



**NEW MEXICO STATE UNIVERSITY BOARD OF REGENTS
SPECIAL MEETING
October 25, 2024 at 8:00 AM**

Live Webcast at the following address: <https://regents.nmsu.edu/regent-meetings/>

Regents of New Mexico State University

Chair Ammu Devasthali, Vice Chair Christopher T. Saucedo, Secretary/Treasurer Garrett Moseley, Dina Chacón-Reitzel, Deborah Romero

Non-Voting Advisory Members - ASNMSU President Ala Alhalholy, Faculty Senate Chair Vimal Chaitanya, Ph.D., Employee Council Chair Donna Johnson

University Officials - Interim President Mónica Torres, Ph.D., Interim Provost Lakshmi Reddi, Ph.D., General Counsel Lisa Henderson, J.D.

AGENDA

A. Call to Order

- 1. Confirmation of Quorum, Chairwoman Ammu Devasthali**
- 2. Approval of the Agenda, Chairwoman Ammu Devasthali**

B. Consent Items

- 1. None.**

C. Action Items

- 1. President Employment Agreement by and between The Regents of New Mexico State University and Dr. Valerio Ferme, Chairwoman Ammu Devasthali**

D. Informational Items

- 1. None.**

E. Announcements and Comments, Chairwoman Ammu Devasthali

F. Adjournment, Chairwoman Ammu Devasthali

PRESIDENT EMPLOYMENT AGREEMENT BY AND
BETWEEN
THE REGENTS OF NEW MEXICO STATE UNIVERSITY AND
DR. VALERIO FERME

**PRESIDENT EMPLOYMENT AGREEMENT
BY AND BETWEEN
THE REGENTS OF NEW MEXICO STATE UNIVERSITY
AND
DR. VALERIO FERME**

This President Employment Agreement (“Agreement”) is made and entered into by and between the **Regents of the New Mexico State University** (“Regents”) and **Dr. Valerio Ferme** (“Dr. Ferme”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

**ARTICLE I
APPOINTMENT AS PRESIDENT**

- 1.01 Appointment. Commencing November 18, 2024 (“Start Date”), Dr. Ferme will be employed by the New Mexico State University System (“NMSU”) pursuant to the terms of this Agreement. Effective January 1, 2025 (“Appointment Date”), contingent on Dr. Ferme’s continued employment with NMSU and compliance with this Agreement through such date, the Regents appoint and authorize Dr. Ferme to serve as President of NMSU. For the purpose of this Agreement, “NMSU” is defined to include all activities and operations of the Constitutionally defined state institution of higher education identified by law as New Mexico State University, including the university based in Las Cruces, New Mexico (NMSU University), NMSU Global, and the three community colleges based in Alamogordo, Doña Ana, and Grants, but excluding the New Mexico Department of Agriculture which is independently managed by a Director who is appointed by and reports to the Board of Regents (“Board”). As President, Dr. Ferme will serve as NMSU's chief executive officer in accordance with the policies, rules and regulations promulgated under the authority of the Regents. Dr. Ferme hereby accepts such appointment and agrees to serve as President of NMSU under the terms and conditions of this Agreement.
- 1.02 Onboarding Period. Between the Start Date and the Appointment Date, Dr. Ferme will perform onboarding duties under the direction of the Regents of NMSU as President Designate in accordance with the policies, rules and regulations promulgated under the authority of the Regents.

**ARTICLE II
DUTIES**

- 2.01 Reporting. Dr. Ferme will report directly to the Regents and will serve under the supervision and subject to the direction of the Regents.
- 2.02 Duties and Responsibilities. Dr. Ferme agrees that he will, at all times, faithfully, industriously, and with the best use of his experience, ability, and talent perform the duties of President. Dr. Ferme will perform all the duties required as President in accordance with

this Agreement, the directives of the Regents, the Regents Policy Manual, the regulations, policies, and procedures of NMSU, and all applicable federal and state laws, regulations, and rules. Dr. Ferme will devote the required professional time, attention, and energy to the business of NMSU, and will not, during the term of this Agreement, engage in any other business or professional activity, except as expressly allowed herein or subsequently approved by the Regents. Dr. Ferme in his capacity as President will be responsible for the oversight of the operations and activities of NMSU. The President will not be responsible for the operation of the New Mexico Department of Agriculture which is governed by the Regents and receives administrative support from NMSU.

