

## SECTION 127 EDUCATION ASSISTANCE PLAN

### University of New Mexico

#### For Tuition Waivers granted to UNM Employees

The purpose of this Educational Assistance Plan is to provide educational assistance to Eligible Employees of the University of New Mexico (the "Employer"). Section 127 of the Internal Revenue Code of 1986, as amended (the "Code"), provides, in general, that gross income of an employee does not include the first \$5,250 of amounts paid or expenses incurred by his or her employer during a calendar year, for educational assistance furnished to the employee pursuant to a qualified written educational assistance plan. This Plan, including its component, the Employer's Policy 3700, is intended to be such a plan; and is intended to more completely document the Plan as it has been in effect since January 1, 2002, when Code Section 127 was amended.

#### A. Definitions

For purposes of this Plan, the following terms have the meaning given below:

##### 1. Education

"Education" means any form of instruction or training that improves or develops the capabilities of an individual, but does not include education or training in sports, games or hobbies unless required as part of a degree program or directly related to the employee's work responsibilities for the Employer. "Education" is not limited to courses that are job-related or part of a degree program.

##### 2. Educational assistance

"Educational assistance" means:

(a) the payment of expenses incurred by or on behalf of an Eligible Employee for education of the Eligible Employee (including, but not limited to, tuition, fees and similar payments, as well as related books, supplies and equipment unless excluded in the Employer's written Business Policy 3700); and

(b) the Employer's provision of courses of instruction for education of an Eligible Employee (including related books, supplies, and equipment unless excluded in the Employer's written Business Policy 3700).

However, "educational assistance" does not include payment for, or the provision of, either (a) tools or supplies that may be retained by the Eligible Employee after completion of a course of instruction; or (b) meals, lodging or transportation.

##### 3. Education Benefit Program

"Education Benefit Program" means the detailed terms, conditions and procedures related to educational assistance benefits set forth in the Employer's written Business Policy 3700 applicable to a particular class of Eligible Employees. A copy of each of the Education Benefit Programs, as amended from time to time, shall be attached hereto as an Exhibit and is hereby incorporated into this Plan. This plan is not intended to include any scholarship or tuition reduction benefits intended to qualify under Code Section 117 or a working condition fringe benefit under Code Section 132. This Plan includes an Education Benefit Program providing for educational assistance permitted under this Plan.

##### 4. Eligible Employee

"Eligible Employee" includes, for any calendar year, any employee who is currently (or formerly) employed by the Employer and is eligible during that year for an Education Benefit Program under the Employer's written Business Policy 3700

#### B. Educational Assistance Benefits

The benefits provided under this Plan consist solely of the educational assistance described in the Education Benefit Programs for classes of Eligible Employees described in such programs. No Education Benefit Program shall allow any Eligible Employee a choice between educational assistance and other remuneration. Except as specifically provided in

this Plan document, this Plan does not limit or expand the level of education and training benefits available to an Eligible Employee under any Education Benefit Program that applies to the Eligible Employee.

### **C. Exclusive Benefit**

The Plan will provide educational assistance for the exclusive benefit of Eligible Employees. Spouses and dependents of an Eligible Employee do not qualify to participate in this Plan, but may be eligible for tuition reduction benefits under a separate program included in the Employer's written Business Policy 3700 applicable to the Eligible Employee.

### **D. Eligibility**

This Plan is intended to benefit the Employer's employees in general; and shall not discriminate in favor of officers or highly compensated employees of the Employer. This Plan will not be considered discriminatory merely because any educational assistance that is available under the Plan to a non-discriminatory class of Eligible Employees is utilized to a greater degree by officers or highly compensated employees included in that class. Otherwise, the classification of Eligible Employees for any Education Benefit Program must comply with the non-discrimination standards of Code Section 410(b)(1)(B), without regard to the exceptions in Code Section 401(a)(5).

An Eligible Employee seeking educational assistance under this Plan must comply with all applicable rules and procedures, including but not limited to eligibility rules and approval and reimbursement procedures, as set forth in the applicable Education Benefit Program or other applicable policies and procedures of the Employer.

### **E. Notification of Eligible Employees**

The Employer shall provide each Eligible Employee with reasonable notice of the terms and availability of this Plan and the Education Benefit Program applicable to such Eligible Employee, in the following manner. This Plan and each of its Education Benefit Programs shall be made available for review by Eligible Employees on the Employer's Human Resources web site and/or Policy Office web site. An Eligible Employee shall be entitled upon written request to a paper copy of this Plan document.

### **F. Tax consequences**

1. To the extent that any Eligible Employee receives from the Employer under this Plan any educational assistance benefits that exceeds \$5,250 in a calendar year, such excess benefits shall be subject to federal income tax and payroll tax withholding in accordance with federal and state law.
2. An Eligible Employee shall be responsible for any income tax liability arising from his or her receipt of educational assistance benefits under this Plan, whether or not the Employer withheld tax on those benefits.

### **G. Miscellaneous**

1. The Employer may amend or terminate the Plan or any Education Benefit Program at any time.
2. This Plan shall not be deemed to constitute a contract between the Employer and any Eligible Employee. Nothing contained in this Plan shall be deemed to give any Participant or Employee the right to be retained in the service of the Employer or to interfere with the right of the Employer to discharge any Eligible Employee at any time, regardless of any effect that such discharge shall have upon him or her as a participant of this Plan.
3. This Plan shall be construed and enforced according to the laws of the State of New Mexico, to the extent not preempted by any federal law.