payment to the Employee shall be disbursed through the Athletic Department. Such disbursements by the Athletic Department shall be made within a reasonable period upon receipt of said monies. In no event shall the University be liable for any payment or disbursement of monies unless and until the University receives said monies for disbursement. The University shall use reasonable efforts to collect monies owing.

However, Employee may contract independently with a shoe, apparel and/or equipment company for Employee himself to wear, promote, endorse or consult with the manufacturer, distributor or seller of such products concerning the design and/or marketing of shoes, apparel or equipment, provided that any such outside employment contract is in writing, does not conflict with any existing or potential contracts or opportunities of University, is approved in advance in writing by the Director of Athletics or designee, does not extend beyond the Term, and terminates herewith. Employee shall not enter into negotiations or preliminary discussions regarding any such independent contract without the prior written consent of the Director of Athletics or designee, which consent shall not be unreasonably withheld. Employee may agree to directly receive compensation due under such independent contract only to the extent that the amounts and schedule for payment/delivery of such compensation is fully and accurately disclosed in the document by which the prior written approval of the Director of Athletics or designee is requested for Employee to enter into such independent contract.

5.6.c. Additional Compensation - Revenue Enhancement Payment

The Employee shall receive additional compensation for the Program's achievement of the following:

1. Revenue Enhancement Payment: If the total of the Program's ticket revenue, including season ticket and single game ticket revenue, exceeds \$ \_\_\_\_\_ in any given Program season, University shall pay the Employee [a bonus] an amount equal to 50% of every dollar of that season's ticket revenue exceeding \$ \_\_\_\_\_ [enter amount above], up to a maximum payment to Employee of \$ \_\_\_\_\_, not subject to COLA, retirement contributions or retirement deductions (the "Revenue Enhancement Payment"). The Revenue Enhancement Payment, if any, shall be paid to Employee no later than the \_\_\_\_\_ day of \_\_\_\_\_ immediately following completion of the season for which the payment was earned. In the event Employee earns the Revenue Enhancement Payment, but Employee's employment is terminated on or before \_\_\_\_\_ of that year, whether: (i) by University with or without cause pursuant to Article 6.1; or (ii) by Employee for the Employee's convenience pursuant to Article 6.2, Employee shall forfeit the Revenue Enhancement Payment. Upon the written approval of the Athletic Director, the Employee may direct the University to distribute the Revenue Enhancement Payment, or any part thereof, to the Program's assistant coaches as additional compensation to them.

5.6.d Retention Bonus

Employee shall receive a retention bonus in the amount of \$ \_\_\_\_\_ if still employed as of \_\_\_\_\_ day of \_\_\_\_\_.

## 5.7 Supplemental Compensation - Athletic Performance Payment

During employment as Head Coach of the Program, the Employee shall have the opportunity to earn supplemental compensation in the amounts and upon the conditions set forth below, based upon the exceptional performance of the Program's team and also based upon the team's participation in post-season games, including the additional services required of Employee in preparation for and participation in such post-season games ("Athletic Performance Payment"). The Employee may direct the University to distribute the Athletic Performance Payment that is earned under the provisions of this Article 5.7, or any part thereof, to the Program's assistant coaches as supplemental compensation to them upon the written approval of the Athletic Director.

Beginning in the second year of the employment contract, for each year that the Program's single year APR is at the level required by Paragraph 4.2.c.8, the University shall pay the Employee, as additional compensation, a total maximum amount of \$\_\_\_\_\_ per fiscal year for the Program's achievement of the following:

### Athletic Performance:

- a. For winning or tying the Conference Regular Season Championship: \$\_\_\_\_\_.
- b. For winning the Conference Tournament Championship: \$\_\_\_\_\_.
- c. For receiving the Conference Coach of the Year Award or Co-Coach of the Year Award: \_\_\_\_\_.
- d. In the NCAA Tournament:
  - i. For the team advancing in each round: \$\_\_\_\_\_.
  - ii. For the team playing in the Final Four: \$\_\_\_\_\_.
  - iii. For the team winning the NCAA Championship: \$\_\_\_\_\_.
- e. In the NIT Post Season Tournament:
  - i. For the team advancing in each round: \$\_\_\_\_\_.
  - ii. For the team playing in the Final Four: \$\_\_\_\_\_.
  - iii. For the team winning the NIT Championship: \$\_\_\_\_\_.
- f. Not more than \$\_\_\_\_\_, as determined by the Athletic Director with the approval of the President for participation in other post season tournaments.

The Athletic Performance Payment shall not be earned and payable unless the Program's single year APR is achieved and maintained at the minimum level set forth above for the immediately preceding academic year. In the event Employee earns the Athletic Performance Payment but Employee's employment is terminated on or before \_\_\_\_\_ of that year, whether: (i) by University for cause pursuant to Article 6.1.c and d; or (ii) by Employee for the Employee's convenience pursuant to Article 6.2, Employee shall forfeit the Athletic Performance Payment.

## 5.8 Opportunities to Earn Outside Income

While employed as Head Coach of the Program, Employee shall have the opportunity to earn outside income as a result thereof, but only upon the following terms and conditions:

### 5.8.a. General Provisions Concerning Outside Income

The following general terms and conditions shall apply to each case in which the Employee seeks to or makes arrangements for activities to earn outside income as a result of being Head Coach of the Program.

#### 5.8.a.1. University Obligations are Primary

Such outside activities shall not interfere with the full and complete performance by the Employee of Employee's duties and obligations as a University employee, recognizing always that the Employee's primary obligations lie with the University and its students.

5.8.a.2. Laws and University, NCAA and Conference Rules Control

In no event shall the Employee accept or receive directly or indirectly any monies, benefit or any other gratuity whatsoever from any person, corporation, University booster club or alumni association or other benefactor if such action would violate: (1) the laws of the State of Nevada; (2) the NSHE Code, any other provisions of the NSHE Board of Regents Handbook, or rules or policies of the University or its Board of Regents; or (3) NCAA legislation or the constitution, bylaws, rules and regulations, or interpretations thereof, or of the Conference, as now or hereafter enacted. Changes or amendments of such laws, legislation, constitution, bylaws, policies, rules and regulations or interpretations thereof shall automatically apply to this Agreement without the necessity of a written modification of this Agreement or of notification to Employee.

5.8.a.3. University Approval is Required

The Employee shall obtain the advance written approval of the University's President, through the Athletic Director or supervisor, before entering into any agreements to receive outside income, which approval shall not be unreasonably withheld.

5.8.a.4. University is Not Liable

ANY ARRANGEMENTS FOR OUTSIDE COMPENSATION AND THE ACTIVITIES THEREUNDER ARE INDEPENDENT OF THE EMPLOYEE'S UNIVERSITY EMPLOYMENT, AND THE EMPLOYEE HEREBY RELEASES THE UNIVERSITY FROM ANY LIABILITY, DAMAGES OR CLAIMS FOR ANY PAYMENT OF OUTSIDE COMPENSATION OR FOR ANY CLAIMS ARISING THEREFROM UNDER ANY CIRCUMSTANCES WHATSOEVER. EMPLOYEE HEREBY EXPRESSLY RELEASES UNIVERSITY, 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.b. Commercial Endorsement

Subject to the provisions of Article 5.8.a hereof, the University and the Employee agree that the Employee may undertake commercial endorsements of products and services in which Employee is identified as the Head Coach of the Program, but that Employee may not otherwise associate the University's name with an endorsement and provided that all such endorsements must cease at the termination of this Agreement or at such time as Employee stops serving as Head Coach of the Program.

5.8.c. Income from Written and Video Materials

Subject to the provisions of Article 5.8.a hereof, the Employee may write and release books and magazine and newspaper articles, columns or video productions in connection with Employee's position as Head Coach of the Program. The Employee agrees to act in a professional manner in all such matters and shall in no way disparage the Nevada System of Higher Education, the University, their activities, programs, regents, officers, employees or agents.

5.8.d. Summer Camp

Subject to the provisions of Article 5.8.a hereof and subject to the availability of the facilities in question, for so long as the Employee serves as Head Coach of the Program, the Employee shall have the opportunity to use University facilities in connection with a summer camp run by the Employee and using Employee's name, along with Employee's identification as the Head Coach of the Program, provided that the University is reimbursed by Employee for its actual and overhead expenses incurred in making the facilities available, and upon such conditions as may be required from time to time by the University's administration. For all camps and/or clinics the Employee may conduct, the Employee shall comply with all applicable NSHE and child protection policies. In addition, for all camps and/or clinics Employee may conduct, Employee shall purchase comprehensive general liability insurance with limits set forth by the

University and which shall name the Board of Regents of the Nevada System of Higher Education as an additional insured. Prior to the commencement of such camps and/or clinics, Employee shall provide the Athletic Director or supervisor with certificates of insurance evidencing such insurance. The University may waive the insurance requirements if it is determined in the best interest of the University to conduct the camps and/or clinics through a division or department of the University. Any profits made by the Employee from this enterprise, after deducting any fees that may be due to the University for conducting the camps and/or clinics through a division or department of the University, shall be retained by him solely. Employee may direct the University to distribute this supplemental compensation, or a part thereof, to Employee's assistant coaches as supplemental compensation to them upon the written approval of the Athletic Director or Employee's supervisor. Employee shall hold harmless and defend University from any and all liability arising from any camp Employee conducts.

#### 5.8.e. Conflict of Interest/Competing Organizations

Employee acknowledges that NSHE and institution Conflict of Interest/Compensated Outside Services Policies and all related rules and procedures thereunder 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, for any other university athletic program or organization, nor shall he perform athletic-related services for any organization, league, conference, college, club or group, with or without compensation, without the prior written consent of the University, which consent can be withheld in the University'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 with University's objectives and philosophies or with the Athletic Department, without first having obtained the written approval of the University's President.