The Duties of the President include, but are not limited to:

- 2.02.1 Leading NMSU to academic excellence, and enhancing the scholarship of teaching research and public service;
 - 2.02.2 Fundraising; donor development; governmental relations; public, private, corporate and alumni relations;
 - 2.02.3 Development of public-private partnerships for the benefit of NMSU, and the responsible development of projects designed to maintain the value of NMSU's portfolio of real estate and water assets for future generations while increasing the revenue generated by those resources;
 - 2.02.4 Long-term visionary strategic planning in conjunction with the Regents, and strategic budgetary responsibilities;
 - 2.02.5 Elevating the accomplishments, prominence, national and international recognition, and prestige of NMSU;
 - 2.02.6 Ensuring that strategic priorities and investments drive quantitative improvements in recruitment, retention, graduation, student employment, alumni giving, and research in order to better accomplish NMSU's core land-grant, Hispanic serving mission;
 - 2.02.7 Enhancement of NMSU's stature and success through research awards, public recognition, and identifiable relevant contributions to regional and state-wide economic development;
 - 2.02.8 Oversee and provide strategic leadership for Division I Intercollegiate Athletics programs at NMSU, including direct involvement in athletic conference decisions and program compliance under NCAA regulations.
- 2.03 Professional Activities. Dr. Ferme is encouraged to participate in local, regional, state, national, and international efforts aimed at promoting and improving public higher education and public higher education administration. Dr. Ferme may provide advice or consultation to, and may receive compensation from, entities other than NMSU, provided that such activities: (a) are approved in advance by the Regents; (b) do not fall within his

duties as President of NMSU; (c) do not interfere with the performance of his official duties and obligations to NMSU; (d) do not create a conflict of interest with respect to his official NMSU duties; (e) are in compliance with all other applicable laws, rules of the Regents, and NMSU regulations and policies concerning ethics or conflicts of interest; (f) do not involve the improper use of NMSU resources, time, materials, or facilities; (g) are reported, if required by law, to governmental ethics bodies; and (h) are reported to the Regents annually, including an accounting of all outside compensation received. Advance approval of the Regents will be deemed given unless, within 2 weeks of receiving written notification of such proposed activities, the Chair of the Board notifies Dr. Ferme that the item will be placed on the agenda of a future Regent's meeting for consideration. Any such approval may be revoked by the Regents at any time. Dr. Ferme's first disclosure of such professional activities is attached as Exhibit A to this Agreement and approved concurrently with the ratification of this Agreement.

ARTICLE III TERM

- 3.01 Term. The “Term” of this Agreement will commence on the Start Date, and terminate January 1, 2030, subject to any early termination as provided in this Agreement and subject to any renewals and extensions. The effective date of any termination of Dr. Ferme’s employment under this Agreement for any reason is hereinafter referred to as the “Termination Date”.
- 3.02 Annual Evaluation. The Regents will conduct an annual evaluation (“Annual Evaluation”) of Dr. Ferme's performance during the 90-day period following the end of each fiscal year of NMSU (each, a “Fiscal Year”). This Annual Evaluation, based on annual and multi-annual performance goals, will replace any other annual performance evaluations regularly conducted pursuant to NMSU policy or rules. Additional interim performance assessments may be conducted by the Regents. Evaluations will be documented and any finding of unsatisfactory performance in the Annual Evaluation will be stated explicitly in the written documentation.
- 3.03 Renewal and Extension of Agreement. The Term of this Agreement may be renewed and extended at any time but only by written agreement signed by authorized representatives of both parties, subject to any approvals that must be obtained in accordance with applicable law or policy.
- 3.04 Tenure Appointment. Upon his appointment as President, Dr. Ferme will be granted a tenured faculty appointment at the rank of full professor in the Department of English in the College of Arts & Sciences. In the event that Dr. Ferme is removed from the position of President pursuant to Section 5.03.1 or 5.03.7 (and, in the case of removal pursuant to Section 5.03.1, the Regents agree in their sole discretion to permit Dr. Ferme to exercise the retreat right described in this sentence), Dr. Ferme may retreat to a regular nine-month or twelve-month faculty position at a salary that is commensurate to the highest rate of pay afforded to tenured full professors of NMSU, in the same discipline and academic department (and, for the avoidance of doubt, Dr. Ferme will not be eligible to earn or receive any further compensation or benefits described in Article IV below, including,

