

NDUS EARLY RETIREMENT AGREEMENT

This Agreement is made according to SBHE Policy 703.1 between ____ (name of college or university) ____ (“State”) and _____ (“Employee”).

1. Employee acknowledges that the terms of this Agreement and of SBHE Policy 703.1 have been reviewed with Employee. Employee understands that Employee is responsible for obtaining Employee’s own legal, tax and financial planning advice and State officials are only able to provide information to Employee and are not authorized to provide and are not responsible for legal, tax or financial planning advice.

2. For and in consideration of the compensation paid or other inducements under the following retirement plan, Employee gives up and relinquishes all tenure or other contract or employment rights with State:

a. Employee’s retirement date is _____.

OR

Employee agrees to a phased or other retirement as follows: ____ (describe terms, including workload, duties, pay and final retirement date) _____

b. State shall pay to Employee the sum of \$_____, which represents ____% of Employee’s final year contract salary of \$_____. Payment shall be made as follows: ____ (describe payment amounts, dates of payment, etc.) _____

Employee’s age at time of retirement is ____ and Employee’s total years of employment is ____ (sum must equal or exceed 70). Such payment precludes any subsequent regular, full-time employment in the university system, although part-time or temporary employment may be permitted in exceptional circumstances.

OR

Employee is not entitled to payment of compensation in addition to regular salary.

c. Employee is entitled to continued participation in State’s uniform group health insurance program and State shall continue to pay premiums for Employee’s participation as follows: _____

OR

Employee is not entitled to continued participation in State’s uniform group health insurance program following retirement except as provided by law.

d. Other: ____ (explain any other terms or conditions) _____

e. The benefits resulting from this Agreement include: ____ (summarize documented benefits resulting from the Agreement) _____

3. Employee, individually and on behalf of Employee's family, heirs, personal representatives and assigns, fully releases and discharges from all liability for damages, actions, causes of action, costs, attorney fees or other expenses of any kind, State and its present or former officers, employees, agents, assigns, insurers and representatives, whether acting in their individual or official capacities. Employee agrees to give up any and all rights or claims Employee now has to any relief of any kind, whether or not Employee now knows about those rights, arising out of employment at State or this resignation, including, but not limited to, claims for violation of the North Dakota Human Rights Act, N.D.C.C. ch. 14-02.4; Title VII of the Civil Rights Act, 42 U.S.C. §§ 2000e et seq.; the Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq.; the Americans with Disabilities Act, 42 U.S.C. §§ 12101 et seq.; the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq.; the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001 et seq.; or any other federal or state law. Employee further understands that this release extends to claims for wrongful discharge, breach of contract, promissory estoppel or breach of an express or implied promise, misrepresentation or fraud, retaliation, infliction of emotional distress, defamation, or otherwise based on any theory, whether developed or undeveloped, arising from or related to employment or separation of employment with State. It is further agreed that all rights Employee may possess under N.D.C.C. § 9-13-02 are expressly waived. N.D.C.C. § 9-13-02 provides that "[a] general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him, must have materially affected his settlement with the debtor." Employee agrees to not institute, nor authorize any other person or party to institute, any claim or legal proceedings against the State or its officers, executives, agents, assigns, insurers, or representatives. Although nothing in this Agreement shall be construed to prohibit Employee from filing a charge with the Equal Employment Opportunity Commission, this release shall extend to and prohibit Employee or Employee's family, heirs, personal representatives and assigns, from filing a court action or seeking individual remedies or damages in any action filed by the Equal Employment Opportunity Commission.

Acceptance Period. Under the Age Discrimination in Employment Act, Employee has the right to have the Agreement open for acceptance for a period of at least 21 days, during which time Employee may consider whether or not to accept this Agreement and seek counsel. Employee agrees that changes to this Agreement, whether material or immaterial, will not restart this acceptance period. Employee asserts that Employee has obtained advice of counsel and specifically waives this 21-day period.

Right to Rescind or Revoke. With respect to potential claims under the Age Discrimination in Employment Act, Employee has the right to revoke this Agreement within seven calendar days of execution; with respect to potential claims under the North Dakota Human Rights Act, Employee has the right to revoke this Agreement within fifteen calendar days of execution. Employee may exercise these rights by delivering or mailing, within the applicable time, written notice of intent to revoke the Agreement to:

H. Patrick Seaworth, General Counsel
State Board of Higher Education
600 East Boulevard Ave. Dept. 215
Bismarck, ND 58505

If Employee exercises any right of rescission or revocation, the State at its option may either nullify this Agreement in its entirety or keep it in effect as to all claims not rescinded or revoked in accordance with these rescission or revocation provisions.

Entire Agreement. This Agreement contains the entire agreement between the parties and they have no other written or oral agreements or understandings. This Agreement supersedes all prior agreements, whether written or oral, between the parties.

Governing Law. The laws of the state of North Dakota shall govern this Agreement. If any part of this Agreement is construed to be in violation of any law, such part shall be modified to achieve the objective of the parties to the fullest extent permitted and the balance of the Agreement shall remain in full force and effect.

EMPLOYEE ACKNOWLEDGES THAT EMPLOYEE HAS READ THIS ENTIRE AGREEMENT AND HAS CONSULTED LEGAL COUNSEL. EMPLOYEE ENTERS INTO THIS AGREEMENT FREELY AND VOLUNTARILY WHOLLY UPON EMPLOYEE'S OWN JUDGMENT, BELIEF, AND KNOWLEDGE AS TO THE NATURE, EXTENT, EFFECT AND DURATION OF ANY CLAIMS EMPLOYEE MAY HAVE. EMPLOYEE AGREES THAT IN ENTERING INTO THIS AGREEMENT EMPLOYEE HAS NOT RELIED ON ANY STATEMENTS OR EXPLANATIONS MADE BY STATE OR ITS REPRESENTATIVES.

STATE:

EMPLOYEE:

Institution President

Date: _____

Date: _____