#### 5.8.f. Disclosure of Outside Income

In accordance with NCAA regulations, the Employee shall report annually in writing to the President of the University, through the Athletic Director or Employee's supervisor, on or before June 30 of each fiscal year, all income from sources outside the University, including, but not limited to, income from annuities, sports camps, housing benefits, complimentary ticket sales, television and radio programs and endorsement or consultation contracts with athletic shoe, apparel or equipment manufacturers or sellers, and the University shall have reasonable access to all records of the to report outside income directly to the NCAA.

## ARTICLE 6 – TERMINATION

### 6.1 Termination by University

The Employee recognizes that Employee's promise to remain as Head Coach of the Program through the entire Term is of the essence of this Agreement to the University. It is also recognized, however, that certain limited circumstances may make it appropriate for the University to terminate this Agreement prior to the completion of its entire term, as follows:

#### 6.1.a. Termination Without Cause

At any time after commencement of this Agreement, University, for its own convenience, may terminate this Agreement by giving ten (10) calendar days prior written notice to Employee and may immediately place Employee on paid administrative leave. The provisions of Title 2, Chapter 6, Section 6.5 do not apply to the University's decision to place Employee on administrative leave as provided in this Article 6.1.a. The termination shall be effective no earlier than ten (10) calendar days after receipt of the written notice of termination. If the University terminates this Agreement for convenience, the University shall pay to Employee, as liquidated damages and not a penalty, the following sum calculated as of the effective date of termination:

6.1.a.1.

Except as set forth in subsections 6.1.a.2 and 3, below, in the event that University terminates this Agreement for its own convenience between the Effective Date and \_\_\_\_\_, University shall pay Employee as liquidated damages and not a penalty, an amount equal to Employee's Base Salary as defined in Article 5.1 of this Agreement, excluding all deductions required by law, payable monthly until the expiration of the Term, or in accordance with a payment schedule agreed upon by the President of the University and the Employee in writing.

Employee shall be entitled to no other compensation or fringe benefits, except as otherwise required by law.

6.1.a.2.

The parties have both been represented by, or had the opportunity to consult with, legal counsel in the negotiations of this Agreement and have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Employee may lose certain benefits, supplemental compensation, or outside compensation relating to Employee's employment with University, which damages are extremely difficult to determine with certainty. The parties further agree that the payment of such liquidated damages by University is Employee's sole remedy and the acceptance thereof by Employee shall constitute adequate and reasonable compensation to Employee for the damages and injury suffered by Employee because of such termination by University. The liquidated damages are not, and shall not be construed to be, a penalty.

6.1.a.3.

Notwithstanding the liquidated damages provisions of this Article 6.1.a, the Employee agrees to mitigate the University's obligations to pay liquidated damages by making reasonable and diligent efforts to obtain employment; such employment includes, but is not limited to, any head or assistant coaching or other athletic position with, or consulting or other services of any kind provided to, or any volunteer position with, any school, college, university, professional or semi-professional athletic team or any athletic conference, organization, league or association, or any sports-related position or volunteer position, or services provided or volunteered to any sports-related entity, including without limitation any media entity. Failure to reasonably and diligently seek other employment shall relieve the University of its obligation to pay liquidated damages under this Article. After the Employee obtains such new employment or volunteer position, the University's financial obligations under this Agreement, including payment of liquidated damages, ceases. Employee shall inform the University in writing immediately upon acceptance of new employment or volunteer position.

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

This Agreement terminates upon the 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 University shall pay to the Employee's estate the Employee's salary through the day death occurred, together with one-twelfth of the Employee's base salary.

Upon total or permanent disability of the Employee, within the meaning of the University's disability insurance for employees, the Employee is required to first use all unused, accrued sick leave and, if applicable, annual leave or other leave authorized under University policies. Upon the expiration of such leave or the period of six (6) months, whichever comes last, this Agreement shall automatically terminate and the Employee shall be entitled to benefits as provided by the University's long-term disability insurance coverage. Benefits provided under this Article are calculated on the Base Salary as set forth in Article 5.1 of this Agreement.

6.1.c. Termination by University for Cause

The University shall have the right to terminate this Agreement for cause at any time. In the sole reasonable judgment of the University, the term "cause" shall include, any of the following:

1. Insubordination, including but not limited to, failure to follow instructions from the Athletic Director or designee consistent with the terms of this Agreement, failure to comply with Athletic Department policies and procedures, failure to perform material duties and responsibilities of Head Coach as specified in this employment agreement or as reviewed, assigned, and revised in accordance with Article 4.2 of this Agreement;
2. Deliberate and serious violations, of the duties outlined in Article 4.2 of this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of the Employee's abilities;
3. Any conduct of the Employee in violation of any criminal statute of moral turpitude;
4. A serious or intentional violation of any law or of any policy, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Nevada System of Higher Education, the NCAA or the Conference, which violation may, in the sole reasonable judgment of the University, reflect adversely upon the University or its Athletic Department, including any violation which may result in the University being sanctioned by the NCAA or the Conference, and including any violation which may have occurred during prior employment of the Employee at another NCAA member institution;
5. A serious or intentional violation of any law or of any policy, rule, regulation, constitutional provision, bylaw or interpretation of the University, the NCAA or the Conference, by Employee or student athletes in the Program, which violation may, in the sole reasonable judgment of the University, reflect adversely upon the University or the programs of its Athletic Department. This shall include, without limitation, any violation which may result in the University being sanctioned by the NCAA or the Conference, any may also include any violation which may have occurred during prior employment of the Employee at another NCAA member institution;
6. Conduct of the Employee which, in the sole reasonable judgment of the University, is seriously prejudicial to the best interests of the University or its Athletic Department, or which violated the University's mission;
7. Any behavior that brings Employee or University into public disrepute, contempt, scandal or ridicule or any behavior that would bring disfavor to the reputation or ethical standards of NSHE or the University;
8. Prolonged absence from duty without the written consent of the Athletic Director or designee;
9. Failure to take appropriate steps to achieve and maintain the minimum APR in any academic year as required by Article 4.2.c.8, including Employee's failure to require all athletes on the Program's team to follow all academic procedures established by the Athletic Department, and also including failure to propose and implement a written plan of action to achieve the minimum APR for the next academic year if the said minimum APR is not achieved in any academic year;
10. Breach of this Agreement;
11. Any cause adequate to sustain the termination of any other University employee under the provisions of NSHE Code, Title 2, Chapter 6; and/or
12. Overall unsatisfactory rating in the Employee's annual personnel evaluation for two (2) consecutive years.

6.1.d. Determination of Cause and Employee's Right to University Hearing

Notwithstanding any provisions of the NSHE Code, including but not limited to Title 2, Chapter 6, if in the sole reasonable judgment of the University, the Employee is found to be in violation of Board of Regents, University, NCAA or Conference rules and regulations, or provisions of this Agreement, including, but not limited to, the prohibitions set forth in Article 6.1.c hereof, while employed by the University, Employee may be terminated for cause. The Athletic Director shall provide a written recommendation to the President of the University that Employee's be terminated for cause. The Employee shall be given a copy of the written recommendation, the opportunity to respond in writing and the opportunity for a meeting

with the President prior to termination. With the approval of the President, the Athletic Director may immediately place Employee on paid administrative leave pending the President's determination regarding cause. The provisions of NSHE Code Title 2, Chapter 6, Section 6.5 do not apply to the decision to place Employee on administrative leave as provided in this paragraph.

The written recommendation to the President must describe the circumstances of the alleged prohibited conduct, the alleged violations, and may include any materials or documentation in support of the charges. Employee shall be provided a copy of the Athletic Director's written recommendation to the President, and within three (3) calendar days after receipt of the written recommendation, may submit a written response, with any supporting materials or documentation to the President and to the Athletic Director. Thereafter, the Athletic Director may submit a written reply to the President and the Employee within three (3) calendar days after receipt of the Employee's written response. The meeting with the President shall take place no later than two (2) calendar days after the Athletic Director submits any written reply. The President has sole and absolute discretion to extend any of these time periods. The Athletic Director shall attend the meeting between the Employee and the President. Employee may have an advisor present at the meeting with the President, but the advisor may not participate actively in the meeting. If Employee chooses to have an advisor present, the Athletic Director may also have an advisor present although the advisor may not participate actively in the meeting.

The President shall issue a written decision within a reasonable time after the meeting with the Employee. The decision of the President is final and not subject to any appeal, grievance or reconsideration. Employee acknowledges and agrees that the administrative process provided herein constitutes legal due process, and that no further administrative process in connection with Employee's termination for cause is required.

Notwithstanding any provision of the NSHE Code to the contrary, the written decision of the President terminating Employee pursuant to this Article 6.1.d may be considered public and may be released by University to the media or any other third party. Employee expressly agrees that, notwithstanding any NSHE Code provision to the contrary, the University shall be permitted to comment publicly regarding termination pursuant to this Article 6.1.d (including through public statements, press release, press conferences and in response to any public statements made by the Employee).

Employee further understands and agrees that in the event a termination is subsequently reversed or determined to be unfounded by a court of competent jurisdiction, the University has the right, in its sole and absolute discretion, to convert Employee's termination to a termination without cause in accordance with Article 6.1.a hereof.

#### 6.1.e. University's Obligations Upon Termination for Cause

In the event this Agreement is terminated for cause in accordance with the provisions of Article 6.1.c and d hereof, as of the effective date of such termination, all of the University's obligations to the Employee under this Agreement subsequent to that date shall cease. In no case shall the University be liable to the 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, camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other source whatsoever.

## 6.2 Termination by Employee

### 6.2.a. Termination for Convenience of Employee

The Employee understands that Employee's promise to remain employed as Head Coach for the entire Term is of the essence of this Agreement to the University. The Employee also understands that the University 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 University prior to the expiration of this Agreement. In recognition of these

understandings, the parties agree that while the 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

The Employee, for Employee's own convenience, may terminate this Agreement during its term by giving prior written notice to the University. 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. Such termination by the Employee must occur at a time outside the Program's team's playing season and recruiting contact periods, as defined by the NCAA, so as to minimize the impact of such termination upon the Program.

