

**UNIVERSITY OF NEBRASKA
DEFERRED COMPENSATION AGREEMENT**

This DEFERRED COMPENSATION AGREEMENT (the "Agreement"), effective as of February 1, 2014, is made by and between **THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**, a body corporate under the Constitution and statutes of the State of Nebraska (the "Board" or "University"), and **JEFFREY P. GOLD, M. D.** ("Chancellor Gold").

WITNESSETH

WHEREAS, the University is an organization described in Section 501(c)(3) of the Internal Revenue Code ("Code") and, as such, is organized and operated exclusively for charitable and educational purposes; and

WHEREAS, the Board has authorized a deferred compensation program pursuant to Section 457(f) of the Code, to be funded by the University of Nebraska Foundation for the current Chancellors and future Chancellors of the University; and

WHEREAS, Chancellor Gold is being hired by the Board to serve as Chancellor of the University of Nebraska Medical Center ("Chancellor") on February 1, 2014; and

WHEREAS, the University is unable to provide compensation on a qualitative and comparable basis to Chancellor Gold under its current base compensation policies; and

WHEREAS, the University would suffer loss if Chancellor Gold were to accept another offer of employment, and it is thus ordinary, necessary and reasonable to provide Chancellor Gold with additional compensation on a deferred basis to induce him to serve and continue to serve as Chancellor; and

WHEREAS, the parties have entered into an agreement to provide Chancellor Gold with certain deferred compensation benefits, as set forth herein, that shall be in addition to his current compensation and any future increase thereof for merit or cost of living.

NOW, THEREFORE, the University and Chancellor Gold hereby agree as follows:

Section 1. Credits to Account. The University shall, during the month of February 2014, credit to a separate account owned by the University, entitled the "Chancellor Gold Deferred Compensation Account" (the "Account"), 11.5% of Chancellor Gold's annual base salary as Chancellor in effect on February 1 of such

Contract Year (the "Initial Credit Amount"), which amount shall be attributable to services to be performed by Chancellor Gold as Chancellor beginning on February 1, 2014 and ending January 31, 2015. For purposes of this Agreement, "Contract Year" shall mean February 1 to January 31. For each subsequent Contract Year, if Chancellor Gold continues to serve as Chancellor as of February 1 of such Contract Year, then the University shall, during the month of February of such Contract Year, credit 11.5% of Chancellor Gold's annual base salary as Chancellor in effect on February 1 of such Contract Year (the "Annual Credit Amount") to the Account (subject to the termination provision in Section 3(c) herein). Each credit of the Annual Credit Amount to the Account shall be attributable to services to be performed by Chancellor Gold as Chancellor for the Contract Year in which the credit is made. Amounts credited to the Account shall be invested by an investment manager as selected by the University from time to time during the existence of the Account. The Account shall be adjusted from time to time, not less than annually, to reflect deemed income received or accrued and deemed gains or losses, if any, realized from investing amounts credited to the Account, and for any investment management fees attributed to such investment. Sums so accumulated or invested shall be held exclusively by and for the benefit of the University, shall be a part of the general assets of the University, subject to the claims of its creditors, and Chancellor Gold shall have no current or future enforceable interest therein except as provided in this Agreement.

Section 2. Funding Contingencies. The obligation of the University to credit funds to the Account each Contract Year shall be subject to the following contingencies:

(a) **Termination of Employment.** If the employment of Chancellor Gold as Chancellor is terminated, whether voluntarily or involuntarily, while this Agreement is in effect, then the University shall credit no additional sums to the Account on and after the date of such termination, other than investment earnings or gains earned through the date of such termination. If the termination is voluntary or involuntary for cause, the University shall retain all of the assets credited to the Account and Chancellor Gold shall have no further claim to any of the assets credited to the Account or the earnings thereon. If the termination is involuntary not for cause, the Account shall be distributed to Chancellor Gold as provided in Section 3(c) herein.

"Termination of Employment" or "Terminates Employment" means the termination of Chancellor Gold's employment with the University for reasons other than death or Disability. Whether a Termination of Employment takes place is determined based on the facts and circumstances surrounding the termination of Chancellor Gold's employment and whether the University and Chancellor Gold intended for Chancellor Gold to provide significant services for the University

following such termination. A termination of employment will not be considered a Termination of Employment if Chancellor Gold continues to provide services for the University (whether as an employee or independent contractor) at an annual rate that is twenty percent (20%) or more of the services rendered, on average, during the immediately preceding three full calendar years of employment (or, if employed less than three years, such lesser period).

Chancellor Gold's employment relationship will be treated as continuing intact while Chancellor Gold is on military leave, sick leave or other bona fide leave of absence if the period of such leave of absence does not exceed six (6) months, or if longer, so long as Chancellor Gold's right to reemployment with the University is provided either by statute or by contract. If the period of leave exceeds six (6) months and there is no right to reemployment, a Termination of Employment will be deemed to have occurred as of the first date immediately following such six (6) month period.

