

**EXCESS BENEFIT PLAN OF THE
NEVADA SYSTEM OF HIGHER EDUCATION**

**A portion of the Nevada System of Higher Education
Defined Contribution Retirement Plan Alternative**

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**EXCESS BENEFIT PLAN OF
THE NEVADA SYSTEM OF HIGHER EDUCATION**

ARTICLE I
ESTABLISHMENT AND RESTATEMENT OF PLAN

Section 1.01 Plan Establishment and History.

(a) The Board of Regents of the Nevada System of Higher Education, created pursuant to Article 11 of the Constitution of the State of Nevada, established the Excess Benefit Plan of the Nevada System of Higher Education ("Excess Benefit Plan") as part of the Nevada System of Higher Education Defined Contribution Retirement Plan Alternative ("401(a) Plan"), effective January 1, 2000, to provide retirement benefits for employees of certain institutions of higher education within the meaning of Section 170(b)(1)(A)(ii) of the Internal Revenue Code ("Code"). The Nevada System of Higher Education ("Employer") is qualified under Code Section 501(c)(3) for exemption from tax under Code Section 501(a). The Excess Benefit Plan was most recently amended and restated effective January 1, 2008.

(b) The Excess Benefit Plan was, and is intended to remain, a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m)(3) and an exempt governmental deferred compensation plan described in Code Section 3121(v)(3). Code Sections 83, 402(b), 409A, 457(a), and 457(f)(1) shall not apply to the Excess Benefit Plan. The sole purpose of the Excess Benefit Plan is to provide for contributions that would have been made to the 401(a) Plan absent the limitations of Code Section 415(c).

(c) The 401(a) Plan is a governmental plan, as defined in Code Section 414(d) and the Employee Retirement Income Security Act Section 3(32) ("ERISA"). As a governmental plan, ERISA does not apply.

Section 1.02 Plan Restatement.

(a) The Excess Benefit Plan is now being amended and restated effective January 1, 2014.

(b) Except as otherwise specifically provided herein, the Excess Benefit Plan as hereinafter set forth establishes the rights and obligations with respect to individuals who are Employees on and after January 1, 2014, and to transactions under the Excess Benefit Plan on and after January 1, 2014. The rights and benefits, if any, of individuals who are not Employees on or after January 1, 2014, shall be determined in accordance with the terms and provisions of the Excess Benefit Plan that was in effect on the date of their Severance from Employment, except as otherwise specifically provided herein or in a subsequent amendment.

ARTICLE II
CONSTRUCTION AND DEFINITIONS

Section 2.01 Construction and Governing Law.

(a) Subject to Subsection (b), the Construction and Governing Law provisions of Section 2.01 of the 401(a) Plan shall apply to this Excess Benefit Plan.

(b) In resolving any conflict between provisions of the Excess Benefit Plan and in resolving any other uncertainty as to the meaning or intention of any provision of the Excess Benefit Plan, the interpretation that causes (i) the Excess Benefit Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m), (ii) any 415(m) Trust to be exempt from tax under Code Sections 115 and 415(m), and (iii) the Excess Benefit Plan to comply with all applicable provisions of the 401(a) Plan and all applicable requirements of the Code and other applicable laws and rules, shall prevail over any different interpretation.

Section 2.02 Definitions. The definitions of the 401(a) Plan shall apply to the Excess Benefit Plan. In addition, when the initial letter of a word or phrase is capitalized herein but not defined in the 401(a) Plan, the meaning of such word or phrase shall be as follows:

(a) "Excess Benefit Plan" means the Excess Benefit Plan of the Nevada System of Higher Education, as amended from time to time.

(b) "Excess Contribution" means, with respect to a 415(m) Participant, the Contribution that would have been made for the 415(m) Participant to the 401(a) Plan but could not be made because of the application of Code Section 415(c).

(c) "415(m) Account" means the separate bookkeeping account maintained for each 415(m) Participant reflecting his or her interest under the Excess Benefit Plan attributable to Excess Contributions. Where the context so permits, "415(m) Account" also means the amount credited to such bookkeeping account.

(d) "415(m) Participant" means an Eligible Employee, former Eligible Employee, Eligible Discretionary Employee, or former Eligible Discretionary Employee who has an Account balance under this Excess Benefit Plan.

(e) "415(m) Trust" means the trust or trusts, if any, established to receive contributions under the Excess Benefit Plan, each such trust to be a grantor trust that is separate from the 401(a) Plan and the trust thereunder.

(f) "415(m) Trustee" means the entity or persons designated trustee of the 415(m) Trust or any successor trustees(s) of the 415(m) Trust.