6.2.a.2. Liquidated Damages

If the Employee terminates this Agreement for convenience, all obligations of the University shall cease as of the effective date of the termination, and the Employee or Employee's designee shall pay to the University, as liquidated damages and not a penalty, the following sums calculated as of the effective date of termination:

Employee shall pay to the University an amount equal to Employee's Base Salary as defined in Article 5.1 of this Agreement for the period remaining in the Term (partial months shall be prorated) and, in addition to this amount, the Employee shall also pay to the University:

- a. If the Employee terminates this Agreement for convenience between the Effective Date and the 2 year anniversary of the Effective Date, an amount equal to two times the amount of Employee's Base Salary as defined in Article 5.1;
- b. If the Employee terminates this Agreement for convenience between the 2 year anniversary of the Effective Date and the 3 year anniversary of the Effective Date, an amount equal to one and one-half times the amount of Employee's Base Salary as defined in Article 5.1; and
- c. If the Employee terminates this Agreement for convenience after the 3 year anniversary of the Effective Date, an amount equal to the entire remaining Base Salary due to Employee as set forth in Article 5.1 (partial months prorated).

The liquidated damages shall be due and payable within twenty (20) calendar days of the effective date of the termination, or in accordance with a payment schedule agreed upon by the President of the University and the Employee in writing, and any unpaid amount shall bear simple interest at a rate of eight (8) percent per annum until paid.

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 the University will incur administrative and recruiting costs in obtaining a replacement for Employee, that the University will lose the benefit of its investment in the Employee, and that the University 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 University's sole remedy and the acceptance thereof by University shall constitute adequate and reasonable compensation to University 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 the Employee terminates this Agreement prior to its expiration pursuant to Article 6.2.a, all compensation and other obligations owed by the University to the Employee under this Agreement will be terminated on the effective date of the Employee's termination, except such sums as are earned by and are still owing to the Employee prior to the effective date of the Employee's termination. The provisions of this Article 6.2 shall be without prejudice to any right the University may have under applicable law.

In no case shall the University be liable to the Employee for the loss of any collateral business opportunities or any other benefits, perquisites or income resulting from activities such as but not limited to camps, clinics, media appearances, apparel or shoe contracts, consulting relationships or from any other sources whatever, that may ensue as a result of the Employee's termination of this Agreement.

### 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 Athletic Department and its programs, including donor lists and donor information, which could be used by other institutions to place the Program's team at a competitive disadvantage. Employee shall not provide, and is prohibited from providing, any such confidential information to other institutions, their coaches, employees, student athletes, agents or representatives.

#### 7.2 Other Employment Opportunities

The parties agree that should another coaching opportunity be presented to the Employee or should the Employee be interested in another position as a coach at any institution of higher education which is a member of the NCAA or the NAIA, or any team participating in any professional league or conference in the United States or elsewhere, requiring the performance of duties prior to the expiration of the Term or any extension hereof, the Employee shall immediately notify the Athletic Director in writing of such opportunity or interest.

### ARTICLE 8 – MISCELLANEOUS

#### 8.1 Assistant Coaches

Subject to such limitations as may be imposed from time to time by the NCAA or the Conference, the University shall provide the Program with up to the maximum permissible number of assistant coaches. The Employee shall have the authority to recommend the hiring and termination of assistant coaches for the Program, subject to the review of the University's Affirmative Action Officer and the Athletic Director and the approval of the President of the University, as the University's appointing authority, or the President's designee. All assistant coaches shall be University employees. It is understood that, except as may be provided in any other written employment agreement, assistant coaches are immediately responsible to the Employee, who will assign the duties of each of the assistant coaches, and that the Employee is responsible for the activities of such assistant coaches as those activities relate to the educational purposes and the athletic interests of the University. It is further understood, however, that the Employee and assistant coaches are additionally responsible to the Athletic Director for compliance with the policies of the University, including its Athletic Department, with the rules and regulations of the NCAA and the constitution, bylaws, rules, regulations, and all official interpretations thereof, and the rules and regulations of the Conference, as may be in effect from time to time.

#### 8.2 Other Remedies

Except as otherwise provided in this Agreement, the Employee shall be entitled to use the grievance procedures established by the University Bylaws for the resolution of disputes under this Agreement.

### 8.3 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 \_\_\_\_\_ County, State of Nevada, and the parties hereby expressly consent to the jurisdiction of said court.

### 8.4 Assignment of Agreement

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

### 8.5 Merger Clause

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

### 8.6 Amendments to Agreement

This Agreement may be amended at any time only by a written instrument duly approved by the University, through its designated representative, and the Employee.

### 8.7 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.

### 8.8 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.

### 8.9 Acknowledgement

The Employee acknowledges that Employee has read and understands the foregoing 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.

#### 8.10 Indemnification of University

The Employee agrees to hold harmless and indemnify the University from any and all suits, claims, demands, damages, liability, costs and expenses, including attorneys' fees and costs, arising out of the 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 the Employee seeks to compel the University to comply with its obligations hereunder or in which the Employee seeks to enforce any remedies Employee may have hereunder. This Article 8.10 shall survive the termination for any reason of this Agreement.

#### 8.11 University Retains All Materials and Records

All materials or articles of information including, without limitation, personnel and student athlete records, recruiting records, team information, films, statistics or any other material or data, furnished to the Employee by the University, developed by the Employee on behalf of the University or at the University direction or for the University's use, or otherwise in connection with the Employee's employment hereunder, are and shall remain the sole property of the University. Within two (2) calendar days after the Employee ceases to serve as Head Coach of the University's Program, after the expiration of the Term, or after this Agreement's earlier termination as provided herein, the Employee shall immediately cause any such materials in Employee's possession or control to be delivered to the University. In addition, the Employee shall relinquish possession of any automobile(s) provided under Article 5.4 of this Agreement in accordance with the terms of the related vehicle loan program and/or agreement. This Article 8.11 shall survive the termination for any reason of this Agreement.

#### 8.12 Employee Will Not Incur University Indebtedness

It is mutually agreed and understood that the Employee shall not incur any indebtedness for or on behalf of the University without first securing the approval of the Athletic Director.

#### 8.13 Government Immunity Not Waived

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

8.14 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 the Employee:

With a copy to: \_\_\_\_\_

If to the University:

Director of Intercollegiate Athletics  
University of \_\_\_\_\_  
Department of Intercollegiate Athletics  
\_\_\_\_\_  
\_\_\_\_\_

8.15 Applicability of Nevada System of Higher Education Code

Except as expressly stated herein, this Agreement is subject to the provisions of the Nevada System of Higher Education Code, Title 2 of the NSHE Board of Regents' Handbook, as may be amended from time to time during the Term.

8.16 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.

[SPACE INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed, effective the day and year first written above, the Employee acknowledging that Employee has had an opportunity to review this Agreement with Employee's attorney.

BOARD OF REGENTS OF THE NEVADA  
SYSTEM  
OF HIGHER EDUCATION, ON BEHALF OF THE  
UNIVERSITY \_\_\_\_\_.

EMPLOYEE: \_\_\_\_\_

By: \_\_\_\_\_  
President

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Director, Intercollegiate Athletics

Date: \_\_\_\_\_

By: \_\_\_\_\_  
General Counsel

Date: \_\_\_\_\_

**C. Head Coach Contract Checklist**

HEAD COACH EMPLOYMENT AGREEMENT - CHECKLIST

University of Nevada, \_\_\_\_\_

Name: \_\_\_\_\_

Head \_\_\_\_\_ Coach

Check all that apply to this contract and fill in the blanks.

\_\_\_\_\_ There are no changes from the approved coach contract template.

\_\_\_\_\_ The language in the approved coach contract template has been changed in the following Paragraphs: \_\_\_\_\_ (attach detailed

\_\_\_\_\_ explanation and justification for the changes).

\_\_\_\_\_ Description of search diversity efforts attached.

Article 3—TERM OF EMPLOYMENT

Par. 3.1 Term of Employment: \_\_\_\_\_ through \_\_\_\_\_.

(For terms longer than 4 years, attach justification and source of funding analysis for all potential payments).

Article 4—POSITION

Par. 4.2.b Head Coach Subject to/Not Subject to Reassignment:

\_\_\_\_\_ Coach will be subject to reassignment.

\_\_\_\_\_ Coach will not be subject to reassignment.

Par. 4.2.c.8 Academic Performance.

\_\_\_\_\_ Minimum Academic Performance Rate (APR)

Article 5—COMPENSATION

Par. 5.1 Base Salary:

\$ \_\_\_\_\_ Base Compensation per Fiscal Year

Par. 5.3 Initial Employment Allowance:

Amount: \_\_\_\_\_

Par. 5.4 Hosting:

Amount: \_\_\_\_\_

Par. 5.5 Season Tickets and Membership:

\_\_\_\_\_ Season Tickets

\_\_\_\_\_ All Other Varsity Sports Home Game Tickets

Par. 5.6.a Media and Public Appearances:

Minimum appearances (on and off season):

\_\_\_\_\_ Radio

\_\_\_\_\_ Television/Internet

\_\_\_\_\_ Public/Donor Events

\$ \_\_\_\_\_ Per Fiscal Year Payment

\_\_\_\_\_ Date of Payment

Par. 5.6.c Additional Compensation—Revenue Enhancement Payment:

\$ \_\_\_\_\_ Threshold Program Ticket Revenue Per Season

\$ \_\_\_\_\_ Maximum Revenue Enhancement Payment

\_\_\_\_\_ Date of Revenue Enhancement Payment

Par. 5.6.d Additional Compensation—Retention Bonus

\$ \_\_\_\_\_ Retention Bonus if employed on \_\_\_\_\_ (date).