without limitation, any payments under the LTI Arrangement, as defined below). Should Dr. Ferme retreat to a faculty position pursuant to this Agreement, he will be provided an opportunity for a one-year sabbatical commencing at the inception of such retreat appointment, during which Dr. Ferme will continue to receive the salary determined in accordance with the preceding sentence, and upon the conclusion of which Dr. Ferme will return to his faculty duties; provided that such sabbatical will end, and Dr. Ferme will not be permitted to return to his faculty duties, if Dr. Ferme commences other employment during such sabbatical. This opportunity to retreat to a tenured faculty appointment may not be exercised, and this grant of tenure is null and void, in the event that Dr. Ferme's employment under this Agreement is terminated pursuant to Sections 5.03.1 (subject to the discretion of the Regents to permit a retreat as set forth above) through 5.03.6.

ARTICLE IV COMPENSATION

- 4.01 Annual Base Salary. During the Term, Dr. Ferme will be paid an annual base salary of six hundred thousand and No/100 Dollars (\$600,000.00), prorated for any partial year ("Annual Base Salary"). This amount will be paid in twice monthly installments through the NMSU's payroll system during the Term, subject to withholdings as may be required by applicable law.
- 4.02 Long-Term Retention Incentive. As soon as commercially practicable after the Start Date, the Regents will, in good faith consultation with Dr. Ferme, design and implement a long-term retention incentive arrangement ("LTI Arrangement") for Dr. Ferme which will provide, among other things, that, for each of calendar years 2025 through 2029, NMSU may, in its discretion, award Dr. Ferme an annual cash retention incentive in an amount up to \$50,000 based on achievement of NMSU and/or individual performance objectives set forth in such LTI Arrangement, and that any such incentives awarded to Dr. Ferme will be earned by and paid to Dr. Ferme in one cash lump sum on the first regular NMSU payroll date coinciding with or following January 1, 2030, contingent on Dr. Ferme's continued employment with NMSU and compliance with this Agreement through January 1, 2030. The LTI Arrangement will be subject to all of the terms and conditions (including as to earning and forfeiture) set forth in such arrangement's governing documents, once adopted by the Regents, and, in the event of any inconsistency between this Agreement and the LTI Arrangement documents relating to the long-term retention incentive described in this paragraph, the LTI Arrangement documents will control.
- 4.03 Employee Benefits. During the Term, Dr. Ferme and his family will be eligible to participate in those benefits that are provided to employees and their families with full time administrative appointments with NMSU, in accordance with and subject to the terms and conditions of such benefits, as may be amended or altered in the future. Specific benefits as described in this section may change from time to time as mandated by the State of New Mexico or as may be determined by the Regents. Participation in a New Mexico Educational Retirement Board (ERB) Plan is a condition of employment and all employees are required to contribute to a retirement account each month through wage withholding as provided by state law and NMSU policy.

4.04 Business Expenses. During the Term, Dr. Ferme will be provided with an office operating budget for business purposes that is comparable in amount to that provided to similar executive offices at NMSU. Additionally, during the Term, Dr. Ferme will be entitled to reimbursement or stipends, consistent with current practices within NMSU, as necessary to provide the following items for NMSU business related purposes: cellular and wireless communication devices; a computer; broadband internet access at his residence; memberships in national and state academic and relevant professional associations, organizations, committees; and any other communications or technology devices or software deemed to be reasonably necessary for the accomplishment of his duties and responsibilities (“Business Expenses”). Reimbursement of the Business Expenses will be subject to the relevant procurement, business procedures and relevant financial guidelines of NMSU.

