

## Executive Director Employment Agreement

**This Employment Agreement** ("Agreement") between the National Congress of American Indians, a 501(c)(4) nonprofit organization, headquartered in Washington, D.C., (and sole owner of the National Congress of American Indians Fund), and the National Congress of American Indians Fund, a trust governed under the laws of the District of Columbia (hereafter "NCAI"), with its principal office located at 1516 P St. NW, Washington, D.C. 20005, and Dante Desiderio, residing at 606 Quincy Street, Arlington, Virginia, an individual ("Desiderio"), is made as of April 12, 2021, with reference to the following facts:

### RECITALS

1. NCAI is engaged in the provision of services to American Indian and Alaska Native People(s) throughout the United States to: (1) protect Indian and Native traditional, cultural and religious rights; (2) seek appropriate, equitable and beneficial services and programs for Indian and Native governments and people; (3) secure and preserve Indian and Native rights under treaties and agreements with the United States, as well as under federal statutes, case laws and administrative decisions and rulings; (4) promote the common welfare and enhance the quality of life of Indian and Native people; and (5) promote a better understanding among the general public regarding Indian and Native governments, people and rights; and
2. NCAI has been delegated constitutional and management powers by the NCAI Congress and the NCAI Fund, Inc. and maintains an administrative office in Washington, D.C.; and
3. The Parties desire to enter into this Agreement to create an employment relationship on the terms and conditions in this Agreement; and
4. Desiderio has direct, current and materially important knowledge of NCAI's financial and operational workings having been a successful management employee of the organization in past years, having consistently over the course of many years worked with NCAI in advocating for federal Indian policies with federal agencies, Congressional staff, members of Congress, and various relevant lobbyists and policy influencers; has national stature as a major federal Indian policy influencer; and, notably, has provided invaluable guidance on various financial and operational matters as a consultant to NCAI; and
5. Desiderio would be leaving a respected, economically meaningful, and secure career position with the Native American Finance Officers Association (NAFOA) in accepting the Executive Director position with NCAI; and
6. NCAI considers the continued viability of NAFOA subsequent to Desiderio leaving NAFOA's employ to be in the best interests of Indian Country generally, and important to NCAI's mission

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

INITIALS: DD  NCAI \_\_\_\_\_

1

of engaging in activities vital to the economic, educational, and operational health of Tribes and individual Indians. NCAI expressly recognizes that past and ongoing mutual efforts by NAFOA and NCAI in various policy and other matters effecting Indian country have served to amplify and materially enhance and strengthen the fulfillment of their respective missions; and that the loss of each other's support would be meaningfully detrimental to their respective interests.

**NOW, THEREFORE**, in consideration of the mutual and individual promises, representations, and undertakings of the Parties set out in this Agreement, including its Recitals, the Parties agree as follows:

## **TERM**

Notwithstanding any at-will policy set out in NCAI's employee handbook, memoranda, or similar documents, including but not limited to those sections of the NCAI employee handbook titled "At-Will Statement" and "Categories of Employment INTRODUCTORY PERIOD" which are hereby superseded by this Agreement, the term of this Agreement shall be from May 11, 2021 to May 11, 2024 ("Employment Term"), unless terminated earlier as provided in this Agreement. Employer has no obligation to extend or renew this Agreement for succeeding terms or to provide any reason why the Agreement was not extended or renewed; provided, however, the Parties agree their intent is to renew this Agreement for additional terms.

In the event of any conflict or inconsistency between the terms and conditions of this Agreement and any terms or conditions set forth in any NCAI policy, the terms and conditions set forth in this Agreement shall prevail. Notwithstanding, Desiderio agrees to make a good faith effort to abide by all employee conduct requirements established by NCAI's employee handbook or other relevant NCAI policies.