Par. 5.7 Supplemental Compensation—Athletic Performance Payment:

Conference Performance:

\$ \_\_\_\_\_ Winning or Tying the Conference Regular Season Championship

\$ \_\_\_\_\_ Tournament Championship

\$ \_\_\_\_\_ Coach of the Year Award or Co-Coach of the Year Award

NCAA Tournament:

\$ \_\_\_\_\_ Advancing in Each Round

\$ \_\_\_\_\_ Playing in the Final Four

\$ \_\_\_\_\_ Winning the NCAA Championship

NIT Post Season Tournament:

\$ \_\_\_\_\_ Advancing in Each Round

\$ \_\_\_\_\_ Playing in the Final Four

\$ \_\_\_\_\_ Winning the NIT Championship

\$ \_\_\_\_\_ Total Maximum Athletic Performance Payment

\_\_\_\_\_ Early Termination Cutoff Date:

\$ \_\_\_\_\_ Other Post-season Tournaments

Attach description of any other monetary terms:

Source of funds for all compensation: \_\_\_\_\_

Article 6—TERMINATION

Par. 6.1.a.1 Termination for Convenience by Institution

\_\_\_\_\_ Remaining Base Salary Paid to Employee if Terminated by this Date

Par. 6.2.a.3 Liquidated Damages Paid by Employee if Terminates for Convenience:

\$ \_\_\_\_\_ Paid to Employer if Employee Terminates on or before 2<sup>nd</sup> Anniversary of Effective Date.

\$ \_\_\_\_\_ Paid to Employer if Employee Terminates after 2<sup>nd</sup> and on or before 3<sup>d</sup> Anniversary of Effective Date.

\$\_\_\_\_\_ Paid to Employer if Employee Terminates after 3d Anniversary of Effective Date.

**The Head Coach Employment Agreement - Checklist is not part of the Employment Agreement. In the event of any discrepancy between this Coach Contract Checklist and the Employment Agreement, the Employment Agreement controls. Checklist only highlights monetary clauses in contact; all other clauses are standard unless otherwise indicated.**

**D. Athletic Director Employment Agreement**

**DIRECTOR OF ATHLETICS  
EMPLOYMENT AGREEMENT**

**BETWEEN**

**BOARD OF REGENTS OF THE  
NEVADA SYSTEM OF HIGHER EDUCATION**

**ON BEHALF OF**

**THE \_\_\_\_\_ (NAME OF INSTITUTION)**

**AND**

**(NAME OF DIRECTOR OF ATHLETICS)**

**DIRECTOR OF ATHLETICS EMPLOYMENT AGREEMENT  
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**DIRECTOR OF ATHLETICS EMPLOYMENT AGREEMENT**

**between**

**Board of Regents of the Nevada System of Higher Education,**

**on behalf of**

**the \_\_\_\_\_ (name of institution)**

**and**

**\_\_\_\_\_ (name of Director of Athletics)**

This Director of Athletics Employment Agreement (this “**Agreement**”) is effective this \_\_\_ day of \_\_\_\_\_ (“**Effective Date**”), by and between the Board of Regents of the Nevada System of Higher Education (“**NSHE**”), on behalf of the \_\_\_\_\_ (the “**University**” or “**Employer**”), and \_\_\_\_\_ (the “**Director of Athletics**” “**Athletic Director**” or “**Employee**”). As further set forth in Article 8.3, this Agreement cancels and replaces, as of this effective date of this Agreement, any and all prior employment understandings and agreements between these two parties, including but not limited to the prior Employment Agreement for the period \_\_\_\_\_, and the extension of that Employment Agreement through \_\_\_\_\_, which was approved at the \_\_\_\_\_, meeting of the NSHE Board of Regents.

**ARTICLE I – PURPOSE**

The University and the Director of Athletics have entered into this Agreement because the University desires to contract the Employee for the period set forth in Article III with the Employee’s assurance that Employee will serve the entire term of this Agreement, a long-term commitment by the Employee being critical to the University’s desire to run a stable athletic department. The University and the Employee agree that the director of intercollegiate athletics at the University conducts professional activities under circumstances unique in the University community and among University employees, including evaluation and scrutiny of department performance by the public and the news media and control by external rules and regulations, including without limitation the rules and regulations of the National Collegiate Athletic Association (“**NCAA**”) and the athletic conference of which the University is a member (the “**Conference**”). These circumstances justify job security and commitment by the Employee longer than one year but less than a continuous appointment. The Employee desires to obtain the opportunities of employment with the University which are set forth in this Agreement. For these reasons, the Employer has agreed to employ the Employee and the Employee has promised to be employed upon the terms and conditions set out in this Agreement.

**ARTICLE II – PUBLIC DOCUMENT**

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

**ARTICLE III – TERM OF EMPLOYMENT. NOTICE OF NON-RENEWAL AND MANDATORY BACKGROUND CHECK**

**3.1 Term of Employment.** The Employee’s employment hereunder shall commence \_\_\_\_\_ and shall continue until this Agreement terminates upon the close of business at the University on \_\_\_\_\_, (the “**Term**”), provided, that this provision is subject to the terms and conditions of Article VI hereof concerning termination and Article VII hereof concerning restrictions on competition, and neither party shall have any right to terminate this Agreement prior to the close of business at the University on \_\_\_\_\_, except as provided therein.

**3.2 Nonrenewal.** THE PARTIES TO THIS EMPLOYMENT AGREEMENT EXPRESSLY UNDERSTAND AND AGREE THAT THE PROVISIONS OF THIS ARTICLE CONSTITUTE THE NOTICE TO THE EMPLOYEE OF THE NONRENEWAL OF EMPLOYEE'S EMPLOYMENT AT THE UNIVERSITY AND THAT EMPLOYEE'S EMPLOYMENT WILL TERMINATE UPON THE CLOSE OF BUSINESS AT THE UNIVERSITY ON THE DATE SET FORTH IN THIS ARTICLE III, AND THAT, NOTWITHSTANDING ANY PROVISION OF THE NEVADA SYSTEM OF HIGHER EDUCATION CODE, TITLE 2, TO THE CONTRARY, NO OTHER NOTICE OF NONRENEWAL OF EMPLOYMENT SHALL BE REQUIRED.

**3.3 MANDATORY BACKGROUND CHECK.** Employee is subject to a mandatory background check to be undertaken by the University and completed within thirty (30) days of the Effective Date of this Agreement. Employee's academic degrees and credentials must be confirmed, and Employee's NCAA compliance record reviewed and accepted by Employer before the Agreement is signed. Employee's failure to pass the background check to the satisfaction of the University, in its sole reasonable 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 background check(s) at the University's discretion at any time during employment. Employee's failure to pass any background check to the satisfaction of the University, in its sole reasonable discretion, for reasons that would constitute cause for discipline or termination of the contract, invalidates and voids this Agreement and results in immediate termination for cause.

## **ARTICLE IV – POSITION**

### **4.1 Employment As Director of Athletics**

The Employee is hereby employed by the University and will serve in the position of the Director of Athletics. Throughout the Term of this Agreement, the Employee shall use Employee's best full-time energies and abilities for the exclusive benefit of the University. The Employee shall serve as the primary and responsible administrator of the athletic department of the University ("**Athletic Department**"). As such, the Employee is an "administrator" as that term is defined by the policies, rules and regulations of the Board of Regents of the Nevada System of Higher Education and University may reassign Employee in accordance with Nevada System of Higher Education Code (hereinafter "**Code**"), Title 2, Chapter 5, Section 5.4.9, as such section may be amended from time to time.

### **4.2 Description Of Employee's Responsibilities**

#### **4.2.a Recognition Of Duties**

The Employee agrees to be a loyal employee of the University. The Employee agrees to devote best efforts full time to the performance of Employee's duties for the University, to give proper time and attention to furthering Employee's responsibilities to the University and to comply with all rules, regulations, policies, and decisions established or issued by the Board of Regents of the Nevada System of Higher Education, the University, the NCAA, and the Conference and to comply with all rules, regulations, policies, and decisions applicable to, or established or issued by the Athletic Department. The Employee agrees that, except as permitted by Article V herein, during the Term of this Agreement, Employee will not engage, directly or indirectly, in any business or investment that would detract from Employee's ability to apply Employee's best efforts to the performance of duties hereunder. Employee also agrees not to usurp any corporate or competitive opportunities of the University.

#### **4.2.b General Duties And Responsibilities of Employee**

During the Term, the Employee agrees to undertake and perform properly, efficiently, to the best of Employee's ability and consonant with the standards of the University all duties and responsibilities attendant to the position of Director of Athletics as set forth in Article 4.2.c below. The Employee further agrees to abide by and comply with the constitution, bylaws and interpretations of the NCAA and all NCAA and University rules and regulations relating to Employee's conduct and administration of the Athletic Department, as now constituted or as any of the same may be amended during the Term, as well as the applicable constitution, bylaws, rules and regulations of the Conference. In the event that the Employee becomes aware of, or has reasonable cause to believe that any violations of any NCAA constitution, bylaws, rules or regulations, or official interpretations thereof, may have taken place, Employee shall report the same promptly to the President or designee.

It is further understood that Employee is individually responsible for compliance with the policies of NSHE and the University, including, but not limited to, those of its Athletic Department, and with the rules and regulations of the NCAA and the Conference and the constitution, bylaws, rules, regulations and official interpretations of each of those, as may be in effect from time to time, and for reporting violations and potential major violations thereof to the President. The Employee agrees to adhere to, respect, and follow the academic standards and requirements of the University in regard to the recruiting and eligibility of prospective and current student athletes for the programs of the Athletic Department.

Employee shall not exhibit any behavior that brings Employee or University into public disrepute, contempt, scandal or ridicule or in any behavior that is unfavorable to the reputation or ethical standards of NSHE or University. In the position as Athletic Director, the Employee is held directly accountable for these general responsibilities relating to the Athletic Department: implementation of the budget for the Athletic Department and the recruiting, mentoring, supervision, evaluation and performance of coaching staff. As Athletic Director, Employee shall be positive in supporting the programs of the Athletic Department, the President and the University.