4.05 Travel. Dr. Ferme will be reimbursed for reasonable and appropriate transportation, lodging, meal, and incidental expenses incurred during the Term for travel associated with official NMSU business in accordance with the NMSU's standard business procedures, except as otherwise provided in this Agreement. In circumstances where air travel time exceeds 2 hours in a one-leg trip, or 4 hours in a two-leg trip, Dr. Ferme will be reimbursed for business class fare for international and domestic flights.

In addition, Dr. Ferme may also be reimbursed for reasonable and appropriate transportation, lodging, meal and incidental expenses incurred by his spouse for the spouse's travel associated with official NMSU business, where the spouse's attendance is necessary and expected. Spousal reimbursements will be limited to the amounts allowed to employees under NMSU's standard business procedures. Dr. Ferme acknowledges that certain spousal travel reimbursements, if any, may be a benefit taxable to Dr. Ferme under applicable tax laws.

4.06 Club Memberships. During the Term, Dr. Ferme may be provided a membership in a private social club, with the choice of club, the type of membership, and club spending limits subject to approval by the Regents. Such membership will be for the purpose of entertaining individuals who support or may support NMSU. The membership may also be used for personal purposes; however, all charges incurred for personal purposes will be paid by Dr. Ferme. It is understood and agreed that Dr. Ferme will not be provided membership at any club that engages in discriminatory practices that would otherwise violate state or federal law if practiced by a private business.

4.07 Moving Expense Reimbursement. Dr. Ferme will be provided with a one-time relocation reimbursement in an amount not to exceed \$22,000, contingent on Dr. Ferme's continued employment with NMSU through the reimbursement date. Receipts for reimbursement must be submitted to the NMSU business office within sixty days of completion of the move to be eligible for reimbursement. Expenses eligible for reimbursement will be determined in accordance with the university's policies and business procedures manual.

4.08 Housing Benefit. Dr. Ferme will reside in the official University Center and Residence on Tortugas Trail at no cost for the duration of his employment with NMSU as

President. In the event of Dr. Ferme's death during the Term, any family member(s) that legally resided with Dr. Ferme at the time of his death will be permitted to remain at such residence for a reasonable grace period to be determined by NMSU to permit such family member(s) to find alternative housing accommodations.

- 4.09 Tax Liabilities. The compensation payable pursuant to this Agreement will be subject to reduction by all applicable withholding or deductions (such as social security and other federal and state taxes) as may be required pursuant to law, government regulations or court order. Dr. Ferme will be responsible for any and all personal income tax liability incurred as a result of any compensation or other benefits provided to him by NMSU. Dr. Ferme is advised to consult his own tax advisor regarding the taxation of all compensation and benefits hereunder, such as moving expenses, social club memberships, automobile and housing benefits, and reimbursement of expenses including spouse travel expense reimbursement. The Regents will report compensation and benefits as taxable income when it determines, in its discretion, that such reporting is required by law.

ARTICLE V DISCIPLINARY ACTION AND TERMINATION

- 5.01 Right to Suspend. If there is sufficient reason to believe that, or upon initiation of an investigation to determine whether, Dr. Ferme is or was involved in conduct constituting "Just Cause" to terminate Dr. Ferme's employment under this Agreement, the Regents may, in its sole and absolute judgment and discretion and in addition to any other right under this Agreement, suspend Dr. Ferme, with or without pay, pending a final decision concerning the matter. At the conclusion of a suspension without pay, should Dr. Ferme be reinstated to the position of President without any resulting discipline, payment of his Annual Base Salary, from the date of suspension, will be restored.
- 5.02 Right to Discipline. The Regents reserves the right to discipline Dr. Ferme for Just Cause. Discipline may include reprimand, temporary suspension with or without pay, or any other sanction up to and including termination of employment under this Agreement. Prior to disciplining Dr. Ferme for Just Cause, the Regents will provide Dr. Ferme with notice of the allegations constituting cause and Dr. Ferme will be provided an opportunity to meet with the Regents to respond to the allegations. The Regents' determination thereafter will be final and subject to no additional administrative review or appeal.
- 5.03 Termination. Dr. Ferme's employment under this Agreement may be terminated before expiration of its Term upon any of the following events:
- 5.03.1 **Mutual Agreement.** Mutual written agreement of the parties.
- 5.03.2 **Resignation.** Resignation by Dr. Ferme; provided, however, that Dr. Ferme must give the Regents at least six (6) months advance written notice of his resignation, unless a shorter period of notice is mutually agreed upon in writing.
- Dr. Ferme acknowledges that, should he voluntarily resign or abandon his employment with NMSU, without such advance notice, the failure to provide the advance notice will result in harm to NMSU and its operations. Accordingly, in