(b) Disability. If Chancellor Gold shall become disabled during the term of this Agreement to an extent that he is no longer able to perform his duties as Chancellor, no further sums shall be credited to the Account following the date of termination as a result of disability other than investment earnings or gains earned through the date of such termination, and the Account shall be distributed to Chancellor Gold as provided in Section 3(d) herein.

(c) Death. If Chancellor Gold shall die during the term of this Agreement, no further sums shall be credited to the Account following Chancellor Gold's date of death other than investment earnings or gains earned through the date of such termination, and the Account shall be distributed to the personal representative of Chancellor Gold's estate as provided in Section 3(e) herein.

Section 3. Vesting, Distribution. The Account shall become vested, and shall be distributed to Chancellor Gold, in the following manner:

(a) Vesting/Distribution at End of Third Contract Year of Service. If Chancellor Gold shall continue as Chancellor through January 31, 2017, all assets credited to the Account by the University through January 31, 2017, including all investment earnings attributed on the books of the University thereto through such date, shall vest and shall be distributed, less applicable withholding required by law, to Chancellor Gold in a lump sum on or before February 28, 2017.

(b) Vesting/Distributions After Fifth Contract Year of Service. If Chancellor Gold shall continue as Chancellor for a period of two additional full

Contract Years beyond February 1, 2017, the assets credited to the Account by the University during such period, including all investment earnings attributed on the books of the University thereto for such period, shall vest as of February 1 following the end of such second Contract Year, and shall be distributed (less required withholding) to Chancellor Gold in a lump sum on or before February 28 following the second such Contract Year. For example, if Chancellor Gold's service as Chancellor extends through February 1, 2019, the assets so credited to the Account through January 31, 2019, including all investment earnings attributed on the books of the University thereto, shall vest on February 1, 2019, and shall be distributed (less required withholding) to Chancellor Gold in a lump sum on or before February 28, 2019. This two-year credit/vesting program shall continue for as long as Chancellor Gold shall continue to serve as Chancellor, unless terminated by the Board upon written notice to Chancellor Gold not less than sixty (60) days prior to the beginning of the first Contract Year of any such two-year credit/vesting period.

(c) Vesting/Distribution Following Involuntary Termination Not For Cause. If the employment of Chancellor Gold is involuntarily terminated not for cause while this Agreement is in effect, all of the assets credited to the Account at the time of such termination, including all investment earnings attributed on the books of the University thereto, shall be distributed (less required withholding) to Chancellor Gold in a lump sum within thirty (30) days following such date of termination.

(d) Vesting/Distribution Following Disability. In the event that Chancellor Gold becomes disabled to an extent that he is no longer able to perform his duties as Chancellor, all of the assets credited to the Account shall vest. If Chancellor Gold is deemed Disabled, as defined in the following sentence, the assets credited to the Account, including all investment earnings attributed on the books of the University thereto, will be distributed (less required withholding) to Chancellor Gold in a lump sum within thirty (30) days following the date of Disability determination. Chancellor Gold will be deemed Disabled if Chancellor Gold: (i) is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months; or (ii) is, by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than twelve (12) months, receiving income replacement benefits for a period of not less than three (3) months under an accident and health plan covering employees of the University. Medical determination of Disability may be made by either the Social Security

Administration or the University. Chancellor Gold must submit proof to the acceptable to the Plan Administrator of Disability, including, but not limited to, the Social Security Administration's determination.

(e) Vesting/Distribution Following Death. In the event that Chancellor Gold shall die while this Agreement is in effect, all of the assets credited to the Account at the time of death, including all investment earnings attributed on the books of the University thereto, shall vest and be distributed (less required withholding) to the personal representative of Chancellor Gold's estate in a lump sum within thirty (30) days following Chancellor Gold's date of death.

Section 4. Conditions to Distributions. Any distributions to Chancellor Gold from the Account are subject to, and contingent upon, the non-occurrence of the following acts or omissions, as determined in good faith by the Board, to wit:

(a) Chancellor Gold shall commit any substantial violation of the rules and regulations of the Board pertaining to his duties as Chancellor of the University.

(b) Chancellor Gold shall commit any dishonest or fraudulent act or any misappropriation of funds of the University.

(c) Chancellor Gold shall attempt to assign or encumber any benefits or other payments that he may be entitled to receive hereunder prior to the time of actual distribution and receipt.

(d) Chancellor Gold shall be a party to or convicted of any act involving moral turpitude of sufficient magnitude to reflect discredit upon himself and the University.

In the event that Chancellor Gold engages in any one or more of the above specified acts or omissions, then he shall not, in any event, be entitled to receive any benefits from the Account or otherwise, pursuant to this Agreement, and the University shall retain all of the assets therein. Chancellor Gold shall retain all assets previously distributed from the Account.

