

**AMENDMENT NO. 1 TO THE  
UNIVERSITY OF NEW MEXICO 403(b) PLAN**

WHEREAS, the University of New Mexico ("UNM") previously adopted the University of New Mexico 403(b) Plan;

WHEREAS, under Section 10.19, UNM reserved the right to amend the Plan; and

WHEREAS, UNM now desires to allow loans from elective deferrals under the Plan.

NOW THEREFORE, the Plan is amended:

1. Effective February 1, 2010, select the second to last item in Section I.3:

Loans from Elective Deferrals: Loans are available to the extent permitted under the investment product, subject to aggregation across all products under the plan.

2. Effective February 1, 2010, to deselect the last item in Section I.4:

Loans are not permitted. Loans were permitted before January 1, 2009.

IN WITNESS WHEREOF, this Amendment No. 1 was signed on the  
12th day of JANUARY, 2010.

UNIVERSITY OF NEW MEXICO:



RAYMOND G. SANCHEZ

Print Your Name and Title

PRESIDENT  
UNM BOARD OF REGENTS

Final signed doc.

UNIVERSITY OF NEW MEXICO  
403(B) PLAN

Effective January 1, 2009

# INTRODUCTION

Tax-sheltered annuity (TSA) arrangements are a form of defined contribution retirement plan under Section 403(b) of the Internal Revenue Code. This type of plan is only available to employees of educational institutions and certain non-profit organizations as determined by Section 501(c)(3) of the Internal Revenue Code. Contributions to this plan are funded through salary reduction agreements signed between the employee and the employer. A portion of the employee's compensation is applied on a pre-tax basis to either annuity contracts issued by life insurance companies or to shares of a regulated investment company (mutual fund) owned by the employee. The contributions and any investment earnings in a 403(b) grow tax deferred until withdrawal, at which time they are taxed as ordinary income.

Participation in the University of New Mexico 403(b) program is voluntary. Participating employees make all contributions through the University to the vendor that they select from a list of participating companies.

# Section I. Employer Information, Plan Elections and Adoption

## EMPLOYER INFORMATION

Public Employer Name: University of New Mexico  
Address: Office of the Controller  
1 University of New Mexico  
MSC 01 1300  
Albuquerque, NM 87131-0001  
Telephone Number: (505) 277-5111

Plan Name: **UNIVERSITY OF NEW MEXICO 403(B) PLAN**

### 1. PLAN EFFECTIVE DATE

This written plan shall be effective on January 1, 2009 and shall supersede any previous written document for this plan.

### 2. ELIGIBLE EMPLOYEES

Eligible Employee means, for any calendar year, any common-law employee of the Employer who is entitled to receive compensation during the calendar year for employment services performed for the Employer, other than: (check all that apply):

- All Employees are eligible – there are no exclusions.
- Employees who are eligible to participate in one or more plans described under Section 403(b)(12)(A) of the Code during the calendar year sponsored by the Employer.
- Employees who are students and regularly attending classes at the Employer institution during the calendar year (limited to Employers that are educational institutions).
- Employees who normally work fewer than \_\_\_ hours per week (must be 20 or less; equivalent to 1,000 hours or less in a year except as otherwise provided under applicable 403(b) regulations generally effective January 1, 2009) during the calendar year.
- Employees who are nonresident aliens and perform no services in the U.S. during the calendar year.
- Employees who receive a qualifying hardship withdrawal, with such exclusion commencing within a reasonable time after notice of a qualifying hardship withdrawal and ending six months thereafter.

### 3. SPECIAL ELECTIONS FOR CONTRIBUTIONS AND DISTRIBUTIONS (check any and all that apply)

- Roth 403(b) Contributions: A Participant may elect to have part or all of his or her salary reductions made on an after-tax basis to any approved Investment Arrangement that accepts and separately accounts for Roth 403(b) contributions in accordance with Section 402A of the Code.
- Non-spousal beneficiary rollovers: A non-spousal beneficiary may directly roll a qualifying distribution to an individual retirement arrangement as defined under applicable law.
- Hardship withdrawals: *If hardship withdrawals are permitted, check either safe harbor or general event test, and you may also choose to allow beneficiaries hardships. If hardships are not permitted, indicate this by choosing the final option.*
- Safe Harbor event test: Hardship withdrawals, if permitted, are limited to the applicable safe harbor events as provided under Section 6.04 of the Plan.
- General event test: Hardship withdrawals, if permitted, may follow any requirements established under a contract or account selected by the Participant, subject to applicable provisions governing hardship withdrawals under 401(k) plans.
- A Participant may receive a hardship withdrawal for a qualifying hardship with respect to the Participant's primary beneficiary(ies) (available only with respect to hardship withdrawals satisfying the 401(k) safe harbor rules under Section 1.401(k)-1(d)(3) of the Treasury Regulations).
- Hardship withdrawals are not permitted. Hardship withdrawals were permitted before January 1, 2009.
- Loans from Elective Deferrals: Loans are available to the extent permitted under the investment product, subject to aggregation across all products under the plan.

Loans are not permitted. Loans were permitted before January 1, 2009.

**4. INVESTMENT ARRANGEMENTS:**

All Providers of eligible Investment Arrangements will be required to enter into a compliance agreement in the form of Appendix A or other form approved by the Employer. The Employer is adopting the Administrative Services and Hold Harmless Agreement provisions as detailed in Appendix A and provided to all Providers. (*Appendix A must also be completed.*)

**5. INFORMATION SHARING AGREEMENTS:**

Transfers from Participant Accounts to contracts or accounts other than approved Investment Arrangements  
 Are permitted if the provider of the contract or account enters into an information sharing agreement with the Employer, in the form of Appendix B or other form approved by the Employer. Employer shall maintain a list of such authorized providers as listed in Appendix C, which may be updated from time to time, and shall periodically deliver such updated list to all Providers.  
 Are not permitted.

**6. INFORMATION SHARING BY LEGACY PROVIDERS:**

Providers maintaining contracts or accounts that are included in the Plan but not currently authorized to receive new contributions:

- May accept new transfers into those contracts or accounts (if not checked, incoming transfers not permitted).
- May permit hardship distributions and loans (if not checked, hardship distributions and loans not permitted).

## SECTION II: The Plan Provisions

### ARTICLE I

#### GENERAL PROVISIONS

The Limitation Year shall be the Plan Year. The Plan Year means the calendar year, beginning on January 1 and ending on December 31, unless otherwise specified in other Plan documentation.

The Plan is funded through one or more annuity contracts and/or custodial accounts described in Section 403(b) of the Code and authorized by the Employer (hereinafter, the "Investment Arrangements") offered by providers selected by the Employer ("Providers"), and to the extent permitted under the Plan, by additional products the issuers or offerors of which have entered into information sharing agreements with the Employer. Purchase payments under the Investment Arrangements generally are made pursuant to participating employees' salary reduction agreements and may also include Employer contributions if selected in Section I and in accordance with separate documentation from the Employer. Except as otherwise required under Code Section 403(b) or agreed by a Provider, this Plan will not impose any duties or obligations on a Provider which are not provided for in the Investment Arrangement and shall not impose on the Employer obligations imposed upon a Provider. All capitalized terms shall have the meaning set forth in Article XI of this document unless otherwise defined within the context of the document.