## **GENERAL RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR**

Employer agrees to employ Desiderio and Desiderio agrees to be employed by Employer in the role of "Executive Director," as defined by Employer's governing documents, and shall hold and use the job title "Chief Executive Officer." In this capacity, Desiderio reports to the President of the NCAI Executive Committee, as defined at Article IV of NCAI's Constitution ("Executive Committee"). Desiderio shall perform services as directed by the Executive Committee according to appropriate program jurisdiction, and shall direct and coordinate the various activities of the NCAI Congress and Fund organizations through the authority delegated by the Executive Committee.

Consistent with the NCAI Constitution and Bylaws, Desiderio is the administrative operating head



of the organization and has the responsibilities and authority that are typically associated with Desiderio's position as Chief Executive Officer. Desiderio has responsibility for leading and managing all strategic and operational aspects of the organization and creating a vision for the long-term success for NCAI and the NCAI Fund. Desiderio has responsibility for ensuring that goals and objectives are established and met, regulatory requirements are complied with, resources are utilized efficiently and effectively, and the needs and priorities of the tribal governments are being met and advanced. These objectives are achieved through the work staff, strong tribal government relationships, tribal and non-tribal organizational partnerships. The location of the work will be primarily in Washington, D.C., with travel as necessary to accomplish the work. Desiderio shall also represent the NCAI Fund's business interests. In recognition and support of the annual performance criteria by which Desiderio will be evaluated, all other C-Suite level employees, by whatever title, will report to the Desiderio.

During the Employment Term, but excluding the Transition Period described below and any periods of vacation, sick leave, and other leaves, Desiderio agrees to devote full business time to the affairs of Employer and to use best efforts to perform Employee's responsibilities faithfully, diligently, effectively, and efficiently. Outside employment, full or part-time, must be disclosed prior to and during this term.

#### **ANNUAL EVALUATION**

Desiderio shall be reviewed annually by the Executive Committee or a Committee thereof. The annual evaluation will consider Desiderio's performance in the following categories:

- Organization and reporting performance and abilities;
- Fiscal and budgeting practices and performance;
- Financial control and oversight;
- Program control and oversight;
- Fundraising;
- Employee management; and
- Any other reasonable performance metrics the Executive Committee deems appropriate.

Six months after the beginning of the Employment Term, Desiderio shall be reviewed consistent with the evaluation criteria above. Nothing in this provision is intended to restrict the Executive Committee from providing on-going performance feedback, or conducting more regular formal evaluations.

#### **AUTHORITY**

Desiderio is authorized to act on behalf of NCAI as required to carry out the normal financial, administrative, personnel management functions (including, but not limited to, recruitment,

screening, hiring, onboarding, ongoing supervision, and discipline); legal matters; and other business of NCAI and/or to protect the interests of NCAI. Desiderio will follow NCAI's Bylaws and policies, including adherence to its Conflicts of Interest Policy.

### **TRANSITIONAL PERIOD**

The Parties recognize that it is in their respective best interests that Desiderio be allowed to assist NAFOA in (i) concluding in an orderly manner any current matter in which his personal involvement is an integral part, and (ii) recruiting, interviewing, hiring, and onboarding a new NAFOA Executive Director; provided Desiderio places the interests of NCAI ahead of any other conflicting considerations.

If Desiderio receives any compensation from NAFOA for his assistance in its securing a new Executive Director or concluding the matters identified above, the receipt of any such compensation shall not be deemed to be a violation of any NCAI conflict of interest or similar policy.

Subsequent to his separation from NAFOA, Desiderio shall make clear to all parties that he is representing the policies, viewpoints, and efforts of NCAI and not NAFOA, except as may be required while concluding any current matter of which his personal involvement is an integral part.

### **COMPENSATION AND BENEFITS**

The compensation and benefits payable under this Agreement are outlined in Attachment A, which is initialed by the parties and made a part of this Agreement. Termination of the employment relationship while the Agreement is in effect by NCAI shall result in the payment of the sums outlined in the Termination clause of this Agreement.

