UNIVERSITY OF NEBRASKA
DEFERRED COMPENSATION AGREEMENT

This DEFERRED COMPENSATION AGREEMENT (the "Agreement"), effective as of January 1, 2020, 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 **WALTER E. CARTER, JR.** ("President Carter").

RECITALS

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 Presidents of the University; and

WHEREAS, President Carter is being hired by the Board to serve as President of the University of Nebraska ("President") on January 1, 2020; and

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

WHEREAS, the parties have entered into an agreement to provide President Carter 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 President Carter hereby agree as follows:

Section 1. <u>Credits to Account</u>. The University shall, during the month of January 2020, credit via cash deposit to a separate account owned by the University, entitled the "President Carter Deferred Compensation Account" (the "Account"), 11.5 percent of President Carter's first year base salary as President in effect on January 1, 2020 (the "Initial Credit Amount"), which amount shall be attributable to services to be performed by President Carter as President during the calendar year beginning on January 1, 2020 and ending December 31, 2020. For purposes of this Agreement, "Calendar Year" shall mean January 1 to December 31. For each subsequent Calendar Year, if President Carter continues to serve as President as of January 1 of such Calendar Year, then the University shall, during the month of January of such Calendar Year, credit 11.5 percent of President Carter's annual base salary as President in effect on January 1 of such Calendar 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 President Carter as President for the Calendar 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 President Carter 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 Calendar Year shall be subject to the following contingencies:

(a) Termination of Employment. If the employment of President Carter as President 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 President Carter 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 President Carter as provided in Section 3(d) herein.

"Termination of Employment" or "Terminates Employment" means the termination of President Carter'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 President Carter's employment and whether the University and President Carter intended for President Carter to provide significant services for the University following such termination. A termination of employment will not be considered a Termination of Employment if President Carter continues to provide services for the University (whether as an employee or independent contractor) at an annual rate that is 20 percent 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).

President Carter's employment relationship will be treated as continuing intact while President Carter is on military leave, sick leave or other bona fide leave of absence if the period of such leave of absence does not exceed 6 months, or if longer, so long as President Carter's right to reemployment with the University is provided either by statute or by contract. If the period of leave exceeds 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 6-month period.

(b) Disability. If President Carter shall become disabled during the term of this Agreement to an extent that he is no longer able to perform his duties as President, 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 President Carter as provided in Section 3(e) herein.

(c) Death. If President Carter shall die during the term of this Agreement, no further sums shall be credited to the Account following President Carter' 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 President Carter's estate as provided in Section 3(f) herein.

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

(a) Vesting/Distribution at End of Third Year of Service. If President Carter shall continue as President through December 31, 2022, all assets credited to the Account by the University through December 31, 2022, including 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 President Carter in a lump sum on or before January 31, 2023.

(b) Vesting/Distributions At Five Years of Service. If President Carter shall continue as President for a period of two additional full Calendar Years through December 31, 2024, all remaining 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 December 31 of such second Calendar Year, and shall be distributed (less required withholding) to

President Carter in a lump sum on or before January 31, 2025 following the second such Calendar Year.

(c) Vesting/Distributions After Fifth Year of Service. If President Carter shall continue as President for a period of two additional Calendar Years from and after January 1, 2025, the assets credited to the Account by the University during such period, including all investment earnings attributed on the books and records of the University thereto for such period, shall vest as of December 31 at the end of such second Calendar Year, and shall be distributed (less required withholding) in a lump sum on or before January 31 following such second Calendar Year. For example, if President Carter's service as President extends through December 31, 2026, the assets so credited to the Account through December 31, 2026, including all investment earnings attributed on the books of the University thereto, shall vest on December 31, 2026, and shall be distributed (less required withholding) to President Carter in a lump sum on or before January 31, 2027. This two-year credit/vesting program shall continue for as long as President Carter shall continue to serve as President, unless terminated by the Board upon written notice to President Carter not less than 60 days prior to the beginning of the first Calendar Year of any such two-year credit/vesting period.

(d) Vesting/Distribution Following Involuntary Termination Not For Cause. If the employment of President Carter 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 President Carter in a lump sum within 30 days following such date of termination.

(e) Vesting/Distribution Following Disability. In the event that President Carter becomes disabled to an extent that he is no longer able to perform his duties as President, all of the assets credited to the Account shall vest. If President Carter 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 President Carter in a lump sum within 30 days following the date of Disability determination. President Carter will be deemed Disabled if President Carter: (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 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 12 months, receiving income replacement benefits for a period of not less than three 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. President Carter must submit proof acceptable to the Board of Disability, including, but not limited to, the Social Security Administration's determination.

(f) Vesting/Distribution Following Death. In the event that President Carter 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 President Carter's estate in a lump sum within 30 days following President Carter's date of death.

(g) Vesting/Distribution Following Non-Renewal of Contract. If the employment of President Carter is terminated based upon the non-renewal of the Contract for reasons other than those described in Section 4(a)-(e) following the initial 3 year vesting period, all of the assets credited to the Account at the time of such termination shall be distributed (less required withholding) to President Carter in a lump sum within 30 days following such date of termination.

Section 4. Conditions to Distributions. Any distributions to President Carter 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) President Carter shall commit any substantial or material violation of the directives, bylaws, policies, rules or regulations of the Board pertaining to his duties as President of the University.

(b) President Carter shall commit any substantial violation of any rule or regulation of the National Collegiate Athletic Association (or any successor organization) that is applicable to the University and its intercollegiate athletic programs.

(c) President Carter shall commit any dishonest or fraudulent act or any misappropriation of funds of the University.

(d) President Carter 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.

(e) President Carter shall be a party to or convicted of any act involving moral turpitude or detrimental conduct of sufficient magnitude to reflect discredit upon himself or the University.

In the event that President Carter 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. President Carter shall retain all assets previously distributed from the Account.

Section 5. No Present Rights. Neither President Carter, 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. President Carter 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 President Carter 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 President Carter 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 President Carter 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. President Carter 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 President Carter 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 President Carter 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 President Carter's benefit is required to be included in his income, the University will pay President Carter 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 President Carter) occurring after the date of this agreement, the University agrees to pay President Carter an amount (the "409A Penalty Tax Reimbursement") that, after withholding for applicable federal and state income taxes, is needed for President Carter 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 President Carter owes due to the inclusion in his income of amounts payable to him pursuant to this Agreement. President Carter 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, President Carter and the University have executed this Agreement on the respective dates set forth below to be effective on January 1, 2020.

The Board of Regents of the University of Nebraska

By: [redacted]

Chris Kabourek, Vice President for Business and Finance

____
Date

[redacted]

Walter E. Carter, Jr.

____
Date