Section 5. No Present Rights. Neither Chancellor Gold, his personal representative, heirs, legatees, distributees, or any other person claiming under him shall have any right to commute, encumber, or otherwise dispose of any right to receive payments hereunder, all of which payments and the rights thereto are expressly declared to be non-assignable. In addition, such rights as herein created shall not be subject to

execution, attachment, or similar process. Any attempt to assign, transfer, pledge, or otherwise dispose of any such right, interest, or benefit contrary to the provisions of this Agreement, or the levy of any attachment or similar process thereon, shall be null and void and without effect.

Section 6. No Discretionary Powers. Chancellor Gold shall take no part whatsoever in the exercise of discretionary powers that are retained by the University pursuant to this Agreement. The University shall incur no liability to Chancellor Gold for the manner or method in which the assets of the Account are managed or invested.

Section 7. Intent of Parties. Anything to the contrary notwithstanding, it is the intention of the parties to this Agreement that the Agreement shall create a contractual obligation to make payments as provided herein. The parties do not intend, and this document should not be construed, to establish any trust for the benefit of Chancellor Gold or to grant him any beneficial interest in the amounts credited to the separate Account established herein until he is entitled to receive payment thereof, nor shall it be construed as an election on the part of Chancellor Gold to defer any current compensation to which he might be otherwise entitled by reason of his current employment by the University.

Section 8. Miscellaneous Provisions.

(a) Entire Agreement, Amendment. This document constitutes the entire agreement between the parties with respect to the subject matter addressed herein and may not be modified, amended or terminated except by a written agreement specifically referring to this Agreement signed by the parties hereto.

(b) Captions. The section headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of said section.

(c) Binding Effect. Except as otherwise expressly provided herein, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and heirs.

(d) Nebraska Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Nebraska.

(e) No Acceleration or Delay of Distributions. The time or manner of distribution of amounts deferred under this Agreement may not be changed by

amendment or otherwise except in conformity with the requirements of Code Section 409A.

(f) Taxes on Distributions. The University or its paying agent shall withhold any taxes that are required to be withheld from the benefits provided under this Agreement. Chancellor Gold acknowledges that the University's sole liability regarding taxes is to forward any amounts withheld to the appropriate taxing authority(ies). Further, the University or the paying agent shall satisfy all applicable reporting requirements, including those under Section 409A of the Code and regulations thereunder.

(g) Administration of Agreement. This Agreement shall at all times be administered and the provisions of this Agreement shall be interpreted consistent with the requirements of Section 409A and Section 457 of the Code and any and all regulations thereunder, including such regulations as may be promulgated after the date of this Agreement.

(h) Distributions Upon Income Inclusion Under Code Section 457(f). Notwithstanding any provision in this Agreement to the contrary, upon the occurrence of any event that results in Chancellor Gold becoming vested in whole or in part in amounts credited to the Account, as reasonably determined by the Board, the University will permit a lump sum distribution of an amount to pay Federal, state and local income taxes due upon the vesting event, provided that the amount of such payment is not more than an amount equal to the Federal, state, and local income tax withholding that would have been remitted by the University if there had been a payment of wages equal to the income includible by Chancellor Gold under Code Section 457(f) at the time of the vesting.

(i) Distribution upon Income Inclusion under Code Section 409A Failure. If this Agreement fails to meet the requirements of Code Section 409A and as a result, some portion of the Chancellor Gold's benefit is required to be included in his income, the University will pay Chancellor Gold the amount required to be included in his income as a result of such failure and noncompliance and the balance in the Account will be reduced accordingly. If the failure to meet the requirements of Code Section 409A is solely caused by an act or omission by the University (without the participation therein by Chancellor Gold) occurring after the date of this agreement, the University agrees to pay Chancellor Gold an amount (the "409A Penalty Tax Reimbursement") that, after withholding for applicable federal and state income taxes, is needed for Chancellor Gold to pay the interest and additional tax described in Code Section 409A(a)(1)(B). The 409A Penalty Tax Reimbursement will not include the ordinary federal and state income


tax Chancellor Gold owes due to the inclusion in his income of amounts payable to him pursuant to this Agreement. Chancellor Gold shall notify the General Counsel of the University in writing within 30 days following the date that he has remitted the interest and additional tax described in Code Section 409A(a)(1)(B), showing the amount thereof. If the University is legally obligated to pay the 409A Penalty Tax Reimbursement, the University will pay the 409A Penalty Tax Reimbursement within 60 days following its receipt of such notification.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, and which together shall constitute a single document.


IN WITNESS WHEREOF, Chancellor Gold and the University have executed this Agreement on the respective dates set forth below effective on February 1, 2014.

**The Board of Regents of the
University of Nebraska**

12.12.13
Date

By: 
David E. Lechner, Vice President for
Business and Finance

7 December, 2013
Date


Jeffrey P. Gold, M.D.

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