All academic standards, requirements and policies of the NSHE and University shall also be observed by the Employee and members of Employee's staff, including assistant coaches, at all times and shall not be compromised or violated at any time. It is the goal and desire of both the University and Employee that student athletes in the Program perform at the highest possible academic level. As Director of Athletics, the Employee will publicly support the mission and policies of the Athletic Department. Employee shall not exhibit any behavior that brings Employee or University into public disrepute, contempt, scandal or ridicule or in any behavior that is unfavorable to the reputation or ethical standards of NSHE or University. In Employee's position as Director of Athletics of the Program, the Employee is held directly accountable for these general responsibilities relating to the Program: implementation of the budget for the Program and the recruiting, training, supervision, evaluation and performance of student athletes and coaching staff.

#### **4.2.c Duties and Responsibilities While Employed As Director of Athletics**

The duties and responsibilities assigned to the Employee in connection with this position as Director of Athletics are as set forth below. The Employee's specific job duties and responsibilities shall be reviewed, assigned and revised from time to time, after consultation with the Employee, by the Employee's reporting supervisor, the President. The duties and responsibilities are not exclusive of the other general duties and responsibilities provided for elsewhere in this Agreement.

##### **4.2.c.1 Academic Responsibilities**

The parties agree that, although this Agreement is sports administrative related, the purpose of University and, accordingly, of all its legal arrangements, including this Agreement, is educational. Thus, the educational purposes of University shall have priority in the various provisions of this Agreement. It is recognized by the parties that a student-athlete may be declared not eligible for competition for academic reasons, because the University believes the individual would not be an appropriate representative of the University, as a disciplinary sanction under the Code, or because University believes that the individual is not eligible according to the rules for practice or competition specified by the NCAA, the Conference or Athletic Department policies. In no event shall such action by University be considered a breach of this Agreement. In furtherance of its educational purpose, the Employee will be responsible for providing necessary academic support services to its student-athletes that will enhance the educational experience and will increase retention of student-athletes, academic progress and graduation rates.

##### **4.2.c.2 Sports Program Employees**

Except as limited by the anti-nepotism provisions of NRS 281.210 and the NSHE Board of Regents Handbook Title 4, Chapter 3, Section 5, Employee shall have the authority to recommend the hiring and termination of head coaches and all Athletic Department staff, subject to the review and approval of the President, as University's appointing authority, or the President's designee. While all Athletic Department employees report directly to the Athletic Director, they shall be bound by the rules and regulations of the University and the NSHE Board of Regents and the Athletic Director shall assign the duties of each.

#### **4.2.c.3 Media Cooperation**

The Athletic Director will serve as the official spokesperson for the Athletic Department and be reasonably available to and cooperate with the media and fulfill all contractual obligations relating to media requests, either print or electronic, or both.

#### **4.2.c.4 Support Academic and University Mission**

Employee shall insure that intercollegiate athletics and student athletes are fully integrated into the whole spectrum of academic life and to complement the University and its mission in the community. Employee will work in cooperation with University's faculty and administrative officials to ensure that all student athletes' requirements are met.

#### **4.2.c.5 Rules Compliance**

Employee shall comply with all rules, regulations, guidelines and policies of the Athletic Department, the NCAA and the Conference. Employee shall have complete knowledge of the rules and regulations governing intercollegiate athletics and maintain strict compliance therewith and shall periodically hold department-wide rules education meetings, mandatory for all Athletic Department employees. Employee shall oversee the NCAA and Conference compliance function and report any infraction to the President.

#### **4.2.c.6 Concern for Student Welfare Issues**

The Director of Athletics shall maintain reasonable discipline and be fair to and understanding of the student-athletes while motivating them to excellence, in all aspects of life, including athletic and non-athletic endeavors, paying particular attention to the high public visibility of student-athletes.

#### **4.2.c.7 Good Sportsmanship**

Intercollegiate athletics contests shall be conducted in a sportsmanlike manner. Employee shall ensure that all student-athletes, coaches and staff who are associated with the Athletic Department conduct themselves in a sportsmanlike manner. Employee shall ensure that all student-athletes, coaches and staff, exhibit ethical behavior at all NCAA and Conference competitions and shall conduct themselves in accordance with the rules of the NCAA and the Conference and the playing rules of the respective sports. Employee shall ensure that all student-athletes, coaches and staff, refrain from making negative comments regarding an opposing institution or its players, teams, coaches/staff or game officials, and shall create a healthy environment for competition.

#### **4.2.c.8 Fiscal Management**

Employee is responsible for all aspects of fiscal management related to the Athletic Department in accordance with University policies and procedures. The Employee, in conjunction with the Vice President for \_\_\_\_\_ [Development/Philanthropy], is responsible for securing outside funding to meet the needs of the Program and to enhance the overall Athletic Department programs.

#### **4.2.c.9 Scheduling of Contests**

The Director of Athletics or designee will have final authority and responsibility with regard to the sports schedules.

#### **4.2.c.10 Public Appearances**

As part of the Employee's compensation and without further consideration, Employee shall participate in public appearances as often as possible within the parameters as defined by the job responsibilities for the position of Director of Athletics.

#### **4.2.c.11 Television, Radio and Personal Appearances**

1. For so long as the Employee serves as Director of Athletics, the Employee shall perform such television and radio appearances as are reasonably arranged and scheduled by the University at no additional compensation to the Employee.
2. For so long as the Employee serves as Director of Athletics, the Employee shall perform such personal appearance duties as the University shall reasonably arrange and schedule to assist in the recruitment of students and to enhance the

regional and national reputation of the University at no additional compensation to the Employee.

#### **4.2.c.12 Other Specific Duties and Responsibilities**

The President may assign any additional duties and responsibilities that are reasonably related to the position of Director of Athletics.

### **4.3 Employee May Be Disciplined for Violations of NCAA, Conference, NSHE Rules and Regulations**

If the Employee is found to have violated any NCAA rule and/or regulation during prior employment at another NCAA member institution, the Employee may be terminated or subject to disciplinary or corrective action as set forth in the NCAA enforcement procedure, depending on the nature of the violation. If the Employee is found to be in violation of NCAA, Conference, University, or NSHE rules and regulations while employed by the University, the Employee shall be subject to disciplinary or corrective action as set forth in the NCAA and/or University enforcement procedure and/or as set forth below in Section 6.1.c and d. The Employee may be suspended for a period of time, the length of which will be determined by the President, with or without pay, or the employment of the Employee may be immediately terminated as provided in Section 6.1.c and d hereof. As used in this section, "violation" shall include: a) the direct action by the Employee violating said policies, and/or; b) Employee's failure to address any violation outlined above committed by other Athletic Department personnel, student athletes, boosters, coaches or athletic department staff members.

### **4.4 Reporting Relationship**

The Employee shall report to the President. The Employee is expected to work closely with a variety of athletic departments at other institutions and University staff, including the President's Cabinet/Council, on all relevant matters affecting the Athletic Department or otherwise connected with the discharge of Employee's duties as an employee of the University.

### **4.5 Periodic Personnel Evaluations**

The Employee's performance of Employee's job duties and responsibilities will be evaluated by the President on an annual basis. These evaluations will take into account prior evaluations and the expectations and goals set for the Employee in such prior evaluations. Specific areas of evaluation may include, but are not limited to, the Employee's efforts to achieve student integration into the academic life of the University; hiring and motivation of high quality coaches; improved graduation rates (which includes student-athlete retention); improved student academic progress and team grade point average; creating a fair and inclusive campus environment; maintaining diversity; maintaining an accountable administration; communicating and collaborating effectively; improving conference rankings and striving for championships; ensuring NCAA compliance; overseeing sound fiscal management; and developing effective fundraising and community relations. In addition, each year that Employee serves as Director of Athletics, Employee will be responsible for evaluating all head coaches and designated staff members.

## **ARTICLE V – COMPENSATION**

In consideration for the promises Employee has made in entering into this Agreement, the Employee shall be entitled to the compensation as described below. All payments, including non-cash consideration and benefits, by the University 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 the Employee is entitled or in which Employee participates, and are subject to the terms and conditions of Article VI hereof concerning termination of this Agreement and Article VII hereof concerning restrictions on competitive employment.

### **5.1 Base Salary and Performance Increase**

The Base Salary paid by the University to the Employee for Employee's services and satisfactory performance of the terms and conditions of this Agreement shall be at the base rate of \$ \_\_\_\_\_ from \_\_\_\_\_, through \_\_\_\_\_ ("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 the Employee is actually employed, and payable in equal monthly installments by the University to the Employee on the first working day of each consecutive calendar month during the Term. Consistent with Section 4.5 of this Agreement, the President will conduct an annual review of the Employee. In the President's sole and unfettered discretion, if the Employee satisfactorily performs under this Agreement for the \_\_\_\_\_ calendar year, the President may increase the Employee's guaranteed base salary to a

rate of \$ \_\_\_\_\_ effective \_\_\_\_\_. Thereafter, in the President's sole and unfettered discretion, if the Employee satisfactorily performs under this Agreement for the \_\_\_\_\_ calendar year, the President may increase the Employee's guaranteed base salary to a rate of \$ \_\_\_\_\_ effective \_\_\_\_\_.

Notwithstanding this Article 5.1, in the event there are salary reductions throughout the Nevada System of Higher Education for any fiscal year during the Term, Employee's Base Salary shall be reduced by the same percentage and in the same manner as other non-tenured faculty of University through the mechanisms required by the Board of Regents, such as, for example, pay cuts and unpaid leave days. Employee shall not be eligible for Cost of Living Adjustments ("COLA") as may be provided by Employer to other professional staff of the University. If the Nevada State Legislature funds merit awards for Nevada System of Higher Education faculty and the Nevada System of Higher Education and University authorize merit awards for University employees, Employee shall not be eligible to participate in the merit program.

