UNIVERSITY OF NEBRASKA
DEFERRED COMPENSATION AGREEMENT

This DEFERRED COMPENSATION AGREEMENT (the "Agreement"), effective as of May 15, 2024, 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"), by and on behalf of the University of Nebraska-Lincoln Department of Intercollegiate Athletics, and **JOHN G. COOK** ("Mr. Cook"), collectively referred to as the Parties.

RECITALS

A. 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

B. Mr. Cook has served as the Head Coach of the Volleyball Program (the "Program") since 2000; and

C. The University would suffer loss if Mr. Cook were to accept another offer of employment, and it is thus ordinary, necessary and reasonable to provide Mr. Cook with additional compensation on a deferred basis to induce him to serve and continue to serve as the Head Coach of the Program; and

D. The Parties entered into a certain Second Amended and Restated Employment Agreement with an effective date of May 15, 2024 (the "Contract of Employment") that provides for a deferred compensation arrangement pursuant to Code Section 457(f), to be funded by the University of Nebraska Foundation; and

E. The parties have entered into an agreement to provide Mr. Cook 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 Mr. Cook hereby agree as follows:

Section 1. <u>Credits to Account</u>. The University shall, during the month of July, 2024, credit to a separate account, entitled the "John Cook Deferred Compensation Account" (the "Account"), one million dollars ($1,000,000) (the "Initial Credit Amount"), which amount shall be attributable to services to be performed by Mr. Cook as Head Coach of the Program during the calendar year beginning on January 1, 2024 and ending December 31, 2024.

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 Mr. Cook 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 shall be subject to the following contingencies:

(a) Termination of Employment. If the employment of Mr. Cook as Head Coach of the Program is terminated 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.

"Termination of Employment" or "Terminates Employment" means the termination of Mr. Cook's employment with the University, including retirement. Whether a Termination of Employment takes place is determined based on the facts and circumstances surrounding the termination of Mr. Cook's employment and whether the University and Mr. Cook reasonably anticipate that no further services would be performed after a certain date or that the level of bona fide services Mr. Cook would perform after such date (whether as an employee or independent contractor) would permanently decrease to not more than 20 percent of the average level of bona fide services performed over the immediately preceding 36 month period of employment. Mr. Cook's employment relationship will be treated as continuing intact while Mr. Cook 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 Mr. Cook'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. This Section 2(a) will be interpreted according to Section 1.409A-1(h) of the Treasury Regulations.

(b) Disability. If Mr. Cook shall become Disabled during the term of this Agreement to an extent that he is no longer able to perform his duties as Head Coach of the Program, no sums shall be credited to the Account following the date of Termination of Employment as a result of Disability other than investment earnings or gains earned through the date of such termination. "Disability" or "Disabled" shall mean that Mr. Cook (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. This Section 2(b) shall be interpreted according to Section 1.409A-3(i)(4) of the Treasury Regulations.

(c) Death. If Mr. Cook shall die during the term of this Agreement, no sums shall be credited to the Account following Mr. Cook's date of death other than investment earnings or gains earned through the date of such termination.

Section 3. Vesting. Amounts credited to the Account, and the investment earnings or gains thereon, shall become vested upon the earliest of subsections (a), (b), or (c):

(a) Generally. If Mr. Cook shall continue his employment as Head Coach of the Program through December 31, 2024, all assets credited to the Account by the University through December 31, 2024, including all investment earnings attributed to the Account shall vest on December 31, 2024.

(b) Death. The Account shall vest if Mr. Cook dies prior to December 31, 2024.

(c) Disability. The Account shall vest if Mr. Cook has a Termination of Employment due to a Disability prior to December 31, 2024.

Section 4. Forfeiture and Conditions to Distributions.

(a) Forfeiture of Unvested Account. As of the date of Mr. Cook's Termination of Employment, Mr. Cook shall forfeit any unvested amounts credited to the Account.