ARTICLE III
ELIGIBILITY AND PARTICIPATION

Section 3.01 Participation. A Participant in the 401(a) Plan shall automatically participate in the Excess Benefit Plan for a Plan Year, if the Contributions that would otherwise be made on the Participant's behalf under the 401(a) Plan for such Plan Year are reduced to comply with the limitations of Code Section 415(c). The Administrator shall determine for each Plan Year which Participants in the 401(a) Plan are covered by this Excess Benefit Plan.

Section 3.02 Cessation of Participation. A Participant shall cease to be a Participant on the distribution of his or her entire 415(m) Account.

ARTICLE IV
CONTRIBUTIONS AND ACCOUNTS

Section 4.01 Excess Contributions.

(a) The Employer shall make an Excess Contribution for each 415(m) Participant determined eligible for the Plan Year pursuant to Article III equal to the Contributions that would have been made for the 415(m) Participant to the 401(a) Plan but that could not be made because of the application of Code Section 415(c). Any such Excess Contribution shall be made to the Excess Benefit Plan not later than the latest date on which contributions could be made to the 401(a) Plan for such Plan Year.

(b) No election is provided at any time to any 415(m) Participant, directly or indirectly, to defer compensation under this Excess Benefit Plan, and no employee pre-tax or after-tax contributions may be made to or under this Excess Benefit Plan at any time. In addition, there are no service purchases of any nature made to the 401(a) Plan or this Excess Benefit Plan.

Section 4.02 415(m) Accounts.

(a) The Vendor(s) shall establish and maintain adequate records to reflect the 415(m) Accounts of each 415(m) Participant. The 415(m) Account shall reflect the record of the 415(m) Participant's interest under this Excess Benefit Plan attributable to Excess Contributions made by the Employer and the earnings and losses thereon. The maintenance of individual accounts is for accounting purposes only, and a segregation of Excess Benefit Plan assets to each 415(m) Account shall not be required.

(b) Excess Contributions with respect to a 415(m) Participant for a Plan Year shall be allocated to the Participant's 415(m) Account as of the earlier of the last day of the Plan Year or such earlier date on which the Excess Contributions are made to the 415(m) Trust; provided, however, no earnings shall be credited with respect to such contributions until the date on which they are invested by the 415(m) Trustee.

Section 4.03 415(m) Participant Statements. The Vendor(s) shall provide to each 415(m) Participant a statement reflecting the value of his or her 415(m) Account as of the end of the Plan Year and as of such other dates as the Administrator may request in writing.

Section 4.04 Participant Directed Investments. Each 415(m) Participant's 415(m) Account shall be invested in the same manner, in the same Investment Options, as the 415(m) Participant elects for his or her Accounts under the 401(a) Plan. Neither the Board, Employer, nor Administrator shall have responsibility or liability for any investments, investment directions, or investment results of the 415(m) Participant.

Section 4.05 Value of 415(m) Account. The value of the 415(m) Account of a 415(m) Participant as of any valuation date is the value of the 415(m) Account balance as determined by the Vendor. The valuation date shall be the last day of the Plan Year and each other date designated by the Administrator or Vendor in a uniform and nondiscriminatory manner. All transactions and 415(m) Account records shall be based on fair market value.

Section 4.06 Expenses of Excess Benefit Plan. All reasonable expenses of administering the Excess Benefit Plan shall be charged against and paid from 415(m) Participants' 415(m) Accounts, unless paid by the Employer.

ARTICLE V **DISTRIBUTION OF ACCOUNTS**

Section 5.01 Default Distribution Provisions. If a 415(m) Participant incurs a Severance from Employment for any reason other than death, the 415(m) Participant shall receive his Vested 415(m) Account in a single cash lump sum payment. Distributions shall commence as soon as practicable, but not later than the sixtieth (60th) day following Severance from Employment.

Section 5.02 Distribution Upon 415(m) Participant's Death. If a 415(m) Participant dies before his or her entire Vested 415(m) Account has been distributed, his or her remaining Vested 415(m) Account shall be distributed to his or her Beneficiary as a single cash lump sum payment as soon as practicable, but not later than the sixtieth (60th) day following the 415(m) Participant's death.

ARTICLE VI **VESTING**

A 415(m) Participant is one hundred percent (100%) Vested in his or her 415(m) Account at all times.

ARTICLE VII **FUNDING**

Section 7.01 Funding.

(a) This Excess Benefit Plan shall be, and remain, unfunded, and the rights, if any, of any person to any benefits hereunder shall be those specified herein and in the 415(m) Trust. This Excess Benefit Plan constitutes an unsecured promise by the Employer to make benefit payments in the future, either from its general assets or through the 415(m) Trust.