## **5.2 Initial Employment Allowance and Fringe Benefits**

### **5.2.a Initial Employment Allowance**

The University shall allocate an initial employment allowance for the purpose of reimbursing the Employee for reasonable moving and related expenses for relocation which shall not exceed ten (10) percent of the base compensation. Employee must submit written invoices or other documentation of such expenses and reimbursement is subject to approval by the President or designee.

-OR-

Within \_\_\_\_ days of beginning employment, Employee shall receive an additional one-time gross payment equivalent to one month's base salary of \$ \_\_\_\_\_. Employee will not be eligible for reimbursement for moving, relocation or other expenses in connection with commencement of employment. Should Employee terminate employment pursuant to Article 6.2 of this Agreement within twelve (12) months of the Effective Date of this Agreement, Employee shall repay the initial employment allowance to University in full within thirty (30) days of termination. Any unrepaid amount of the initial employment allowance shall bear simple interest at the rate of eight (8) percent annum until paid in full.

### **5.2.b Fringe Benefits**

The Employee shall be entitled to the standard fringe benefits provided to all other professional employees of the University including, but not limited to, retirement contributions based upon the compensation paid pursuant to Article 5.1 of this Agreement, insurance and sick leave. Employee is responsible for notifying the President or designee in writing of any request for use of sick leave time. Employee does not earn and is not entitled to accrue annual leave, but personal leave may be taken at times and in duration approved in advance or as directed by the President, at the request of the Employee or otherwise.

## **5.3 Expenses**

The University will reimburse the Employee for all travel and out-of-pocket expenses reasonably incurred by Employee for the purpose of and in connection with the performance of Employee's duties under this Agreement. Such reimbursement shall be made in accordance with standard reimbursement rates and procedures of the University upon presentation to the University of standard travel reimbursement forms, vouchers or other statements itemizing such expenses in reasonable detail. At all times the spouse or one guest of the Employee may travel with the Employee for business purposes in representing the University. Upon prior written approval from the President or designee for said travel, University will provide travel expenses for such spouse or guest in accordance with NSHE and University travel policies.

## **5.4 Automobiles**

The University, as additional compensation to the Employee, shall make arrangements for and provide to the Employee, on a loan basis, one (1) automobile for the use of the Employee for so long as the Employee serves as the Director of Athletics. The University further agrees to provide appropriate liability and comprehensive automobile insurance to cover the Employee in Employee's use and operation of said automobile. Employee shall be responsible for all other expenses involved in the use and operation by Employee of said automobile.

## **5.5 Season Tickets**

a. The University shall make available to the Employee \_\_\_\_\_ tickets for each regular season contest for all sports for as long as Employee serves as the Director of Athletics.

b. The University shall make available to the Employee, upon request, post season tickets as approved by the President.

## **5.6 Bonus**

Provided that Employee is employed as Director of Athletics on \_\_\_\_\_, Employer shall make, as additional compensation, a one-time payment of \$ \_\_\_\_\_ to Employee, in accordance with NSHE Board of Regents Handbook, Title 4, Chapter 3, Section 25.5.

## **5.7 Hosting Account**

University shall provide Employee up to \$ \_\_\_\_\_ per annum hosting activities undertaken as Athletic Director. Employee shall comply with all Board of Regents, University, and Athletic Department policies governing Hosting Accounts.

## **5.8 Opportunities to Earn Outside Income**

While the Employee is employed as Director of Athletics, Employee shall have the opportunity to earn outside income as a result thereof, but only upon the following terms and conditions:

### **5.8.a General Provisions Concerning Outside Income**

The following general terms and conditions shall apply to each case in which the Employee seeks to or makes arrangements for activities to earn outside income as a result of being Director of Athletics.

#### **5.8.a.1 University Obligations are Primary**

Such outside activities shall not interfere with the full and complete performance by the Employee of Employee's duties and obligations as a University employee, recognizing always that the Employee's primary obligations lie with the University and its students.

#### **5.8.a.2 Laws and University, NCAA and Conference Rules Control**

In no event shall the Employee accept or receive directly or indirectly any monies, benefit or any other gratuity whatsoever from any person, corporation, University booster club or alumni association or other benefactor if such action would violate: (1) the laws of the State of Nevada; (2) the NSHE Code, Title 2, any other provisions of the NSHE Board of Regents Handbook, or rules or policies of the University or its Board of Regents; or (3) NCAA legislation or the constitution, bylaws, rules and regulations, or interpretations thereof, or of the Conference, as now or hereafter enacted. Changes or amendments of such laws, legislation, constitution, bylaws, policies, rules and regulations or interpretations thereof shall automatically apply to this Agreement without the necessity of a written modification of this Agreement or of notification to Employee.

#### **5.8.a.3 University Approval is Required**

The Employee shall obtain the advance written approval of the University's President before entering into agreements to receive outside income.

#### **5.8.a.4 University is Not Liable**

ANY ARRANGEMENTS FOR OUTSIDE COMPENSATION AND THE ACTIVITIES THEREUNDER ARE INDEPENDENT OF THE EMPLOYEE'S UNIVERSITY EMPLOYMENT, AND THE UNIVERSITY SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY PAYMENT OF OUTSIDE COMPENSATION OR FOR ANY CLAIMS ARISING THEREFROM UNDER ANY CIRCUMSTANCES WHATSOEVER. EMPLOYEE HEREBY EXPRESSLY RELEASES UNIVERSITY, ITS 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.b Disclosure of Outside Income**

In accordance with NCAA regulations, the Employee shall report annually in writing to the President of the University, on or before June 30 of each fiscal year, all income from sources outside the University, and the University shall have reasonable access to all records of the Employee necessary to verify such report. In addition, in accordance with NCAA regulations, Employee may be required to report outside income directly to the NCAA.

## **ARTICLE VI – TERMINATION**

### **6.1 Termination by University**

The Employee recognizes that Employee's promise to remain as Director of Athletics of the Program through the entire term of this Agreement is of the essence of this Agreement to the University. It is also recognized, however, that certain limited circumstances may make it appropriate for the University to terminate this Agreement prior to the completion of its entire term, as follows:

#### **6.1.a Termination By University Without Cause**

Notwithstanding any provision of the Code to the contrary, at any time after commencement of this Agreement, the University may terminate this Agreement without cause by giving ten (10) days' written notice to the Employee, such termination to become effective no earlier than ten (10) days after receipt of such written notice. In the event the University terminates this Agreement without cause, the University shall pay to the Employee, as liquidated damages, an amount equal to the Employee's Base Salary for the period remaining in the Term of this Agreement, to be paid on a monthly basis prorated over the remainder of the Term of this Agreement, or in accordance with a payment schedule agreed upon by the parties in writing. The University shall not be liable for any consequential damages or loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources that might ensue as a result of the University's termination of this Agreement without cause and Employee hereby expressly waives any such claims against the University, its officers, employees and agents.

The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Employee may lose certain benefits, supplemental compensation or outside compensation relating to Employee's employment at the University, which damages are extremely difficult to determine with certainty, or fairly or adequately. The parties further agree that payment of such liquidated damages by the University and acceptance thereof by the Employee shall constitute adequate and reasonable compensation to the Employee for damages and injury suffered because of such termination by the University. The foregoing shall not be, nor be construed to be, a penalty.

#### **6.1.b Automatic Termination upon Death or Disability of Employee**

This Agreement terminates upon the Employee's death. Notwithstanding any provision of the 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 University shall pay to the Employee's estate the Employee's salary through the day death occurred, plus any earned, accrued but unused annual leave, if applicable under University policies, together with one-twelfth of the Employee's base salary.

Upon total or permanent disability of the Employee, within the meaning of the University's disability insurance for employees, the Employee is required to first use all unused, accrued sick leave and, if applicable, annual leave or other leave authorized under University policies. Upon the expiration of such leave or the period of six (6) months, whichever comes last, this Agreement shall automatically terminate and the Employee shall be entitled to benefits as provided by the University's long-term disability insurance coverage. Benefits provided under this article are calculated on the Base Salary as set forth in Article 5.1 of this Agreement.

#### **6.1.c Termination by University for Cause**

The University shall have the right to terminate this Agreement for cause at any time. The term "cause" shall include, in addition to and as examples of its reasonable and customary meaning in employment contracts, any of the following:

1. Failure to perform the duties outlined in Article 4.2 of this Agreement or refusal or unwillingness to perform such duties in good faith and to the best of the Employee's abilities;
2. Material breach by Employee of any of the other terms and conditions of this Agreement;
3. Any conduct of the Employee in violation of any criminal statute of moral turpitude;

4. Any behavior of Employee that brings Employee into public disrepute, contempt, scandal or ridicule or any behavior that would bring disfavor to the reputation of the University;
5. Any serious or intentional violation of any law or of any policy, rule, regulation, constitutional provision, bylaw or interpretation of the University, the Nevada System of Higher Education, the NCAA or the Conference, which violation may, in the sole judgment of the University, reflect adversely upon the University or its Athletic Department. This shall include, without limitation, any violation which may result in the University being sanctioned by the NCAA or the Conference, and may also include any violation which may have occurred during prior employment of the Employee at another NCAA member institution;;
6. Any intentional violation, of which Employee knew or should have known, of any law or of any policy, rule, regulation, constitutional provision, bylaw or interpretation of the University, the NCAA or the Conference, which violation may, in the sole judgment of the University, reflect adversely upon the University or the programs of its Athletic Department, including any violation which may result in the University being sanctioned by the NCAA or the Conference;
7. Conduct of the Employee which, in the sole judgment of the University, is seriously prejudicial to the best interests of the University or its Athletic Department or which violates the University's mission;
8. Prolonged absence from duty without the written consent from the President; or
9. Any cause adequate to sustain the termination of any other University employee under the provisions of the NSHE Code, Title 2, Chapter 6.

#### **6.1.d Determination of Cause and Employee's Right to University Hearing**

Employee shall be entitled to all notices, hearings, procedures and appeals as are provided by the NSHE Code, Title 2, Chapter 6 for any disciplinary action against Employee.