### ARTICLE II

#### AVAILABILITY OF ELECTIVE DEFERRALS

All elective deferrals under the Plan shall comply with the universal availability requirements of Section 403(b)(12) of the Internal Revenue Code and Regulations there under, which are hereby incorporated by reference.

All Employees of the Employer shall be permitted to have Elective Deferrals contributed on their behalf immediately following commencement of employment and for all periods thereafter unless specifically excluded in Section I. For purposes of this requirement, and to the extent consistent with applicable Treasury Regulations, an Employee normally works fewer than 20 hours per week if for the 12-month period beginning on the date of hire the Employer reasonably expects the Employee to work fewer than 1,000 hours and, for each subsequent plan year ending after this initial employment year, the Employee worked fewer than 1,000 hours in the preceding 12-month period.

Eligible Employees shall be provided notice of the opportunity to have Elective Deferrals contributed on their behalf, of the opportunity to start, stop or change the amount of such deferrals, and of any limitations on such opportunities, at least once in any Plan Year. ☆

An Employee shall cause Elective Deferrals to be made by entering into a salary reduction agreement with the Employer, whereby the Employee agrees to reduce his or her future salary payments by a specific amount, and the Employer agrees to apply such salary reduction amounts to an Investment Arrangement on behalf of the Employee. The Employer may adopt reasonable administrative limitations and procedures with regard to the number and timing of salary reduction agreements that a Participant may have in effect in any Limitation Year. ☆

The Employer may set reasonable limits on the minimum amount of permitted Elective Deferrals, provided that such limits shall not exceed \$200 on an annualized basis. Otherwise, a Participant shall be permitted to make Elective Deferrals in any amount subject to the limitations of this Article and Article IV or of the Investment Arrangement.

A Participant shall at all times have a fully vested and no forfeitable interest in his or her Account attributable to Elective Deferrals.

An Employee whose employment is interrupted by qualified military service under Section 414(u) of the Code or who is on a leave of absence for qualified military service under Section 414(u) of the Code may elect to make additional Elective Deferrals upon resumption of employment with the Employer equal to the maximum Elective Deferrals that the Employee could have elected during that period if the Employee's employment with the Employer had continued (at the same level of compensation) without the interruption or leave, reduced by the Elective Deferrals, if any, actually made for the Employee during the period of the interruption or leave. Except to the extent provided under Section 414(u) of the Code, this right applies for five years following the resumption of employment (or, if sooner, for a period equal to three times the period of the interruption or leave).

## **ARTICLE III - Not Applicable - Plan Does Not Have Employer Contributions or Nonelective Employee Contributions**

### **EMPLOYER CONTRIBUTIONS AND NONELECTIVE EMPLOYEE CONTRIBUTIONS**

This Plan may include Employer Contributions and/or Nonelective Employee Contributions. If the Plan includes such contributions, the Employer shall determine, in its sole discretion, the amount of such contributions, if any, to be made to the Plan for each Plan Year.

Such contributions shall be allocated to each eligible Employee's account at the time and in the manner set forth in supplemental Plan documentation.

For purposes of Employer or Nonelective Employee Contributions to the plan, Compensation shall mean regular or base salary or wages paid by the Employer to an Employee during the Plan Year for services rendered as an Employee. The amount of Compensation taken into account under this Plan for any Employee for any Plan Year shall not exceed the maximum amount permitted under Section 401(a)(17) for such Plan Year. Effective for Limitation Years beginning on or after January 1, 2005, Compensation shall include Compensation paid within 2½ months after separation from service if such Compensation would have been paid if the Participant had continued employment, or if for bona fide sick, vacation or other leave.

A Participant shall at all times have a fully vested and nonforfeitable interest in his or her Account attributable to Employee Nonelective Contributions. Unless otherwise provided in supplemental Plan documentation, a Participant shall at all times have a fully vested and nonforfeitable interest in his or her Account attributable to Employer contributions. In the event Employer contributions are not fully vested, non-vested amounts shall be accounted for separately for purposes of the Plan consistent with the requirements of the Code and underlying regulations, and forfeitures will be used to reduce future Employer contributions under this Plan, or may be made available to pay any administrative expenses of the Plan.

## ARTICLE IV CONTRIBUTION LIMITATIONS

### 4.01 SPECIAL CODE LIMITATIONS.

Notwithstanding any other provision of the Plan, no Elective Deferrals shall be made that would exceed the limitations on the amounts excludable from gross income under Sections 402(g), 414(v), and 415 of the Code, and those limitations are incorporated herein by reference. Except as otherwise provided in the Investment Arrangements, and/or in any agreement between the Employer and another party, the Employer shall be responsible for determining that these limitations are satisfied. If any of these limits would otherwise be exceeded, the Participant's Elective Deferrals under this Plan shall be reduced or limited to the extent necessary to satisfy the applicable limits. Notwithstanding any other provision of the Plan, no Employer contributions or Nonelective Employee Contributions shall be made that, when taken together with Elective Deferrals other than those described under Code Section 414(v), would exceed the limitations on the amounts excludable from gross income under Section 415 of the Code, and those limitations are incorporated herein by reference. Except as otherwise provided in an agreement between the Employer and another party, the Employer shall be responsible for determining that these limitations are satisfied.

#### A. Basic Annual Limitation

Except as provided in subsections B and C, the maximum amount of the Elective Deferral under the Plan for any calendar year shall not exceed the lesser of (a) the applicable dollar amount or (b) the Participant's Includible Compensation for the calendar year. The applicable dollar amount is the amount established under Section 402(g)(1)(B) of the Code, which is \$16,500 for 2009, and is adjusted for cost-of-living after 2009 to the extent provided under Section 415(d) of the Code.

"Includible Compensation" means the Participant's actual wages in box 1 of Form W-2 for a year for services to the Employer, but subject to a maximum of \$245,000 (or such higher amount as may apply under Section 401(a)(17) of the Code) and increased (up to the dollar maximum) by any compensation reduction election under Section 125, 132(f), 401(k), 403(b), or 457(b) of the Code (including any Elective Deferral under the Plan). The amount of Includible Compensation is determined without regard to any community property laws.

#### B. Special Section 403(b) Catch-up Limitation for Employees With 15 Years of Service

Because the Employer is a qualified organization (within the meaning of § 1.403(b)-4(c)(3)(ii) of the Treasury Regulations), the applicable dollar amount under subsection A for any "qualified employee" is increased by the least of:

(a) \$3,000;

(b) The excess of:

(1) \$15,000, over

(2) The total special 403(b) catch-up elective deferrals made for the qualified employee by the qualified organization for prior years; or

(c) The excess of:

(1) \$5,000 multiplied by the number of years of service of the employee with the qualified organization, over

(2) The total Elective Deferrals made for the employee by the qualified organization for prior years.