(b) Under no circumstances shall Excess Contributions under this Excess Benefit Plan be part of or credited to the 401(a) Plan, and benefits under this Excess Benefit Plan shall be paid solely from the 415(m) Trust.

Section 7.02 415(m) Trust. The 415(m) Trust is established separate from the 401(a) Plan and its underlying trust to hold the Excess Contributions under this Excess Benefit Plan and the earnings thereon. The 415(m) Trust is maintained solely for the purpose of providing benefits under this Excess Benefit Plan and defraying the reasonable administrative costs of this Excess Benefit Plan and the 415(m) Trust. Contributions under this Excess Benefit Plan shall be held separate and apart from the funds of the 401(a) Plan and shall not be commingled with the assets thereof.

Section 7.03 415(m) Trust Assets. All assets of the 415(m) Trust, including all Excess Contributions under this Excess Benefit Plan, all property and rights acquired or purchased with such amounts, and all income attributable to such amounts shall be and remain the general, unpledged, unrestricted assets of the 415(m) Trust. The 415(m) Trust funds shall be held separate and apart from other funds of the Employer and shall be used exclusively for the uses and purposes of 415(m) Participants and general creditors as set forth herein. 415(m) Participants shall have no preferred claim on, or any beneficial interest in, any assets of the 415(m) Trust or the Employer. Any assets held by the 415(m) Trust shall be subject to the claims of the Employer's general creditors under federal and state law in the event of insolvency, to the extent of the Employer's undistributed contributions, if any.

Section 7.04 415(m) Trust Income. It is intended that income accruing to the 415(m) Trust shall constitute income derived from the exercise of an essential governmental function on which the 415(m) Trust shall be exempt from tax under Code Sections 115 and 415(m)(1).

ARTICLE VIII **ADMINISTRATION OF THE EXCESS BENEFIT PLAN**

Section 8.01 Authority of the Administrator. Except as expressly provided herein, the Administrator shall have the same rights, duties, and responsibilities with respect to this Excess Benefit Plan as it has with respect to the 401(a) Plan.

Section 8.02 Employment of Consultants. The Administrator may employ one (1) or more persons to render advice with regard to its responsibilities under the Excess Benefit Plan. The consultants, independent auditors, attorneys, and actuaries performing services for the 401(a) Plan may also perform services hereunder.

Section 8.03 Payment of Benefits. The Administrator, if in doubt concerning the correctness any benefit payment hereunder, may suspend payment until satisfied as to the correctness of such payment.

ARTICLE IX
CLAIMS PROCEDURES

If a 415(m) Participant makes a written claim for benefits under the Excess Benefit Plan to the Employer or Vendor, as applicable, and the written request is denied, the Employer or Vendor, as applicable, shall within a reasonable period of time provide a written denial to the 415(m) Participant. It shall include the specific reasons for denial, the provisions of the Excess Benefit Plan and/or Funding Vehicles on which the denial is based, and how to apply for a review of the denied claim. Where appropriate, it shall also include a description of any material which is needed to complete or perfect a claim and why such material is necessary. Within sixty (60) days after the 414(m) Participant receives notification of the denial, a 415(m) Participant may request in writing a review of a claim denied by the Employer or Vendor, as applicable, and review pertinent documents and submit issues and comments in writing to the Employer or Vendor, as applicable. The 415(m) Participant shall receive a written decision upon such request for review of a denied claim within a reasonable period of time following receipt of the request.

ARTICLE X
AMENDMENT AND TERMINATION

Section 10.01 Amendment and Termination. The Chancellor reserves the right amend, freeze, or terminate the Excess Benefit Plan, or to discontinue any further Excess Contributions to the Excess Benefit Plan, at any time. Notwithstanding the preceding, this Excess Benefit Plan shall terminate automatically on termination of the 401(a) Plan. Following such termination, all 415(m) Accounts shall be distributed in accordance with the applicable provisions hereof.

Section 10.02 Adverse Effects. Any amendment or termination of the Excess Benefit Plan cannot adversely affect the benefits accrued by 415(m) Participants prior to the date of amendment or termination. This Excess Benefit Plan may not be amended in a manner that violates any provision of the Code.

ARTICLE XI
MISCELLANEOUS

Section 11.01 Non-Alienation.

(a) A 415(m) Participant's 415(m) Account under the Excess Benefit Plan shall not be liable for any debt, liability, contract, engagement, or tort of the 415(m) Participant or his or her Beneficiary, nor subject to anticipation, sale, assignment, transfer, encumbrance, pledge, charge, attachment, garnishment, execution, alienation, or any other voluntarily or involuntarily alienation or other legal or equitable process, nor transferable by operation of law.