#### **6.1.e University's Obligations Upon Termination for Cause**

In the event this Agreement is terminated for cause in accordance with the provisions of Article 6.1.c and d hereof, as of the effective date of such termination, all of the University's obligations to the Employee under this Agreement subsequent to that date shall cease. In no case shall the University be liable to the 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 and Employee hereby expressly waives any such claims against University, its officers, employees or agents.

#### **6.2 Termination by Employee**

The Employee understands that Employee's promise to remain employed as Director of Athletics for the entire term of this Agreement is of the essence of this Agreement to the University. The Employee also understands that the University is making a highly valuable investment in Employee continued employment by entering into this Agreement and that its investment would be lost were Employee to resign or otherwise terminate Employee employment with the University prior to the expiration of this Agreement. In recognition of these understandings, the parties agree that while the 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 Written Notice**

Notwithstanding any provision of the NSHE Code, Title 2 to the contrary and subject to the provisions of Article 7.1, at any time after commencement of this Agreement, the Employee may terminate this Agreement without cause by giving ten (10) days' written notice to the President, such termination to become effective no earlier than ten (10) days after receipt of such written notice.

### **6.2.b Liquidated Damages**

If the Employee terminates this Agreement for convenience, then Employee or designee shall pay to the University, as liquidated damages and not a penalty, the following sum: an amount equal to the remaining base salary of the Employee as set forth in Section 5.1, excluding all deductions required by law. The liquidated damages shall be due and payable within twenty (20) calendar days of the effective date of the termination or in accordance with a payment schedule agreed upon by the parties in writing, and any unpaid amount shall bear simple interest at a rate eight (8) percent per annum until paid. The University shall not be liable for any consequential damages or loss of any collateral business opportunities or any other benefits, perquisites, or income from any sources that might ensue as a result of the Employee's termination of this Agreement without cause and Employee hereby expressly waives any such claims against the University, its officers, employees and agents.

The parties have bargained for and agreed to the foregoing liquidated damages provision, giving consideration to the fact that the Employee may lose certain benefits, supplemental compensation or outside compensation relating to Employee's employment at the University, which damages are extremely difficult to determine with certainty, or fairly or adequately. The parties further agree that payment of such liquidated damages by the Employee and acceptance thereof by the University shall constitute adequate and reasonable compensation to the University for damages and injury suffered because of such termination by the Employee. The foregoing shall not be, nor be construed to be, a penalty.

## **ARTICLE VII – RESTRICTIVE COVENANTS**

### **7.1 Confidential Information**

The parties agree that in the course of employment, Employee will have access to confidential information regarding the Athletic Department, including donors and donor lists and its programs that could be used by other institutions to place the Program's team at a competitive disadvantage. Employee shall not provide, and is prohibited from providing, any such confidential information to other institutions, their coaches, employees, student athletes, agents or representatives.

### **7.2 Other Opportunities**

The parties agree that should another athletic director opportunity be presented to the Employee or should the Employee be interested in another position as an athletic director at any institution of higher education which is a member of the NCAA or the NAIA, or for any team participating in any professional league or conference in the United States or elsewhere, requiring the performance of duties prior to the expiration of the Term of this Agreement or any extension hereof, the Employee shall notify in writing the President of such opportunity or interest. The Employee agrees not to seek, discuss, negotiate for or accept employment requiring performance of duties prior to the termination date of this Agreement or any extension thereof, without first obtaining written consent from the President, which shall not be unreasonable withheld.

## **ARTICLE VIII – 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 \_\_\_\_\_ County, State of Nevada, and the parties hereby expressly consent to the jurisdiction of said court.

### **8.2 Assignment of Agreement**

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

### **8.3 Merger Clause**

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

#### **8.4 Amendments to Agreement**

This Agreement may be amended at any time only by a written instrument duly approved by the University, through its designated representative, and the 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**

The Employee acknowledges that Employee has read and understands the foregoing 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 of University**

The Employee agrees to hold harmless and indemnify the University from any and all suits, claims, demands, damages, liability, costs and expenses, including attorneys' fees and costs, arising out of the 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 the Employee seeks to compel the University to comply with its obligations hereunder or in which the 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 University Retains All Materials and Records**

All materials or articles of information including, without limitation, personnel and student athlete records, recruiting records, team information, films, statistics or any other material or data, furnished to the Employee by the University, developed by the Employee on behalf of the University or at the University direction or for the University's use, or otherwise in connection with the Employee's employment hereunder, are and shall remain the sole property of the University. Within seven (7) days of the expiration of the Term of this Agreement or its earlier termination as provided herein or the reassignment of employment from the position of Director of Athletics, Employee shall deliver any such materials as well as the automobile in Employee's possession or control to University.

#### **8.10 Employee Will Not Incur University Indebtedness**

It is mutually agreed and understood that the Employee shall not incur any indebtedness for or on behalf of the University without first securing the approval of the President or designee and that all contractual obligations incurred by Employee must be in accordance with applicable NSHE and University policies, specifically including delegations of signature authority and provisions for approval of the Board of Regents. No contracts for employment of head or assistant coaches shall be negotiated without the prior approval of the President of all terms thereof, specifically including selection of such coaches, the term of such agreements, and all compensation to be offered.

#### **8.11 Government Immunity Not Waived**

It is expressly agreed and understood between the parties that the University is an entity of the State of Nevada and that nothing contained herein shall be construed to constitute a waiver or relinquishment by the University of its 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 the Employee:**

Director of Athletics

**If to the University:**

Office of the President

### **8.13 Applicability of Nevada System of Higher Education Code**

This Agreement is subject to the provisions of the NSHE Code, Title 2, except as stated herein.

### **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.

### **8.15 “Force Majeure” Clause**

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, 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.

### **8.16 Employee Will Not Make Investments Competitive With University’s Objectives**

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 with University’s objectives and philosophies or with the Athletic Department, without first having obtained the written approval of the President

IN WITNESS WHEREOF, the parties hereto have executed this Agreement or caused this Agreement to be executed, effective the day and year first written above, intending to be legally bound by its provisions and Employee acknowledging that Employee has reviewed this Agreement with Employee’s attorney.

**BOARD OF REGENTS OF THE NEVADA  
SYSTEM OF HIGHER EDUCATION ON  
BEHALF OF THE**

\_\_\_\_\_:

By: \_\_\_\_\_  
President

Date: \_\_\_\_\_

By: \_\_\_\_\_  
General Counsel

Date: \_\_\_\_\_

**EMPLOYEE:**

By: \_\_\_\_\_  
Director of Athletics

Date: \_\_\_\_\_

(Added 6/16, A. 9/16, 3/17, 3/18)

## Section 15. Audit Related Procedures

NSHE institutions are subject to audits by internal and external auditors. Therefore, each institution shall develop procedures to manage these activities and include them in their institutional policies. The procedures should, at a minimum, address the following.

1. Meetings. Audits begin and end with entrance and exit meetings, respectively. Additional meeting may be necessary such as during audit fieldwork. The institution Business Officer shall provide guidance regarding the personnel that are responsible for attending audit meetings.
2. Field work. The auditors may work with various institutional personnel during audit field work depending on the scope of the review. The institution Business Officer shall provide general guidance regarding the personnel involved during audit field work.
3. Reports. Audit reports are issued at the conclusion of the audit process. The institution shall provide guidance regarding the personnel to whom reports shall be distributed. For external audits, including those from external grantors, the audit reports shall also be forwarded to the Chancellor and the NSHE Chief Internal Auditor.
4. Responses. Audit reports often require a response from institutions for the findings noted. The institution shall provide guidance regarding the personnel responsible for drafting, reviewing and approving the initial and follow-up responses to audit report findings.
5. Audit Committee. For audit reports presented to the Board of Regents Audit Committee, the institution Business Officer shall provide guidance regarding the personnel responsible for representing the institution at the audit committee meetings.
6. Monitoring. In general, audit findings are required to be monitored until they are resolved. The institution Business Officer shall develop a system for tracking and resolving audit findings and provide guidance regarding the personnel that will be responsible for this activity.

(Added 6/16)

## Section 16. Electronic Payment Instruction Verification Policy

This policy was created specifically to address supply chain fraud which can occur when payments are diverted to an unintended bank account by fraudulent people or entities skilled at circumventing internal procedures designed to ensure that payments are routed correctly to legitimate suppliers.

The following steps must be taken in advance of setting up or changing electronic payment instructions:

- Validate all new electronic payment instruction requests received even if the request is internal.
- Contact the supplier or requester directly by phone to confirm any requests for payment method or payment instruction changes. Do not use the contact information provided on the request to change payment method or payment instructions; do use contact information known to be genuine such as the contact information in your master supplier file or information collected from the original contract.
- Verify the new information provided on the payment instructions provided with the known contact.

- Document the verification process that was followed to validate payment instructions. The person responsible for entering/updating wire instructions and the person approving new/updated wire instructions must approve the record of verification. A record of the verification must be maintained by the institution in accordance with record retention policies.

(Added 9/16)

## **Section 17. NSHE Payroll Services**

### **1. Purpose**

This document establishes responsibility for the provision of Payroll Services for the Nevada System of Higher Education (NSHE) for the benefit of the NSHE institutions and System Administration.

The Business Officers Council (BOC), consisting of the institutional and system CFOs, oversees processing and delivery of payroll services through the governance structure outlined in this document.

NSHE Payroll Services administratively reports to the University of Nevada, Reno (UNR) campus Associate Vice President of Business and Finance. NSHE Payroll Services provides direction, coordination and guidance for payroll services resources statewide.

These guidelines:

- Outline the services provided and working assumptions between NSHE Payroll Shared Services lead institution and the partner institutions
- Define mutual requirements and expectations for critical business processes and overall performance
- Define mutual requirements and expectations for reporting and communications
- Provide a vehicle for resolving conflicts

### **2. Objectives of the Service**

NSHE Payroll Services performs the functions and services associated with and directly related to payroll delivery to NSHE employees; governmental reporting and tax withholding, as prescribed by laws, regulations and policies, as well as the timely payment and reconciliation of all liabilities created by benefits offered to and other voluntary and mandatory deductions from the employees' paychecks.