For purposes of this subsection B, a "qualified employee" means an employee who has completed at least 15 years of service taking into account only employment with the Employer.

#### C. Age 50 Catch-up Elective Deferral Contributions

An Employee who is a Participant who will attain age 50 or more by the end of the calendar year is permitted to elect an additional amount of Elective Deferrals, up to the maximum age 50 catch-up Elective Deferrals for the year. The maximum dollar amount of the age 50 catch-up Elective Deferrals for a year is \$5,500 for 2009, and is adjusted for cost-of-living after 2009 to the extent provided under the Code.

#### D. Coordination

Amounts in excess of the limitation set forth in subsection A shall be allocated first to the special 403(b) catch-up under subsection B and next as an age 50 catch-up contribution under subsection C. However,

in no event can the amount of the Elective Deferrals for a year be more than the Participant's compensation for the year.

- E. **Special Rule for a Participant Covered by Another Section 403(b) Plan**  
For purposes of this Section 4.01, if the Participant is or has been a participant in one or more other plans under Section 403(b) of the Code (and any other plan that permits elective deferrals under Section 402(g) of the Code), then this Plan and all such other plans shall be considered as one plan for purposes of applying the foregoing limitations of this Section 4.01. For this purpose, the Administrator shall take into account any other such plan maintained by any Affiliated Employer and shall also take into account any other such plan for which the Administrator receives from the Participant sufficient information concerning his or her participation in such other plan. Notwithstanding the foregoing, another plan maintained by an Affiliated Employer shall be taken into account for purposes of Section 4.01 only if the other plan is a § 403(b) plan.

#### **4.02 CORRECTIVE DISTRIBUTIONS.**

- A. **415 Excess**  
If, notwithstanding the application of Section 4.01, the limits under Section 415 of the Code are exceeded for any taxable year, to the extent timely identified such amounts shall be allocated to a separate account, and to the extent consistent with applicable Code provisions and IRS guidance, the Employer shall notify one or more of the Providers, as appropriate, and Elective Deferrals will be returned to the Participant until contributions are within the Section 415 limits. If the limits under Section 415 are exceeded with respect to a Provider, and if such excess is identified by the Employer, the Employer is deemed to have notified the Provider and Elective Deferrals will be returned to the Participant until contributions are within the Section 415 limits.
- B. **402(g) Excess**  
If, notwithstanding the application of Section 4.01 and after any adjustment provided for in Section 4.02(A) above, the dollar limit on Elective Deferrals under Section 402(g) of the Code is exceeded for any taxable year, the Participant may notify one or more Providers and may request, but not later than March 1 after the close of such taxable year, that any portion of his or her "excess deferrals" (within the meaning of the Code) and attributable income be returned to the Participant. A Participant is deemed to have notified a Provider of, and to have requested a distribution of, those excess Elective Deferrals that arise solely on account of the Elective Deferrals made to an Investment Arrangement maintained by the Provider. If a return of "excess deferrals" is made, the return shall be made not later than April 15 after the taxable year for which the "excess deferrals" occurred. Such amount shall be distributed in one lump sum without regard to Participant consent in accordance with your Provider's procedures and applicable law.
- C. **414(v) Excess**  
A contribution which, when combined with other contributions to the Plan, exceeds the limitation under Code Section 414(v), shall be distributed in accordance with 4.02(A) or (B) above, according to the limit that was exceeded.

## **ARTICLE V LOANS TO PARTICIPANTS**

### **5.01 GENERAL.**

Loans shall be made available to all Participants on a reasonably equivalent basis under any Investment Arrangement which permits such loans, provided that any such loan shall comply with the provisions of this Article. Any such loan shall be excluded from gross income to the extent that it does not exceed the limitations under Section 72(p) of the Code, including the limitations on the total of a Participant's non-taxable loans from all plans of the Employer. The Providers shall have responsibility for administering loans under the Investment Arrangement, and shall make such inquiries as necessary to determine the limitation on nontaxable loans under Section 72(p).



**5.02 LOAN GUIDELINES.**

The making of loans under this Plan shall be subject to written guidelines set forth in a separate document by the Provider of the Annuity Contract or Custodial Account, which shall govern the availability, terms, and procedures for Participants to obtain loans under that Annuity Contract or Custodial Account.

**ARTICLE VI  
DISTRIBUTIONS, INCLUDING HARDSHIP DISTRIBUTIONS**

**6.01 AVAILABILITY OF DISTRIBUTIONS PRIOR TO SEVERANCE FROM EMPLOYMENT.**

Prior to a Participant's Severance from Employment, the Participant's Account attributable to Elective Deferrals shall be available for distribution only

- (i) in the event of hardship, to the extent permitted under Section 6.04,
- (ii) after the Participant attains age 59½,
- (iii) Plan termination in accordance with Section 403(b) of the Code and the regulations promulgated thereunder, or
- (iv) if elected by the Participant during a period of service in the uninformed services (described in Code Section 3401(h)(2)(A), provided however, that if a distribution is elected, the Participant may not make an Elective Deferral during the 6-month period beginning on the date of the distribution.

A special rule applies to pre-1989 elective deferrals under Treasury Regulations Section 1.403(b)-6(d).

Prior to a Participant's Severance from Employment, the Participant's Account attributable to any contributions made under Article III will be available for distribution only as described in an appendix to the Plan, including but not limited to the elections in Section I provided however that any such Employer Contributions made or transferred to a Custodial Account shall not be available for distribution in the event of hardship. Notwithstanding the foregoing, the portion of a Participant's Account attributable to Rollover Contributions shall be available for distribution at any time to the extent permitted under the Code.

**6.02 AVAILABILITY OF DISTRIBUTIONS AFTER SEVERANCE FROM EMPLOYMENT.**

A Participant's Account shall be available for distribution at any time after the Participant's Severance from Employment.

**6.03 REQUIRED DISTRIBUTIONS.**

Investment Arrangements shall be required to include, and the Providers shall be required to administer, the applicable requirements imposed by Code Section 401(a)(9) and the regulations there under. No Payout Option shall be permitted that fails to provide for the Participant or any Beneficiary to receive for each calendar year at least the amounts required to be distributed in accordance with Section 401(a)(9) of the Code and the regulations there under. If the Investment contains no default election for beneficiary distributions after the death of the participant pursuant to Treasury Regulation 1.401(a)(9)-5, the default election shall be the life expectancy method. Nothing in this section shall be construed as making available any benefit or form or time of distribution not otherwise available under an Investment Arrangement.