### **TERMINATION**

If the Agreement is terminated by Desiderio, there shall be no termination compensation other than accrued compensation earned prior to the effective date of termination minus payments due and owing to NCAI, if any. Desiderio agrees that he will make a good faith effort to provide NCAI with at least three months' notice should he terminate this Agreement.

In the event that the Agreement is terminated by NCAI for cause reasonably defined as (i) grossly negligent, (ii) repeated failure to perform the essential requirements of the position, (iii) unethical, illegal, or fraudulent conduct, or (iv) conduct that constitutes unlawful discrimination or harassment, including sexual harassment as prescribed by NCAI's policies, ("For Cause") there shall be no severance pay or termination compensation other than the payment of compensation



remaining after deduction of amounts due and owing to NCAI, if any.

If the decision is made by NCAI to terminate the Agreement for reasons other than For Cause, and in exchange for executing a standard severance agreement including a release of claims, Desiderio shall be paid his full compensation for the twelve calendar month period following the date of termination, as well as the cost of acquiring health benefits for that same time period equivalent to those being provided as part of his compensation as set out in Attachment A. The amount of this severance is expressly stated to be reasonable given that Desiderio will have left a respected, economically meaningful, and secure career position with NAFOA in accepting the Executive Director position with NCAI, as well as the recognition that it would be very difficult, if not impossible as a practical matter, for Desiderio to secure an equivalent position in Indian country to those he would then have had with either NCAI or NAFOA. If Desiderio obtains subsequent employment within the twelve-month period, he will notify NCAI of that employment and provide documentation of his compensation, and he agrees to forfeit the remaining severance payments equal to the compensation he will receive from the subsequent employer. That is, NCAI will only be obligated to issue severance payments for the portion of the twelve-month severance period during which Desiderio has obtained subsequent employment equal to the difference between his salary with NCAI at the time of his separation and his salary received from subsequent employer.

#### **DEATH / TOTAL DISABILITY**

If Desiderio dies during the term of this Agreement, his employment and all obligations of NCAI under this Agreement shall cease except those related to any insurance or retirement programs, unpaid salary obligations, or reimbursable expenses.

In the event Desiderio becomes permanently disabled and unable to perform the essential functions of his job as "essential functions" are defined under applicable federal/state laws, his employment and all obligations of NCAI under this Agreement shall cease except those related to any insurance or retirement programs, unpaid salary obligations, or reimbursable expenses, and he may be replaced as required to carry on the functions of NCAI.

Desiderio's permanent disability means that Desiderio, by reason of his physical or mental disability, is incapable of performing the duties of his customary position with NCAI, and such disability has continued for a period of at least one hundred twenty (120) consecutive days in any 12-month period and is expected to be of a long duration or to result in death. Permanent disability shall be established by a majority of three physicians, one selected by Desiderio (or his/her spouse, child or children, parent or legal representative in the event of his inability to select a physician), one by NCAI, and the third by the two physicians selected by Desiderio (or his/her spouse, child or children, parent or legal representative in the event of his inability to select a

physician) and NCAI.

## RESOLUTION OF DISPUTES

Arbitration. In the event of any Dispute (as defined below) between Desiderio and NCAI, including all Disputes regarding Desiderio's rights under this Agreement or termination of this Agreement, or any extension or renewal thereof, and if the Dispute is not resolved informally by the Parties, Desiderio shall submit the Dispute to binding arbitration, excluding Disputes regarding claims based on the Fair Labor Standards Act and/or any applicable state wage and hour act. Desiderio shall initiate the arbitration by notifying the President of NCAI in writing of the nature of the Dispute and Desiderio's request for arbitration within one hundred twenty (120) days from the last time the alleged violative action occurred.

The arbitration shall be governed by the Model Employment Arbitration Procedures of the American Arbitration Association (the "AAA"), which are incorporated herein by this reference, and by the provisions of Attachment B, which the Parties have initialed and is made part of this Agreement. In case of any conflict between the AAA Model Employment Arbitration Procedures and this Agreement, the terms of this Agreement shall prevail. Both parties agree to be bound by any final decision of the arbitrator rendered pursuant to this Agreement, subject to appeal rights as provided in any applicable federal or state law. This arbitration provision shall survive termination of this Agreement.