the event the President voluntarily resigns or abandons his employment with NMSU, because the actual harm and damage caused to NMSU cannot be accurately determined, the parties agree that within 30 days after his resignation or abandonment of his duties as President, Dr. Ferme will pay to the Regents as liquidated damages a sum equal to six months of his then current Annual Base Salary.

5.03.3 Mental or physical incapacity. Upon the determination by the Regents of mental or physical incapacity of Dr. Ferme, which renders him, with or without reasonable accommodation, incapable of properly performing the full-time duties required under this Agreement. If the Regents believe that, because of mental or physical incapacity, Dr. Ferme is unable to perform the essential functions of his position, it may, but is not obligated to, require Dr. Ferme to submit to a medical examination, either physical or mental, by a physician licensed to practice medicine in New Mexico and selected by the Regents, in order to report to and assist the Regents in determining whether Dr. Ferme is mentally or physically incapacitated such that he cannot perform the essential functions of his job, and if so, whether there is a reasonable accommodation that would enable Dr. Ferme to perform the essential functions of his position. Such examination and report will be at NMSU's expense. If the Regents determine, in their sole discretion and by a majority vote, that Dr. Ferme is mentally or physically incapacitated and is, therefore, incapable of properly performing the essential functions of his position under this Agreement, and that there is not a reasonable accommodation that can be made to enable Dr. Ferme to perform the essential function of his position, then Dr. Ferme's employment under this Agreement may be terminated. Dr. Ferme will receive oral or written notice of such potential action and upon written request to the Regents, will have an opportunity for an informal appeal, in executive session, to discuss the basis for the proposed action and to respond. The Regents' determination thereafter will be final and subject to no additional administrative review or appeal.

5.03.4 Death. This Agreement will terminate automatically upon Dr. Ferme's death.

5.03.5 Just Cause. The Regents may terminate Dr. Ferme's appointment and employment under this Agreement at any time for Just Cause. For purposes of this Agreement, "Just Cause" will include, but will not be limited to:

- (1) Dr. Ferme's theft, dishonesty, fraud, embezzlement, willful misconduct, breach of fiduciary duty or material falsification of any documents or records of NMSU or its affiliates;
- (2) Dr. Ferme's failure to abide by NMSU's code of conduct or other policies (including policies relating to confidentiality and workplace conduct and any drug, alcohol, or chemical substance abuse policy) made available to Dr. Ferme;
- (3) Dr. Ferme's unauthorized use, misappropriation, destruction or diversion of any tangible or intangible asset or corporate opportunity of NMSU or its

affiliates (including Dr. Ferme's improper use or disclosure of NMSU's or its affiliates' confidential or proprietary information);

- (4) any misconduct, moral turpitude, gross negligence or malfeasance of Dr. Ferme that has or could be expected to have a material detrimental effect on NMSU's or its affiliates' reputation or business;
- (5) Dr. Ferme's negligent or willful failure to perform Dr. Ferme's assigned duties for NMSU or directives or orders of the Regents;
- (6) Dr. Ferme's indictment for, conviction of (including any plea of guilty or nolo contendere), or imposition of unadjudicated probation for, any felony or any other criminal act involving fraud, dishonesty, misappropriation or moral turpitude, or that materially and permanently impairs Dr. Ferme's ability to perform Dr. Ferme's duties with NMSU, or Dr. Ferme's commission of any act or omission that could reasonably be expected to result in any indictment, conviction or imposition described in this sentence;
- (7) commission by Dr. Ferme of an act of personal dishonesty which involves personal material profit in connection with his employment with NMSU;
- (8) Dr. Ferme's willful failure to cooperate with NMSU or its affiliates and its legal counsel in connection with any investigation or other legal or similar proceeding involving NMSU or its affiliates; or
- (9) an act by Dr. Ferme or by Dr. Ferme's spouse which causes substantial discredit or embarrassment to NMSU or its affiliates or which otherwise negatively impacts the reputation of NMSU or its affiliates.
- (10) any material breach by Dr. Ferme of this Agreement or any other agreement between Dr. Ferme and NMSU or its affiliates.