**6.04 HARDSHIP DISTRIBUTIONS.**

- A. If authorized in Section I, hardship distributions are available under the Plan. Hardship distributions shall be approved only if the Participant meets the criteria specifically set forth in subsection B [for 401(k) safe-harbor event guidelines], or C (for general event guidelines). In such cases, there shall be paid to such Participant out of his or her Account only such portion of the amount requested as is necessary to prevent or alleviate the hardship. In making its determination hereunder, the Employer or service provider shall follow uniform and nondiscriminatory practices and its determination shall be final and binding. No amount attributable to income on Elective Deferrals shall be available for distribution on account of hardship. Hardship distributions shall be permitted only from 100% vested Accounts.
- B. If Section 401(k) safe harbor guidelines are selected in the Section I, hardship distributions may only be made on account of the following (deemed to be "immediate and heavy financial needs of the Participant"):

- (i) expenses already incurred or necessary for anticipated medical care, described in Code Section 213(d), for the Participant, spouse, children or dependents;
  - (ii) purchase (excluding mortgage payments) of a principal residence for the Participant;
  - (iii) payment of tuition and related educational fees, including room and board expenses, for the next 12 months of post-secondary education for the Participant, spouse, children or dependents;
  - (iv) the payment of amounts necessary to prevent the eviction of the Participant from his or her principal residence or the foreclosure on the mortgage of his or her principal residence;
  - (v) payments for burial or funeral expenses for the participant's deceased parent, spouse, children or dependents; or
  - (vi) such other circumstances as may be specified in Treas. Reg. Section 1.401(k)-1(d)(3)(iv) or subsequent promulgations.
- C. If general events test is selected in Section I, hardship distributions may only be made in the event that the Participant experiences an immediate and heavy financial need, and the amount of any such distribution shall be limited to the amount needed to satisfy the financial need. No amount attributable to post-1998 income on Elective Deferrals shall be available for distribution on account of hardship.
- D. All hardship distributions shall be made in accordance with Treas. Reg. Section 1.401(k)-1(d)(3)(iv)(C) to the extent such need may not be satisfied from other resources that are reasonably available to the Participant, including commercially available loans and loans available under the Investment Arrangement established under the Plan. The determination as to whether the Participant's circumstances are a case of hardship shall be based on the merits of each individual case; provided, however, that all determinations as to hardship shall be made uniformly and consistently for all Participants in similar circumstances under the Investment Arrangement.

A hardship distribution may be adjusted upwards to cover any federal, state or local taxes, including penalty taxes, which can reasonably be anticipated to result from the distribution. The need for a hardship distribution will be determined based on the facts and circumstances.

**6.05 DIRECT ROLLOVERS.**

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this section, a distributee may elect, at the time and in the manner prescribed by the Provider, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the distributee in a Direct Rollover.

**6.06 INVOLUNTARY CASH-OUTS AND AUTOMATIC ROLLOVERS.**

All distributions which would otherwise qualify as Eligible Rollover Distributions shall require the consent of the Participant. If a Participant's total Vested Account balance is zero, the Participant shall be deemed to have received a distribution of such Account balance.

**6.07 AVAILABILITY OF DISTRIBUTION FROM CUSTODIAL ACCOUNTS.**

Notwithstanding the foregoing provisions under this Article, any Custodial Account must provide that in no event shall any amount invested under the Custodial Account, whether attributable to Elective Deferrals, Nonelective Contributions or Employer Contributions, be paid or made available from such account before the Participant:

- (i) dies;
- (ii) attains age 59½,
- (iii) has a Severance from Employment;
- (iv) becomes disabled within the meaning of Section 72(m) of the Code;
- (v) in the case of contributions made pursuant to a salary reduction agreement [within the meaning of Section 3121(a)(5)(D) of the Code] encounters financial hardship; or,

(vi) plan termination in accordance with Section 403(b) of the Code and the regulations there under.

## **ARTICLE VII DEATH BENEFITS**

### **7.01 FORM OF BENEFITS.**

#### **A. Death Before Commencement of Benefits**

If a Participant dies before the commencement of distributions under a Payout Option, the Participant's Account balance shall be payable as a death benefit to the Participant's Beneficiary in accordance with the Payout Options available under the Investment Arrangement.

#### **B. Death After Commencement of Benefits**

If distributions under the Investment Arrangement have begun and the Participant dies before his or her entire interest in the Investment Arrangement has been distributed, the remaining interest shall be distributed according to the terms of the Payout Option or other provisions of the Investment Arrangement.

### **7.02 LIMITATIONS ON DEATH BENEFITS.**

Notwithstanding the provisions of Section 7.01, following the death of the Participant, that portion of the Participant's Account that is subject to the requirements of Section 401(a)(9) of the Code must be distributed to the Participant's Beneficiary at least as rapidly as required under Section 401(a)(9), the requirements of which are incorporated herein by reference.

## **ARTICLE VIII**

### **ROLLOVERS AND TRANSFERS**

#### **8.01 ROLLOVER CONTRIBUTIONS.**

An Employee may elect to make a Rollover Contribution to an Investment Arrangement that the Employee selects under the Plan.

#### **8.02 VESTING AND DISTRIBUTION.**

Any amount credited to a Participant's Account pursuant to a Rollover Contribution under Section 8.01 of this Plan or a Transfer under Section 8.03 of this Plan shall be fully vested and nonforfeitable at all times and shall be subject to the terms of this Plan.

#### **8.03 TRANSFERS FROM A PLAN OF THE EMPLOYER.**

All transfers under this Section 8.03 shall be subject to any applicable restrictions under the Code and regulations there under. Any Employee who has participated in a plan, annuity contract, or custodial account under Section 403(b) of the Code attributable to his or her current or prior employment with the Employer, or to his or her current or prior employment with another qualifying employer, may elect to transfer all or a portion of the amount accumulated under such other plan, annuity contract, or custodial account to this Plan (herein a "Transfer"), provided such Transfer must be effected in a manner consistent with the terms of such other plan, annuity contract, or custodial account as well as the terms of this Plan, and provided further that such Transfer qualifies as a tax-free transfer or exchange under generally accepted interpretations of the Code and Regulations. The portion of a Participant's Account attributable to such a Transfer (and, if applicable, the separate portions of the Transfer attributable to Employee and Employer contribution accounts) shall be subject to the terms of this Plan as if the contributions from which the transferred amount are derived were made under this Plan. However, no such Transfer shall have the effect of reducing a Participant's vested percentage in, or otherwise eliminating any benefit rights applicable to, any transferred amount protected by ERISA or applicable law.

A Participant may transfer among Investment Products available under the Plan subject to any restrictions selected in Section I of the Plan and any restrictions under the affected Investment Products. A Participant may transfer from this Plan to another 403(b) plan of the Employer or of another employer, provided that the receiving plan permits the transfer.

**8.04 THIS ARTICLE.**

This article shall not be construed to require this Plan to accept a Rollover or Transfer which may not meet the requirements for a Rollover Contribution or Transfer under generally accepted interpretations of the Code, nor shall it be construed to require an Investment Arrangement the terms of which expressly prohibit such a transfer to permit such a transfer. The Provider may require the Participant to furnish such proof as is necessary to establish that the amount is a Rollover Contribution or Transfer.

**8.05 TRANSFERS TO PURCHASE PERMISSIVE SERVICE CREDIT.**

To the extent permitted by Code Section 403(b)(13), a Participant may elect to transfer all or a portion of the balance of his or her Account to a defined benefit governmental plan [as defined in Code Section 414(d)]. Such an election may be made at any time.