(b) Notwithstanding paragraph (a), the Excess Benefit Plan shall offset from the benefit otherwise payable to a 415(m) Participant or his or her Spouse such amounts as are permitted to be offset under a court order, civil judgment, or settlement agreement in accordance with Code Section 401(a)(13)(C).

Section 11.02 Limitation of Rights and Obligations. Neither the establishment nor maintenance of the Excess Benefit Plan, nor any amendment thereof, nor the purchase of any insurance contract, nor any act or omission under the Excess Benefit Plan or resulting from the operation of the Excess Benefit Plan shall be construed:

(a) as conferring upon any 415(m) Participant, Beneficiary or any other person a right or claim against the 415(m) Trust, Administrator, or Employer, except to the extent that such right or claim shall be specifically expressed and provided in the Excess Benefit Plan;

(b) as a contract or agreement between the Employer and any 415(m) Participant or other person; or

(c) as an agreement, consideration, or inducement of employment or as effecting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Employee to continue or terminate the employment relationship at any time.

Section 11.03 Federal and State Taxes. It is intended that Excess Contributions under the Excess Benefit Plan, plus any earnings thereunder, are excludable from gross income for federal and state income tax purposes until paid or made available to Participants or Beneficiaries. However, the Administrator does not guarantee that any particular federal or state income, payroll or other tax consequence will occur because of participation in this Excess Benefit Plan.

Section 11.04 Erroneous Payments. If the Administrator or Vendor makes any payment that according to the terms of the Excess Benefit Plan and the benefits provided hereunder should not have been made, the Administrator or Vendor may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Administrator or Vendor, from the person to whom it was made or from any other appropriate party.

Section 11.05 Indemnification. To the extent limited in accordance with Nevada Revised Statutes 41.0305 to 41.039, the Employer shall indemnify, defend, and hold harmless any members of the Board or any person to whom any power, authority or responsibility of the Employer is delegated pursuant to Section 14.03, except a Vendor or other service provider, from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, including attorney fees, arising either directly or indirectly from any act or failure to act by the Employer or any of its officers or employees, which may occur during or which may arise out of the operation or administration of the Plan. The Employer will assert the defense of sovereign immunity as appropriate in all cases, including malpractice and indemnity actions. The Employer's indemnity obligation for actions sounding in tort is limited in accordance with the provisions of Nevada Revised Statute 41.035 to \$100,000.00 per cause of action.

Section 11.06 Finality of Determination. All determinations with respect to crediting of service under the Excess Benefit Plan are made on the basis of the records of the Employer, and all determinations made are final and conclusive upon Employees, former Employees, Eligible Employees, former Eligible Employees, and all other persons claiming a benefit under the Excess Benefit Plan.

Section 11.07 Release. Any payment to a 415(m) Participant shall, to the extent thereof, be in full satisfaction of the claim of the Participant being paid thereby, and the Administrator or 415(m) Trustee may condition payment thereof on the delivery by the 415(m) Participant of a duly executed receipt and release in such form as may be determined by the Administrator.

Section 11.08 Severability. If any provision of this Excess Benefit Plan shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Excess Benefit Plan shall continue to be fully effective.

Section 11.09 Counterparts. The Excess Benefit Plan may be executed in any number of counterparts, each of which shall be deemed to be an original. All counterparts shall constitute but one and the same instrument and shall be evidenced by any one counterpart.

NEVADA SYSTEM OF HIGHER EDUCATION

By:  _____

Printed Name: **DANIEL J. KLAICH** _____

Title: **CHANCELLOR** _____

Date: **12/16/14** _____

**FIRST AMENDMENT TO THE
EXCESS BENEFIT PLAN OF THE
NEVADA SYSTEM OF HIGHER EDUCATION
AS RESTATED JANUARY 1, 2014**

The Excess Benefit Plan of the Nevada System of Higher Education ("Plan"), as restated effective January 1, 2014, is amended as follows, pursuant to Article X of the Plan, effective January 1, 2016.

1. Section 5.02 of the Plan shall be and read as follows:

Section 5.02 Distribution Upon 415(m) Participant's Death. If a 415(m) Participant dies before his or her entire Vested 415(m) Account has been distributed, his or her remaining Vested 415(m) Account shall be distributed to his or her Beneficiary as a single cash lump sum payment as soon as practicable following the 415(m) Participant's death.

2. In all other respects, the Plan shall be and remain unchanged.

IN WITNESS WHEREOF, the Nevada System of Higher Education has caused this First

Amendment to be duly executed on September 7, 2016.



Chancellor
Plan Administrator

Lanette E. Williams
9-7-16

Witness