NSHE Payroll Services also identifies, examines and resolves payroll issues, and identifies, analyzes and has the authority and responsibility to implement continuous improvements to payroll business processes, system upgrades and configuration changes.

### **3. Governance**

The Business Officers Council (BOC) provides oversight of NSHE Payroll Services and monitors coordination among campuses, System Computing Services, Human Resources, Benefits and employees.

Specific responsibilities of BOC are outlined in Section 4.

#### 4. Roles, Responsibilities, and Expectations

##### a. NSHE Payroll Services

In coordination with all NSHE institutions, including Human Resources, SCS and benefits business centers, NSHE Payroll Services is responsible for the timely and accurate processing of the following payroll related activities:

- i. Processing of all payroll related settlements for regular and semi-monthly payroll cycles for delivery to employees on scheduled payment dates (i.e. paychecks, direct deposits, payment cards, and advices)
- ii. Processing of off-cycle payment requests (i.e. paychecks, direct deposits, payment cards, and advices)
  1. Requests received by noon will be processed by the next business day provided they are approved by the institution and all preceding processes have been completed
- iii. Upon notification of an employee work assignment in a state other than Nevada, verify that we are an employer in the state, city and/or jurisdiction where the work is to be performed. If not currently established, NSHE payroll services will work with the location authorities and set NSHE up as an employer within 45 days of being notified. Extra ordinary costs associated with new tax jurisdictions may be billed to the requesting institution.
- iv. Processing of employee and employer benefit and tax liability withholding; producing timely and accurate liability payments; and completing monthly reconciliation of associated liability accounts. Examples include the following:
  1. Federal Withholding Tax
  2. State Income Tax
  3. Social Security (FICA) and Medicare
  4. Retirement plans (PERS & RPA Retirement, FICA Alternative)
  5. Unemployment Contributions and quarterly payments and Workers Compensation
  6. Retired Employees Group Insurance Assessment (REGIA)
  7. Miscellaneous Deductions
- v. Processing wage garnishments for new and changed court orders by the deadline applicable to the type of garnishment and prescribed by regulation
- vi. Processing and issuing W-2s and associated reports and filings by established statutory deadlines. Issuing corrections when necessary.
- vii. Communication and customer relations to address issues, concerns and inquiries from internal and external parties
  1. Prepare a communications plan for review by the BOC annually
  2. Provide payroll support from 8 am – 5 pm, excluding weekends and observed holidays
    - a. Provide a shared email for employees and respond within one business day
    - b. Provide telephone support for employees that is answered during business hours
      - i. Voicemail will advise the caller that their call will be returned within one business day
  3. Provide timely responses for information requests from internal and external parties (i.e. System Administration, internal audit, governments, agencies, banks, auditors, public records request and benefit providers).
  4. Produce and publish a payroll calendar
- viii. Manage and retain records for payroll related documents in accordance with federal, state and NSHE laws, regulations and policies
- ix. Oversight and management of all payroll related outsource service agreements, if any

- x. Overpayment processing (include campus, HR, Grants and Controller involvement)
- xi. Manage payroll banking activity for the following:
  - 1. Funding and settlement for net payroll and liabilities
  - 2. Response to positive pay exceptions by banking deadlines
  - 3. Bank reconciliation
  - 4. Issue stop payments
  - 5. Cancellations and reissues
  - 6. Stale check processing (escheatment) within 180 days of issue date
- xii. Actively participate in weekly Workday payroll conference call
- xiii. Functional testing of changes to configuration, reports, security, integrations and new releases to ensure these changes are working as intended

b. System Computing Services (SCS) - Workday Project Management

SCS plays a key role in ensuring that the Workday system is operating in a manner that results in timely and accurate payroll processing and payments. SCS in consultation with Payroll Services and other key stakeholders performs the following:

- i. Maintain system configuration and integrations
- ii. Manage payroll team and Business Analyst with input from Payroll Services (hiring, evaluation, priorities)
- iii. Lead and participate in weekly Workday payroll conference calls
- iv. SCS support on payroll processing days will be available until payroll has successfully completed and during normal business hours all other days
- v. Ad-Hoc reporting requests and support
- vi. Provide testing plan and resources for Workday updates
- vii. Ensure that incomplete configurations not delivered at go-live are completed using adequate consulting and SCS resources (i.e. academic pay and PERS)
- viii. Provide testing plan for Workday releases that impact the payroll business process
- ix. Initial testing of all business process changes, integration changes and new releases to insure these changes are working as intended
- x. Review and communicate impact from Workday release notes
- xi. Implement and document policies and procedures for managing incoming and outgoing integrations and provide those documents to all payroll business process participants listed in this document
- xii. Activate state tax tables for remote work locations when needed and establish the new deduction codes for unemployment and workers' compensation with 14 days of being notified by NSHE Payroll Services of the need

c. Campus Human Resources

Campus human resources offices are responsible for the timely submission of employee actions within the Workday payroll system and required documents necessary for processing employee payments accurately and timely. These offices are responsible for the processing the following in accordance with established deadlines:

- i. First point of contact for employees regarding payroll issues
- ii. Personnel actions for hire and termination
- iii. Job changes
- iv. Salary adjustments resulting from job changes, merit, cost of living, etc.
- v. Actively participate in weekly Workday payroll conference call or payroll updates during the HR user group meetings
- vi. Notify payroll of all retroactive hires, terminations and job changes prior to the deadline for the next on-cycle payroll
- vii. Review payroll cutoff calendars to be familiar with important payroll processing and primary job switch dates

- viii. Notify and work with payroll on remote work locations to ensure NSHE is an employer in the state, city and/or jurisdiction prior to the work assignment being approved; establish procedures to ensure remote work employees maintain and update current work address information in Workday within 5 days as it changes

d. Benefits Offices

Business center benefit offices are responsible for the timely submission of employee benefit additions, deletions and changes within the Workday payroll system and required documents necessary for processing employee payments accurately and timely. These offices are responsible for the following in accordance with established deadlines:

- i. Review the accuracy of incoming integrations files in sufficient time to ensure inaccuracies can be corrected before payroll is calculated for each on-cycle payroll
- ii. Complete benefit enrollment/elections accurately and timely
- iii. Work cooperatively with NSHE Payroll, Human Resources and SCS to resolve issues with benefit providers in a manner that ensures accurate deductions
- iv. Actively participate in weekly Workday payroll conference call or payroll updates during the HR user group meetings
- v. Review payroll cutoff calendars to be familiar with important payroll processing dates
- vi. Notify payroll of all retroactive or administrative benefit changes

e. NSHE Institutions

NSHE institutions' employees and supervisors are critical in the efficient processing of payroll by ensuring time entry is accurate and job hires, terminations and changes are communicated to the appropriate stakeholder in a timely manner. Institutions are responsible for:

- i. Notification of hires and terminations
- ii. Adopting policies for time entry and approval for their employees and supervisors that respects published payroll deadlines and ensure compliance with those policies
- iii. Entry and approval of leave in accordance with published deadlines
  - a. Establish service level expectations for timely and accurate payroll payments, system functionality, legal and regulatory compliance and reporting
  - b. Establish expectations for and provide guidance to NSHE Payroll Services
  - c. Establish, approve and implement the budget and funding model
  - d. Define roles, responsibilities and expectations of all parties
  - e. Review staffing and work plans, ensuring that adequate cross-training exists to provide redundancy and backup support for essential functions
  - f. Monitor efficiency, effectiveness and quality of payroll business processes and attainment of service expectations
  - g. Provide direction when there are conflicting priorities
  - h. Review, approve or deny Workday exception requests related to the configuration of Workday payroll or other processes that impact payroll
  - i. Resolve conflicts that arise
- iv. Review of these responsibilities and update this document annually to reflect current roles, responsibilities, expectations and practices
- v. Notify and work with payroll on remote work locations to ensure NSHE is an employer in the state, city and/or jurisdiction prior to the work assignment being approved

## 5. Metrics and reporting

For purposes of evaluating the efficiency and effectiveness of payroll transaction processing and reporting requirements (inclusive of processes for which campus staff and payroll payees are responsible for accurate and timely completion), metrics will be compiled, monitored and reported annually to BOC. Metrics will be trended and shared with institution partner offices to support efforts to identify and remedy business process deficiencies and/or staff training issues.

Metrics to be monitored include:

1. Number/percentage of demand payments to regular cycle payments by institution and in total for the system
2. Number/percentage of retroactive payment calculations per cycle per institution and in total for the system
3. Voided payments/stop payments as a percent of total payroll payments by institution and in total for the sys
4. Payroll errors by source and institution and/or responsibility area and in total for system
5. Number of statutory return submissions with identification of any late filings
6. Average central payroll cost of producing a payroll payment
7. Cost of central payroll office as a percent of total payroll cost
8. Employees by institution without submitted and approved time prior to each on-cycle payroll and in total for the system
9. Retro hires and terminations by institution and department/college and in total for the system Payroll Issues and Business Process Reporting

NSHE Payroll Shared Services will develop mechanisms to identify, evaluate and assess the effectiveness of payroll business processes to identify issues and inform continuous improvement efforts. Mechanisms will focus on the following areas:

1. Summary of payroll issues reported over the period, including number of issues reported, number resolved, number of outstanding issues and data on time to acknowledge and time to resolve
2. Summary of volume of phone calls, and service tickets received during the period, including number of phone calls that go to voice mail and data on time to respond to both phone calls and service tickets
3. Report information regarding training and communication efforts over the period, including titles of courses offered, frequency and attendance; resources available through websites, etc.
4. Report payroll business process improvements, system upgrades and configuration changes implemented over the period

(Added 12/21)