**ARTICLE IX  
CLAIMS PROCEDURE**

**9.01 APPLICATION FOR BENEFITS.**

Each application for a loan or a distribution must be made to the Provider of the Investment Arrangement from which the distribution is to be made in accordance with the terms of the Investment Arrangement under which any such application is made.

**9.02 DOMESTIC RELATIONS ORDER.**

For purposes of this section, an application for benefits in the form of, or pursuant to, a domestic relations order shall be responded to by the Provider only after a determination that such order is a Domestic Relations Order. The Provider shall determine whether a domestic relations order is recognized as a Domestic Relations Order under the Internal Revenue Code. Once an order has been established as a Domestic Relations Order for purposes of accounts maintained by that Provider, benefits shall be paid in accordance with the applicable requirements of such order, provided however that the order may not confer new or additional rights or impose any new or additional obligations on the Provider of the Investment Arrangement. Distributions to an Alternate Payee pursuant to a valid Domestic Relations Order will be permitted without regard to whether the Participant would be eligible for a distribution from the Plan.

**ARTICLE X  
MISCELLANEOUS PROVISIONS**

**10.01 ANTI-ALIENATION.**

Any benefit or interest available under the Plan, any right to receive payments under the Plan, or any payment made under the Plan shall not be subject to assignment or alienation, garnishment, attachment, transfer or anticipation, execution or levy, whether by the voluntary or involuntary act of any interested person under the Plan, except for a benefit or interest which becomes payable pursuant to a Domestic Relations Order, or an amount that the Employer finds is lawfully demanded under a levy issued by the Internal Revenue Service with respect to that Participant or Beneficiary or is sought to be collected by the United States Government under a judgment resulting from an unpaid tax assessment against the Participant or Beneficiary.

**10.02 GOVERNING LAW.**

Except as otherwise provided by applicable federal law this Plan shall be governed by and construed according to the laws of the state of New Mexico.

**10.03 CONFORMITY WITH CODE.**

This Plan is established with the intent that it conform to the requirements of Section 403(b) and other applicable provisions of the Code. The provisions of this Plan shall be interpreted whenever possible in conformity with the requirements of the Code.

**10.04 NOT SUBJECT TO ERISA.**

This Plan is established and maintained as a plan that is exempt from the requirements of Title I of the Employee Retirement Income Security Act of 1974, as provided by Section 4 of such statute.

- 10.05 QUALIFIED MILITARY SERVICE.**  
Notwithstanding any provision of this plan to the contrary, contributions, benefits and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Internal Revenue Code.
- 10.06 AMENDMENT OF LAW.**  
Where the law (including, but not limited to, the Code) governing the Plan is amended, modified, or interpreted through subsequent legislation, or rulings, or decisions, the Plan's provisions should be construed, insofar as is feasible, as incorporating any such amendment, modification, or interpretation of the law.
- 10.07 HEADINGS.**  
The headings and subheadings of this Plan have been inserted merely for convenience of reference, and in no way define or limit the scope of any of the provisions and are to be ignored in any construction of the provisions.
- 10.08 GENDER AND NUMBER.**  
The masculine pronoun, whenever used herein, shall include the feminine pronoun, and the singular shall include the plural, except where the context requires otherwise.
- 10.09 NECESSARY INFORMATION.**  
All Employees shall provide the Employer and any life insurance company that issues an Annuity Contract hereunder and any custodian of a Custodial Account established under the Plan, with any information that may be needed for the proper and lawful operation and administration of the Plan; including, but not limited to, appropriate evidences of the Employee's age and marital status, his or her current address, the current address of his or her spouse, and the current address of any other Beneficiary.
- 10.10 NO RIGHT OTHER THAN PROVIDED BY PLAN.**  
The establishment of this Plan and the purchase of any Annuity Contract or establishment of a Custodial Account under the Plan shall not be construed as giving to any Participant or Beneficiary or any other person any legal or equitable right against the Employer or its representatives, except as is expressly provided by this Plan. Under no circumstances shall this Plan constitute or modify a contract of employment or in any way obligate the Employer to continue the services of any Employee.
- 10.11 INABILITY TO LOCATE PARTICIPANT OR BENEFICIARY.**  
In the event that all, or any portion, of any distribution payable to a Participant or Beneficiary hereunder shall, at the expiration of three (3) years after it shall become payable, remain unpaid solely by reason of the inability of the life insurance company that has issued the Annuity Contract or the custodian of the Custodial Account to ascertain the whereabouts of such Participant or Beneficiary, after reasonable efforts to do so, the Annuity Contract or Custodial Account shall continue to hold the benefits due.
- 10.12 PROTECTION OF LIFE INSURANCE COMPANY OR CUSTODIAN.**  
Regardless of any provision of this Plan, a life insurance company shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Annuity Contract which it may issue under the Plan, and a custodian shall not be required to take or permit any action or allow any benefit or privilege contrary to the terms of any Custodial Agreement which may be established under the Plan.
- 10.13 ANNUAL ACCOUNTING.**  
Records and statements for the Plan and each Participant are to be maintained on the basis of the Plan Year.
- 10.14 REPORTING TO PARTICIPANTS.**  
A statement of accrued benefits will be sent by the Provider to each Participant at least once each Plan Year.
- 10.15 SEVERABILITY.**  
If any provision of the Plan shall be held invalid for any reason, that holding shall not affect the remaining provisions of the Plan which shall be construed and enforced as if the invalid provision had not been included in the Plan.

**10.16 EGTRRA.**

This Plan document contains certain amendments to reflect the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"). These amendments are intended to comply with the requirements of EGTRRA and are to be construed in accordance with EGTRRA and guidance issued there under.

**10.17 PLAN DOCUMENT.**

The terms of the Plan include this Plan document, the terms of the Investment Arrangements, and applicable salary reduction agreements. The terms of this Plan document may limit a Participant's rights under the Investment Arrangement if the Employer has provided the relevant Providers with written notice of such limitations. In no event, however, may any Plan provision unilaterally enlarge or otherwise materially modify a Provider's obligations under an Investment Arrangement.

**10.18 ALLOCATION OF PLAN RESPONSIBILITIES.**

The Employer and the Providers shall not be responsible hereunder for the administration of those requirements that are allocated to the other party. The Employer shall be responsible for any functions that are not specifically allocated hereunder. The Employer may delegate any or all administrative responsibilities under the Plan to one or more persons.

**10.19 AMENDMENT OR TERMINATION.**

The Employer reserves the right to amend or terminate the Plan at any time, provided that no amendment or termination of the Plan may cause or result in the following:

- (i) amounts held under the Plan to be used for, or diverted to, purposes other than the exclusive benefit of Participants and Beneficiaries,
- (ii) a reduction in the amount of benefits accrued by or the amount credited to the Account of any Participant,
- (iii) a reduction in any Participant's vested percentage in that portion of the Participant's account attributable to Employer Contributions, if any, made before the day such amendment is adopted or becomes effective, whichever is later,
- (iv) the elimination or reduction of any optional form of distribution or benefit, including those benefits provided under Section 11.16 of Plan, or
- (v) any early retirement benefit provided by the Plan.