The Regents' determination that "Just Cause" exists will be final and subject to no additional administrative review or appeal.

5.03.6 Unsatisfactory Performance. The Regents may elect to terminate Dr. Ferme's employment under this Agreement following a second consecutive unsatisfactory Annual Evaluation, provided pursuant to Section 3.02 of this Agreement, as determined by the Regents, in their sole discretion.

5.03.7 Termination at the Discretion of the Regents. The Regents will have the right to immediately terminate Dr. Ferme's employment under this Agreement at any time as they may determine, in their discretion, to be in the best interests of NMSU. For the avoidance of doubt, a termination under this Section 5.03.7 does not include any termination described in Sections 5.03.1 through 5.03.6 hereof.

5.04 Compensation upon Termination.

5.04.1 **Accrued Benefits.** If Dr. Ferme's employment under this Agreement ends for any reason, Dr. Ferme (or, as applicable, his estate) will receive the following (collectively, the "Accrued Benefits"): (1) any earned and unpaid Annual Base Salary through the Termination Date (paid within sixty calendar days following the Termination Date, or on such earlier date as may be required by applicable law); (2) subject to Article IV above and applicable NMSU policies and regulations, any unreimbursed eligible expenses otherwise due through the Termination Date; (3) the value of any accrued but unused leave through the Termination Date in accordance with state law and NMSU's regulations and policies; and (4) any accrued vested benefits (including any COBRA coverage continuation rights) under any NMSU employee benefit plan, paid or provided subject to and in accordance with the terms of such plan.

5.04.2 **Severance.**

- (1) In the event Dr. Ferme's employment under this Agreement is terminated pursuant to Section 5.03.3 (mental or physical incapacity), Dr. Ferme (or, as applicable, his estate) will be eligible to receive, in addition to the Accrued Benefits, and contingent upon Dr. Ferme's satisfaction of the "Release Condition" (as defined below), severance in an amount equal to his Annual Base Salary (as in effect on the Termination Date) for the shorter of 6 months or the then-remaining portion of the Term, less all required deductions and withholdings, which will be paid to Dr. Ferme in one lump sum in cash within seventy five (75) days after the Termination Date.
- (2) In the event Dr. Ferme's employment under this Agreement is terminated pursuant to Section 5.03.7 (termination at the discretion of the Regents), Dr. Ferme will be eligible to receive, in addition to the Accrued Benefits, and contingent upon Dr. Ferme's satisfaction of the Release Condition, severance in the form of continued payment of his Annual Base Salary (as in effect on the Termination Date) in equal periodic installments on NMSU's regular payroll dates (not less frequently than monthly) for the shorter of 12 months following the Termination Date or the then-remaining portion of the Term, less all required deductions and withholdings, contingent on Dr. Ferme's remaining in a tenured faculty position under Section 3.04 and providing continued substantial services to NMSU through each installment payment date, and provided that the first such installment will be paid on NMSU's first regularly scheduled pay period next following the sixtieth (60th) day after the Termination Date and will include payment of any installments that were otherwise due prior thereto.

5.04.3 **No Other Obligations.** NMSU will have no other obligation for further damages, compensation or other amounts beyond the payments and benefits expressly described in this Section 5.04.

5.04.4 **Release Condition.** For purposes of this Agreement, "Release Condition" means that Dr. Ferme must, on or after the Termination Date, timely execute and deliver to the Regents a separation agreement including a general release of claims against NMSU, the Regents, and their respective affiliates, in a form then provided by the

Regents, and such release must become effective and irrevocable according to its terms no later than sixty (60) calendar days following the Termination Date, and only so long as Dr. Ferme has not revoked or breached any of the provisions of such release and does not subsequently breach any such provisions.