(b) Account Forfeiture. Mr. Cook shall forfeit any and all payments from the Account and shall reimburse the University an amount equal to all payments which Mr. Cook has previously received from the University under this Agreement in the following situations:

(i) If Mr. Cook Terminates Employment as Head Coach of the Program prior to January 31, 2029 and accepts subsequent employment as a coach with a member school of the National Collegiate Athletic Association (NCAA) or a successor organization; or

(ii) If Mr. Cook's employment is terminated for cause by the University pursuant to the terms of the University of Nebraska-Lincoln Department of Intercollegiate Athletics Policy on Standards of Professional Performance For Athletic Staff and Rules of Procedure for Disciplinary Actions as set out in Appendix C of the Contract of Employment and as determined by the Athletic Director; or, if subsequent to Mr. Cook's Termination of Employment for any reason, Mr. Cook's employment could have been terminated for cause by the University pursuant to the terms of the University of Nebraska-Lincoln Department of Intercollegiate Athletics Policy on Standards of Professional Performance For Athletic Staff and Rules of Procedure for Disciplinary Actions as set out in Appendix C of the Contract of Employment and as determined by the Athletic Director.

In the event that Mr. Cook 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.

Section 5. Payment Schedule. Subject to the withholding of taxes described in Section 9(g), the University shall pay the amounts credited to the Account as set out in this Section.

(a) Initial Payment. On January 31, 2025, the University will make a payment to Mr. Cook from the vested Account in an amount equal to the Federal, state and local income taxes due pursuant to the vesting of the Account under Section 3(a) and Code Section 457(f).

(b) Second Payment. On the earlier of (i) January 31, 2029 or (ii) thirty days following the date Mr. Cook has a Termination of Employment, the University shall make a payment equal to the remaining vested amounts of the Account to Mr. Cook.

(c) Disability. In the event that Mr. Cook becomes Disabled, no further benefit payments pursuant to Sections 5(a) or 5(b), if applicable, will be made following the date Mr. Cook becomes Disabled. The University will pay Mr. Cook, within 60 days following the date Mr. Cook becomes Disabled, a lump sum payment of the remaining, vested Account balance as of the date Mr. Cook's becomes Disabled, regardless of whether the Mr. Cook dies following the date Mr. Cook becomes Disabled.

(d) Death. In the event that Mr. Cook dies, no further benefit payments pursuant to Sections 5(a) or 5(b), if applicable, will be made following the date of Mr. Cook's death. The University will pay the personal representative of Mr. Cook's estate, within 60 days following the date of death, a lump sum payment of the remaining, vested Account balance as of the date of his death.

Section 6. No Present Rights. Neither Mr. Cook, 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 7. No Discretionary Powers. Mr. Cook 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 Mr. Cook for the manner or method in which the assets of the Account are managed or invested.

Section 8. 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 Mr. Cook 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 Mr. Cook to defer any current compensation to which he might be otherwise entitled by reason of his current employment by the University.

Section 9. Miscellaneous Provisions.

(a) Recitals. The recitals set forth above are hereby incorporated herein and confirmed by the parties hereto in their entirety.

(b) 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.

(c) 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.

(d) 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.

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

(f) 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.

(g) 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. Mr. Cook 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 Code Section 409A and regulations thereunder.

(h) 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 Code Section 409A and Section 457 and any and all regulations thereunder, including such regulations as may be promulgated after the date of this Agreement.

(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 Mr. Cook's benefit is required to be included in his income, the University will pay Mr. Cook 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.

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

[Remainder of page intentionally left blank; signature page immediately following.]

JOHN G. COOK REPRESENTS AND WARRANTS THAT HE HAS THOROUGHLY READ AND CONSIDERED ALL ASPECTS OF THIS AGREEMENT, THAT HE UNDERSTANDS ALL PROVISIONS OF THIS AGREEMENT, THAT HE HAD AN OPPORTUNITY TO CONSULT WITH HIS ATTORNEY THROUGHOUT THIS PROCESS, AND THAT HE IS VOLUNTARILY ENTERING INTO THIS AGREEMENT WITHOUT DURESS OR COERCION OF ANY KIND.

In witness of this Agreement, both Mr. Cook and authorized representatives of the University have executed the Agreement on the dates indicated below.

JOHN G. COOK

By [redacted]
John G. Cook Date

THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA

By [redacted]
Chris Kabourek Date
Interim President

APPROVED:

By [redacted]
Troy Dannen Date
Director of Athletics

By [redacted]
Seth Dorsey Date
Deputy AD – Internal Operations/CFO

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