The amendment or termination of the Plan may not enlarge or modify the contractual obligations of any Provider. Subject to the limitations of Section 10.03, the Employer may in its sole discretion, by action in advance or by inaction and subsequent ratification, temporarily or permanently waive any Plan limitation or requirement, or portion thereof.

## **ARTICLE XI DEFINITIONS**

As used in this Plan, the following words and phrases shall have the meanings set forth below:

**11.01 ACCOUNT.**

The account or accounts established and maintained under the Investment Arrangements for each Participant with respect to his interest in the Plan.

**11.02 AFFILIATED EMPLOYER.**

The Employer and any other entity that is required to be aggregated with the Employer under the provisions of the Code (or the Regulations or other IRS guidance) applicable to retirement plans under Section 403(b) of the Code.

**11.03 ALTERNATE PAYEE.**

Any spouse, former spouse, child or other dependent of a Participant who is recognized by a Domestic Relations Order, or similar order recognized under the Internal Revenue Code for the Plan, as having a right to receive all, or a portion of, the benefits payable under the Plan with respect to the Participant.

**11.04 ANNUITY CONTRACT.**

A group or individual annuity contract which may be a fixed, variable, or combination fixed and variable annuity contract, which is issued by a life insurance company and approved for sale in this state, and which provides for periodic payments at regular intervals whether for a period certain or for one or more lives. The terms of each Annuity Contract purchased under the Plan shall satisfy the requirements of Section 403(b) of the Code.

**11.05 BENEFICIARY.**

The person or persons designated by the Participant under an Investment Arrangement to receive any benefits payable in the event of the Participant's death.

**11.06 CODE.**

The Internal Revenue Code of 1986, as now or hereinafter amended.

**11.07 CUSTODIAL ACCOUNT.**

A group or individual custodial arrangement established with a bank or other entity meeting the requirements of Section 401(f)(2) of the Code, under which only shares of regulated investment company stock (mutual funds) maybe offered. The terms of any Custodial Account established under the Plan shall satisfy the applicable requirements of Section 403(b) of the Code.

**11.08 DIRECT ROLLOVER.**

A payment from an Investment Arrangement to the Eligible Retirement Plan specified by a distributee. A distributee includes an Employee or former Employee with respect to an Eligible Rollover Distribution. In addition, the Employee's or former Employee's surviving spouse, and the Employee's or former Employee's spouse or former spouse who is an Alternate Payee is a distributee with respect to the interest of the spouse or former spouse in an Eligible Rollover Distribution.

**11.09 DOMESTIC RELATIONS ORDER ("DRO").**

Any judgment, decree, or order (including a property settlement agreement) made pursuant to state domestic relations law which: (1) relates to child support, alimony payments or marital property rights to a spouse, former spouse, child or other dependent; and (2) creates or recognizes the existence of an Alternate Payee's right to, or assigns to an Alternate Payee the right to, receive all or a portion of the benefits payable under a plan.

**11.10 ELECTIVE DEFERRAL.**

A contribution to purchase an Investment Arrangement which is made pursuant to an Employee's salary reduction agreement within the meaning of Section 3121(a)(5)(D) of the Code, or which is made on an after-tax basis as a Roth 403(b) contribution pursuant to the requirements of Section 402A of the Code.

**11.11 ELIGIBLE RETIREMENT PLAN.**

Eligible Retirement Plan as defined in Section 401(a)(31)(D) of the Code.

**11.12 ELIGIBLE ROLLOVER DISTRIBUTION.**

Eligible Rollover Distribution as defined in Section 401(a)(31)(C) of the Code.

**11.13 EMPLOYEE.**

Any natural person who is a common law employee of the Employer. Notwithstanding the preceding sentence, an individual shall not be considered an Employee for any period during which he or she was not contemporaneously treated by the Employer as an employee for federal income tax purposes. Leased employees described in Code Section 414(n) shall not be considered Employees. If the Employer is a state or local government entity Employee shall include common-law employees of any state or local government entity that is on common payroll with the Employer if that entity is also an eligible employer under Treasury Regulations Section 1.414(c)-5.

**11.14 EMPLOYER.**

The entity(ies) named in Section I. Notwithstanding anything herein to the contrary, with the consent of the Employer and Insurer (or Trustee, if applicable), any Affiliated Employer may adopt this Plan and all of the provisions hereof, and participate herein and be known as a Participating Employer, by a properly executed document evidencing said intent and will of such Participating Employer.

**11.15 EMPLOYER CONTRIBUTIONS.**

Contributions made to the Plan by the Employer, without reduction to the Participant's salary. Such contributions, if permitted under the Plan and properly authorized by the Employer, may, at the election of the Employer, be made in any form and at any time otherwise permitted under the Code and under supplemental documentation of the Employer. This Plan contains no Employer Contributions.

**11.16 INVESTMENT ARRANGEMENT.**

An Annuity Contract or a Custodial Account that the Employer has designated as an Investment Arrangement available under the Plan. The Employer shall take all steps necessary to establish any individual or group contracts or accounts. The Employer shall exercise due diligence in selecting and monitoring all Provider, Annuity Contracts and Custodial Accounts and shall execute and comply with all required contracts and agreements. The Employer shall maintain an ongoing list of all approved Providers and products under the Plan. In addition the Employer shall maintain written records confirming compliance in accordance with applicable law and the terms of the Plan. Participants may select one or more Investment Arrangements on a form specified by the Employer, and shall be solely responsible for directing the Provider of the Investment Arrangements as to their investment selections within the Investment Arrangement and/or permitted transfers to another provider. The Providers shall be responsible for administering the terms of their respective Annuity Contracts and/or Custodial Accounts, including but not limited to annual limitations upon Elective Deferrals, limitations upon loans and distributions, requirements regarding distributions upon attainment of age 70½ or retirement, whichever is later, and such other provisions required under Section 403(b).

**11.17 NONELECTIVE EMPLOYEE CONTRIBUTIONS**

Contributions that are made to an Investment Arrangement pursuant to the reduction of an Employee's Compensation, provided that the reduction is automatic upon the satisfaction of applicable eligibility requirements as a condition of employment or results from a one-time irrevocable election to have such contributions made (or similar irrevocable election approved in applicable Treasury regulations). Unless on account of an irrevocable election, the rate of Nonelective Employee Contributions is uniform for all Employees for whom such contributions are made.

**11.18 PARTICIPANT**

An Employee or former Employee who has not yet received all of the payments of benefits to which he or she is entitled under the Investment Arrangements.

**11.19 PAYOUT OPTION.**

Any of the annuity options or other options for payment that may be available under an Investment Arrangement established under the Plan. In the case of an annuity contract, these options may be in the form of a lump sum payment or periodic payments at regular intervals either for a period certain or for one or more lives, and in the case of a custodial account, may be in the form of a lump sum payment or payments of a specified amount or for a specified period or such other payout options that are permitted under the custodial agreement.