- 5.05 Return of Property. Dr. Ferme acknowledges that all memoranda, records, reports, manuals, handbooks, drawings, blueprints, books, papers, letters, formulas, contracts, catalogs, and other documentation (whether in draft or final form), and any and all other documents furnished to Dr. Ferme by NMSU or otherwise acquired or developed by him in connection with his employment with NMSU (collectively "Recipient Materials") will at all times be NMSU's property. On the expiration date or within fourteen (14) days of an earlier termination of his employment under this Agreement, Dr. Ferme will return any Recipient Materials which are in his possession, custody, or control, including Recipient Materials retained by Dr. Ferme in his office, automobile, or home. Additionally, on the expiration date or within fourteen (14) days of the earlier termination of his employment under this Agreement, Dr. Ferme agrees to return any equipment or other tangible property provided by NMSU or by the NMSU Foundation, Inc. for his use during his employment, including, but not limited to, the equipment purchased under Section 4.04 above, any desktop or laptop computers, printers, monitors, cellular telephones, pagers, personal communication devices, credit cards, access cards, security cards, and keys which are in his possession, custody, or control. Further, on the expiration date or within 30 days after earlier termination of this Agreement, Dr. Ferme agrees to vacate and return to NMSU any NMSU owned residence that he occupies, in the same condition in which it was delivered to him, normal wear and tear excepted.

ARTICLE VI CONFIDENTIAL INFORMATION

- 6.01 Protection of Confidential Information. Dr. Ferme recognizes and acknowledges that the Regents or NMSU may provide him with access to information of a confidential nature to enable him to perform his duties and responsibilities hereunder. Dr. Ferme agrees that, except as may be required: (a) by the duties and responsibilities of his position; (b) by a lawful order of a court of competent jurisdiction; (c) in the event of litigation regarding this Agreement; or (d) to the extent that he has express authorization from the Regents, he will keep confidential indefinitely all confidential information concerning the Regents and NMSU which was acquired by or disclosed to him during the course of his employment with NMSU, and not to disclose the same, either directly or indirectly, to any other person, firm, or business entity, or to use it in any way except for the benefit of the Regents and NMSU or in the performance of the duties and responsibilities assigned to him. For purposes of this Agreement, the term "confidential information" means all non-public information or data relating to NMSU which Dr. Ferme has learned or will learn during the course of his employment with NMSU, whether or not a trade secret within the meaning of applicable law, or any other data or proprietary information or documents pertaining to the Regents and NMSU which Dr. Ferme is told or reasonably ought to know the Regents or NMSU regards as proprietary or confidential. Nothing in this Agreement or this confidentiality provision shall preclude, prohibit, or otherwise limit in any way Dr. Ferme's rights and abilities to contact, communicate with or report unlawful conduct, or provide

documents to federal, state, or local officials for investigation or participate in any whistleblower program administered by such agencies.