Any such arbitration must be initiated by Desiderio not more than one hundred twenty (120) days after termination of this Agreement or termination of any extension or renewal thereof, or the dispute will be considered forever waived and time barred.

Disputes. As used herein, "Dispute" means any and all demands, claims, or causes of action, whether related to or arising out of this Agreement, any applicable federal or state statute, regulation or executive order, or the common law, including demands, claims or causes of action for:

- Breach of contract, wrongful termination, breach of the implied covenant of good faith and fair dealing, violation of public policy, retaliatory discharge, malfeasance, misfeasance, breach of trust, equitable or promissory estoppel, misrepresentation, defamation, invasion of privacy, tortious interference with contract or contractual expectancy, etc.;
- Employment discrimination, including claims based on Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, any applicable state law against discrimination, and all other applicable federal, state and local antidiscrimination laws, regulations and executive orders; and
- Damages for pain and suffering, emotional distress, liquidated damages, punitive damages, taxable costs, interest and reasonable attorneys' fees.

EXECUTIVE DIRECTOR EMPLOYMENT AGREEMENT

INITIALS: DD  NCAI \_\_\_\_\_

6



## GENERAL TERMS

Desiderio represents and warrants to NCAI that he is free to enter into this Agreement and that he has no commitment, arrangement or understanding to or with any party which restrains or conflicts with his performance of the covenants, services and duties provided for in this Agreement.

During Desiderio's employment hereunder, this Agreement may not be assigned by either party without the written consent of the other; provided, however, that NCAI may assign its rights and obligations under this Agreement to a successor by merger or affiliation if such successor carries on NCAI's work substantially in the form in which it is being conducted at the time of the merger or affiliation. Except as otherwise provided by applicable law, no interest of Desiderio or any beneficiary or representative of Desiderio may be directly or indirectly transferred, encumbered, seized by legal process, or in any other way subjected to the claims of a creditor. This Agreement shall be binding upon Desiderio, his heirs, personal representatives and permitted assigns; and on NCAI, its successors and assigns.

This Agreement and Attachments represent the entire agreement between the parties and supersede any prior oral or written agreements between the parties. Any modification of this Agreement must be in writing and signed by the Parties. If any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

When this Agreement requires that a party give notice to the other Party or other communication that materially impacts the rights of the Parties, including specifically notices of breach, default, termination, or arbitration, the notice must be provided to the following via any delivery method that can be confirmed (e.g., Federal Express or confirmed delivery email):

*If to Employer, to:*

Sadina Montani  
Partner, Crowell & Moring LLP  
1001 Pennsylvania Ave. NW  
Washington, DC 20004  
smontani@crowell.com

*If to Employee, to:*

Dante Desiderio  
606 Quincy Street  
Arlington, VA 22204  
nahysson@gmail.com

This Agreement shall be interpreted under the laws of Washington, District of Columbia.

IN WITNESS THEREOF, the parties have executed this Agreement.

By:  Date: April 12, 2021  
Dante Desiderio

By: \_\_\_\_\_ Date: April \_\_\_\_, 2021  
Fawn Sharp President, NCAI

\*\*\*



**ATTACHMENT A**  
**Compensation/Benefits/Leave**

**SALARY AND BENEFITS**

**Salary.**

- Desiderio's annual salary will be \$275,000 during the Employment Term and will be paid according to Employer's customary payroll practices.
- Desiderio is eligible for a five percent (5%) annual salary increase based on meeting the goals, metrics and milestones of the organization, effective one year after the Employment Term begins and on the anniversary of the Employment Term every year thereafter.
- All payments of salary, bonuses, or other compensation will be reduced by applicable withholdings and deductions.
- The parties agree the Desiderio is exempt under the Fair Labor Standards Act and applicable state law pursuant to, among other things, the executive and/or administrative exemptions.