**11.20 PROVIDERS**

The issuers of the Annuity Contracts and/or custodians or other providers of the Custodial Accounts maintained under the Plan and listed in Appendix C.

**11.21 ROLLOVER CONTRIBUTION**

A Rollover Contribution is a transfer described in Code Section 402(c)(1), 403(a)(4)(A), 403(b)(8)(A), or 457(e)(16)(A) or a payment described in Code Section 401(a)(31) or 408(d)(3)(A)(ii).

**11.22 SEVERANCE FROM EMPLOYMENT**

Any date on which a Participant ceases to be employed:

- (i) by the Employer and any Affiliated Employer; or
- (ii) by the Employer, even though the Employee may continue to be employed by a Affiliated Employer that is another unit of the State or local government that is not a 501(c)(3) organization or a public school (a



State-Sponsored educational organization under Code Section 170(b)(1)(A)(ii) or in a capacity that is not employment with a 501(c)(3) organization or a public school (e.g., ceasing to be an employee performing services for a public school but continuing to work for the same State or local government employer).

Dated: NOVEMBER 11, \_\_\_\_\_, 2008

**UNIVERSITY OF NEW MEXICO:**

By: James H. Koch

Its: PRESIDENT, BOARD OF REGENTS

Printed Name: JAMES H. KOCH

# APPENDIX A

## SECTION 403(b) PROGRAM QUALIFIED SERVICE PROVIDER AGREEMENT (HOLD HARMLESS AGREEMENT)

WHEREAS, the governing board of \_\_\_\_\_ (the "Employer") wishes to make available to its employees tax-deferred annuities and/or custodial accounts pursuant to the provisions of Section 403(b) of the Internal Revenue Code of 1986, as amended (hereinafter called the "Code"); and

WHEREAS, \_\_\_\_\_ (the "Company") is authorized pursuant to State and Federal law to offer and has offered to provide tax-deferred annuity contracts or custodial accounts for eligible employees of the Employer;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The Employer shall make available tax-deferred annuities and/or custodial accounts to all of its employees, except those permitted to be excluded under Code Section 403(b)(12), subject to an annual minimum contribution of no more than \$200, as set forth in Code Section 403(b)(12).
2. In connection with the annuities or custodial accounts, the Company shall provide the following administrative services. The Company agrees to:
  - A. Calculate the maximum annual contribution permitted by law under the 403(b) program for employees contributing to a 403(b) program product offered by the Company, upon:
    - (i) enrollment,
    - (ii) non-automatic increases in deferrals, if the Company is notified in advance thereof, or
    - (iii) request by the Employer or employee. This calculation shall include calculation of the limits under Code Sections 415(c), 402(g) and 414(v), as applicable to 403(b) programs. In performing the calculation, the Company is entitled to rely on information provided by the participant and/or the Employer.
  - B. Review salary reduction contributions, as identified to the Company by the Employer, for each employee directing contributions to a Company annuity or custodial account, at the end of each year, and notify the Employer within a reasonable time thereafter if any employee has contributed in excess of the elective deferral limit of Code Section 402(g), as applicable to 403(b) programs and as set forth in the Company's annuity contract or custodial account. In calculating the Code Section 402(g) limit, the Company is entitled to rely on information provided by the participant and/or the Employer concerning qualification for and the calculation of the elective cap expansion under Code Section 402(g)(7).
  - C. Notify participants of the minimum distribution requirements under Code Sections 403(b)(10) and 401(a)(9) and the regulations promulgated there under. Required minimum distributions will be calculated in a manner consistent with the methodology set forth under the Code and underlying Treasury regulations.
  - D. Based upon information provided by the Employer and/or the employee, limit distributions to those events described in Section 403(b)(11), or Section 403(b)(7) and the regulations promulgated there under as applicable, and as set forth in the Company's annuity contract or custodial account. Any additional plan restrictions, where appropriate, will be applied, provided that they are communicated to the Company in advance and in writing.
  - E. Report benefit distributions and deemed distributions on IRS Form 1099-R, and withhold Federal income taxes on distributions meeting the requirements of Paragraph 2(D) of this Agreement, as requested by the participant or the participant's beneficiary, or as required by law.
  - F. Provide employees with notice of their rights to elect a direct rollover or to receive the distribution directly, within a reasonable time and prior to making an eligible rollover distribution, consistent with Section 403(b)(8), Section 402(f) and regulations promulgated thereunder.
  - G. To the extent loans are available under the terms of the Employer's 403(b) program, offer nontaxable loans that are consistent with the requirements of Section 72(p) and the regulations thereunder. The Employer and the Company shall agree upon procedures for confirming that the loan being requested, when added to any other loans under the plans of the Employer, will not cause the participant to exceed

the maximum nontaxable loan amounts available under the Code or the terms of the Employer's plan, and/or that the participant has no loan defaults with another account under the plan or under another plan which is required to be aggregated with the plan for purposes of applying this limitation.

- H. Furnish to employees upon request information concerning the terms and provisions of the annuity or custodial account purchased, including any distribution options available at the time of retirement or distributions other than at retirement.
  - I. For any qualifying insurance product offered under the Employer's 403(b) plan or program, verify that the premiums paid for any qualified incidental insurance offered by the Company through the allocation of contributions or other amounts held under the plan or program are within the limits specified by law, and report the appropriate costs incurred by employees who participate in the Company's qualified incidental insurance, if any. Such reporting will comply with the reporting requirements promulgated the Internal Revenue Service.
  - J. Extend its full and complete cooperation in providing data to the Employer, including any and all necessary documents required in the event of an audit by the Internal Revenue Service, as such data and/or documents are requested by the Employer for the sole purpose of administering the plan in conformity with requirements of the Code. The data and/or documents provided will reflect information as identified to the Company by the Employer, and will be provided to the extent reasonably available from records maintained by the Company in the ordinary course of business. The Employer acknowledges that its release of such data or documents may be subject to applicable federal and/or state privacy limitations, and that release by the Company of certain information may be subject to participant consent.
  - K. Cooperate in the correction of any defects in the Employer's 403(b) program under applicable Internal Revenue Service guidance regarding correction and self-correction of applicable defects to the extent those defects relate to annuity contracts issued by or custodial accounts maintained by the Company. In the event that the Company identifies any operational defects in the ordinary course of business, the Employer hereby authorizes the Company to correct any such operational defects in the 403(b) program in a manner consistent with applicable guidance. The Company also agrees to cooperate in the correction of any defects in the Employer's 403(b) program which the Employer submits to the IRS or addresses under applicable self-correction or audit programs, pursuant to applicable IRS guidance for such correction to the extent those defects relate to annuity contracts issued by or custodial accounts maintained by the Company, provided that:
    - (i) the Employer notifies the Company within a reasonable time in advance of a submission in accordance with the Employee Plans Compliance Resolutions System (EPCRS) program, and
    - (ii) the Employer and the Company agree in advance as to the scope of the potential correction the Company will undertake, as it relates to annuity contracts or custodial accounts issued by the Company.
  - L. Comply, and to direct its agents and representatives to comply, with all pertinent written directives regarding the solicitation of employees of the Employer and the purchase of annuities or custodial accounts, to the extent that such directions are consistent with applicable law and are provided to the Company within a reasonable time in advance of the enforcement of any such directives.
3. The Company shall maintain errors and omissions insurance for each of its agents, or shall require each of its agents to maintain errors and omissions insurance. The Company shall also maintain general corporate liability and fidelity coverage and provide proof thereof to the Employer upon request. All such insurance coverage shall be maintained while this Agreement remains in effect. The Company shall notify the Employer in writing within thirty (30) days of a termination of such coverage which occurs while this Agreement remains in effect, where the coverage is not replaced by similar coverage from another insurer.
4. The Company shall hold harmless and indemnify the Employer, its officers and employees from any statutory tax penalties, and/or interest on tax deficiencies or on statutory tax penalties, that may be lawfully imposed by any governmental authority by reason of: (i) the making of contributions to tax-sheltered annuity contracts or custodial accounts sold by the Company in excess of the limits on tax-deferred contributions imposed by the Code, if such excess contributions arise from an erroneous calculation of such contribution limits by the Company or a representative thereof; or (ii) any challenge to the tax-qualified status of the form of any annuity contracts or custodial accounts purchased from the Company on behalf of employees of the Employer.