ARTICLE VII
MISCELLANEOUS

- 7.01 Amendment. This Agreement may not be modified or amended except by a written agreement duly executed by Dr. Ferme and approved by the Regents in an open public meeting.
- 7.02 Code Sections 409A and 457(f). Although the Regents do not guarantee the tax treatment of any payment or benefits hereunder, it is intended that payments and benefits under this Agreement be exempt from, or comply with, Section 409A of the Internal Revenue Code of 1986, as amended (the “Code”), and the regulations and guidance promulgated thereunder (collectively, “Section 409A”) and Section 457(f) of the Code and the regulations and guidance promulgated thereunder (collectively, “Section 457(f)”), and, accordingly, to the maximum extent permitted, this Agreement shall be interpreted in a manner consistent therewith. For purposes of Section 409A and Section 457(f), Dr. Ferme’s right to receive installment payments pursuant to this Agreement shall be treated as a right to receive a series of separate payments and, accordingly, each installment payment will at all times be considered a separate and distinct payment. Whenever a payment hereunder specifies a payment period with reference to a number of days, the actual date of payment within the specified period shall be within the sole discretion of NMSU. Notwithstanding the foregoing, the Regents do not guarantee any particular tax result, and in no event whatsoever will the Regents, NMSU, or their respective affiliates, officers, directors, employees, counsel or other service providers, be liable for any tax, interest or penalty that may be imposed on Dr. Ferme by Section 409A or Section 457(f) or damages for failing to comply with Section 409A or Section 457(f).
- 7.03 Charitable Donation. The Board will coordinate with the NMSU Foundation the initial transfer of \$10,200 into the Aggie Cupboard account and subsequent annual transfers of matching charitable contributions during the Term to other NMSU charitable causes selected by Dr. Ferme and his spouse. Dr. Ferme commits to make an initial gift to the NMSU Foundation of \$10,200 dedicated to the Aggie Cupboard and to make subsequent annual charitable contributions during the Term to other NMSU charitable causes selected by Dr. Ferme and his spouse.
- 7.04 Notice. Any notice that is required or may be given under the terms of this Agreement must be delivered both to the parties' official NMSU email addresses and by either courier or regular mail to the addresses indicated below the signatures on this document. Each party's designated address for notification purposes may be changed at any time by giving notice to the other party in accordance with this Section.
- 7.05 Parties Bound. Dr. Ferme and NMSU acknowledge that each has had an opportunity to consult with his or its respective attorneys or advisors concerning the meaning, import, and legal significance of this Agreement, and each has read this Agreement, as signified by their signatures hereto, and are voluntarily executing same after the opportunity to have

received advice of counsel or advisors for the purposes and consideration herein expressed.

- 7.06 Severability. The terms of this Agreement are severable such that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions will continue to be valid and enforceable.
- 7.07 Default. Should either party default in the performance of his or their obligations, the non-defaulting party will be entitled to reasonable attorneys' fees and costs incurred in connection with any dispute or lawsuit arising out of such default. Any disputes between the parties will be resolved in the District Court of the State of New Mexico in Doña Ana County.
- 7.08 Waiver. No waiver by either party of any default or breach of this Agreement will be deemed a waiver of any other default or breach of the same or any other term or condition of this Agreement. No delay or failure to enforce any provision of this Agreement will constitute a waiver or limitation of any rights enforceable under this Agreement.
- 7.09 Non-Assignable. This Employment is not assignable but will be binding upon the heirs, administrators, personal representatives, successors, and assigns of both parties.
- 7.10 Governing Law. The validity, interpretation, construction and performance of this Agreement will be governed by and construed in accordance with the substantive laws of the State of New Mexico, without giving effect to the principles of conflict of laws of such State.
- 7.11 Entire Agreement. This Employment constitutes the entire understanding of the parties hereto concerning the employment between Dr. Ferme and the Regents and supersedes any and all prior or contemporaneous agreements, whether written or oral, between the parties. The parties agree that neither of them has made any representation with respect to the subject matter of this Agreement, except such representations as are specifically set forth herein. The parties acknowledge that they have relied upon their own judgment in entering into this Agreement.
- 7.12 Ratification by the Regents. This Agreement is subject to final approval by the Regents and will only become legally binding upon NMSU with a majority vote for the ratification at an open public meeting of the Regents. Upon such ratification, this Agreement be deemed effective as of the date in which the final signature was placed upon this document as indicated below.

[Signature page follows.]

As evidence of their agreement to the terms set forth above, the Parties have placed their signature on this Agreement on the date indicated below.

**Regents of the
New Mexico State University**

Valerio Ferme, Ph.D.

By: Ammu Devasthali, Chair

Valerio Ferme, Ph.D

Date: _____

Date: _____

<p>NOTIFICATIONS:</p> <p>Email: regents@nmsu.edu</p> <p>Regular Mail: NMSU Board of Regents c/o University General Counsel PO Box 30001, MSC 3UGC Hadley Hall, Room 132 2850 Weddell Road Las Cruces, NM 88003</p>	<p>NOTIFICATIONS:</p> <p>Email: vferme@msn.com</p> <p>Regular Mail: Dr. Valerio Ferme 558 Empress Avenue, Cincinnati, OH 45226</p>
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