**Bonus.** In addition to his annual salary, Desiderio is not guaranteed a bonus, but Desiderio is eligible for an annual bonus at the Executive Committee's discretion based on Desiderio's performance towards meeting the goals, metrics and milestones of the organization.

**Salary Adjustments.** When appropriate, and at the sole discretion of the Executive Committee, a merit salary increase in addition to the guaranteed salary increase described above may be authorized based on Desiderio's performance. The Parties upon mutual agreement may at any time approve an addendum to this Contract that identifies defined annual salary adjustments upon the successful achievement of specifically identified performance-based criteria. To the extent that the Executive Committee authorizes cost of living adjustments for all staff members, Desiderio will be eligible to automatically receive a consistent cost of living adjustment.

**Vacation.** Desiderio is eligible to receive paid vacation leave consistent with the paid vacation leave available to other full-time Employer employees as provided for in the Employment Handbook.

**Employment Benefits.** During the Employment Term, Desiderio and Desiderio's family are eligible to receive all benefits to the extent generally available to other full-time Employer employees and their families. These benefits currently include medical, prescription, dental, disability, group life, accidental death, and retirement plans. In addition, Desiderio is entitled to paid sick leave or other leaves and benefits in accordance with Employer's policies and procedures. Employer reserves the right to modify, amend, or discontinue any of the benefits at any time. Desiderio reserves the right to voluntarily decline participation in any of the benefits at any time. Any such declination shall be in accordance with Employer policies and procedures.

**EXPENSE REIMBURSEMENT**

Business Expenses. Employer will reimburse Desiderio for reasonable and actual expenses incurred during the Employment Term as required in discharging Desiderio's responsibility, including lodging, travel, mileage, meals, and any approved costs incurred in connection with attendance at an approved conference or other program. Desiderio must maintain records of the expenses and timely submit the records to Employer with an explanation of the expense for which Desiderio seeks reimbursement in accordance with Employer's policies.

\*\*\*



**ATTACHMENT B**  
**Additional Arbitration Terms**

**Neutral Arbitrator.** The parties shall select a neutral and unbiased arbitrator according to the procedures established by the AAA for that purpose.

**Expenses of Arbitration.** Under the AAA Employment/Workplace Fee Schedule, the employee's fee is capped at \$300. NCAI (the employer) pays the arbitrator's compensation unless the employee or individual, post dispute, voluntarily elects to pay a portion of the arbitrator's compensation. Arbitrator compensation and administrative fees are not subject to reallocation by the arbitrator except upon the arbitrator's determination that a claim or counterclaim was filed for purposes of harassment or is patently frivolous.

**Each party shall bear its own witness fees, costs and attorneys' fees unless the arbitrator otherwise orders one or the other party to bear such fees and costs.**

**Discovery.** Both parties may make discovery prior to the arbitration hearing as provided for in the AAA, and as the arbitrator may determine is necessary for each party to adequately arbitrate the claims asserted in the arbitration, including access to essential documents and witnesses.

**Attorneys.** Either party may, but need not, be represented by an attorney of his or its choice at any time during the arbitration process.

**Remedies.** The arbitrator shall not be limited in awarding remedies provided by this Agreement or by any applicable federal, state or local statute, regulation, or executive order, or the common law, so long as the arbitrator finds facts and makes conclusions based on the evidence presented adequate for the award of such remedies.

**Limitation of Arbitrator's Power.** The arbitrator shall have no power to alter, amend or repeal any provision of this Agreement.

**Written Decision and Award.** Within thirty (30) days of the close of the arbitration hearing, or as otherwise agreed to by the parties, the arbitrator shall render a written decision and award. The decision and award shall be based on the facts presented by the parties, this Agreement and applicable law, and shall contain findings of fact and conclusions sufficient for judicial review to the extent required by applicable law.

\*\*\*