- A. The paragraph directly above shall not apply if the event giving rise to the imposition of statutory tax penalties or interest:
  - (i) is directly attributable to erroneous information furnished to the Company by the Employer or any employee thereof, or
  - (ii) occurs after the Company has notified the Employer or the affected employee in writing of an error and either or both has failed or refused to take appropriate corrective action, or
  - (iii) is directly attributable to the failure of the Employer to follow a legal requirement for the 403(b) program if the Employer had been duly notified in writing of such requirement and compliance therewith was beyond the control of the Company.
  
- B. In the event that the Internal Revenue Service or other governmental authority notifies the Employer of any proposed action that could give rise to any claim against the Company under the Agreement, the Employer shall promptly notify the Company in writing of such proposed action. Following the Company's receipt of notification in writing of such proposed governmental action, the Company may discharge its liability under this Agreement by making appropriate payment to the Employer or affected employee at any time prior to the final disposition of the proposed governmental action; in such event, the Company shall not be liable for additional interest which may accrue with respect to the amount of the payment after the date thereof. If the Company concludes that the proposed governmental action is erroneous or unwarranted, it may request that the Employer or affected employee pursue available legal remedies to contest the proposed governmental action, in which case the Company shall offer to bear all reasonable fees and costs associated with the pursuit of such legal remedies. If the Company makes such request and offer and the Employer or affected employee declines to pursue the available legal remedies, or if the Employer fails to notify the Company of the pendency of the proposed governmental action within a reasonable time after the Employer has been notified of the proposed action, the Company shall have no liability under this Agreement in connection with that governmental action.
  
- 5. The Company and the Employer reserve the right, upon thirty (30) days' written notice to the Employer or the Company, respectively, by Registered or Certified mail, to terminate this Agreement, but such termination shall in no manner affect any liability incurred under this Agreement prior to the effective date of such termination.

6. Notice under this Agreement shall be sent to the parties at the address listed below:

**COMPANY**

COMPANY Name: \_\_\_\_\_

COMPANY address: \_\_\_\_\_

COMPANY address: \_\_\_\_\_

COMPANY City \_\_\_\_\_

COMPANY State, Zip \_\_\_\_\_

**EMPLOYER**

EMPLOYER Name: \_\_\_\_\_

EMPLOYER address: \_\_\_\_\_

EMPLOYER address: \_\_\_\_\_

EMPLOYER City: \_\_\_\_\_

EMPLOYER State, Zip \_\_\_\_\_

7. Premiums shall be sent to the Company at:

COMPANY Name: \_\_\_\_\_

COMPANY address: \_\_\_\_\_

COMPANY address: \_\_\_\_\_

COMPANY City \_\_\_\_\_

COMPANY State, Zip \_\_\_\_\_

8. This Agreement supersedes and replaces any and all prior written or oral agreements of the Company regarding the purchase of annuities or custodial accounts by the Employer for its employees.

9. This Agreement may be modified by either party to the Agreement in writing and by signature of both parties.

COMPANY:

\_\_\_\_\_  
Name of Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

EMPLOYER:

\_\_\_\_\_  
Name of Employer

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name (Printed or Typed)

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

# APPENDIX B

## 403(b) INFORMATION SHARING AGREEMENT

Not Applicable - Approved Investment Arrangements only.  
See Appendix C.

# APPENDIX C

## AUTHORIZED 403(b) PROVIDER LIST

This list identifies the investment providers ("Providers") and qualifying annuity contracts and custodial accounts ("Product") available under the designated 403(b) plan ("Plan") maintained by the plan sponsor ("Employer"), on or after the effective date of this list ("Effective Date"). Authorized products in each category below may be identified according to marketing name or other independently identifiable designation, such as policy form number or internal form number. Changes in such identifiers, however, should be promptly reflected in a revised provider list. Providers and products on this list shall be subject to requirements and restrictions under the written plan, if any, provided however that such requirements and restrictions are not intended to enlarge the rights and benefits otherwise set forth in the products.

Employer: THE UNIVERSITY OF NEW MEXICO

Plan Name: THE UNIVERSITY OF NEW MEXICO 403(B) PLAN

AIG (Valic)

Fidelity

ING

MetLife

TIAA CREF

## APPENDIX D

### 403(b) UNIVERSAL AVAILABILITY NOTICE

To: UNM employees  
From: Payroll Department  
Date:  
Subject: Notice of Employees' Right to Participate in  
the 403(b) Program

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The University of New Mexico offers a voluntary salary reduction 403(b) program to its employees\*. The 403(b) program is intended to provide an additional retirement savings opportunity to employees and we are pleased to offer that opportunity to you.

- Lower taxes today – you can contribute before taxes are calculated thus lowering your taxable income
- Tax-deferred growth and compounding interest – the difference you would have paid in taxes earns interest plus that interest earns interest, compounding even more
- You take the initiative – contributing to a 403b retirement plan can help you take control of your future

Remember, 403b plans are meant to encourage long-term retirement saving so income taxes are paid at withdrawal when you may be in a lower tax bracket and if withdrawn before age 59½ might be subject to federal restrictions and a 10% tax penalty.

We invite you to contact the UNM Payroll Department at 277-2353 for information about how you can start a 403b program and to receive a list of the university's approved vendors. You may also go to the UNM Payroll's web page at <http://www.unm.edu/~payroll> for the list of vendors and you can go to the UNM Lobo web to enroll in the 403b program.

\*Exception: Student employees are excluded from participation in the 403(b) program.