

## **ADDENDUM RETENTION BONUS**

Through this Addendum, the Parties, **The Board of Regents of the University of Nebraska**, a public body corporate, by and on behalf of the University of Nebraska-Lincoln (“University” or “UNL”), and **John G. Cook** (“Coach Cook”), an individual, hereby amend and modify the provisions of Coach Cook’s current employment contract with the University.

### **Recitals**

A. The University, through its Department of Intercollegiate Athletics, currently employs Coach Cook as the head coach of its women’s volleyball team pursuant to an employment contract that continues through January 31, 2024 (“Contract”).

B. The Parties now want to modify that Contract in the manner set forth within this Addendum.

### **Terms**

In consideration of the mutual promises and covenants set forth below and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree to amend and modify the provisions of Coach Cook’s Contract as follows:

1. **Retention Bonus.** If Coach Cook should remain employed as the head coach for the University’s women’s volleyball team through December 31, 2022 (hereinafter referred to as the “Vesting Date”), the University shall pay or cause to be paid to Coach Cook a lump sum retention bonus in the amount of seven hundred fifty thousand dollars (\$750,000.00). This bonus is in addition to the regular annual compensation owed to Coach Cook under the terms of his Contract with the University.

2. **Payment of the Retention Bonus.** If Coach Cook remains employed in his current position with the University through to the Vesting Date, he shall be paid the full amount of the retention bonus referenced above on January 31, 2023. If he should, however, (a) die, (b) become permanently disabled, or (c) be involuntarily terminated by the University for any reason other than for cause as defined within the terms of his Contract with the University, prior to the Vesting Date, Coach Cook or his estate shall be paid a prorated share of the retention bonus. This prorated share will be based on a percentage of the total retention bonus that is calculated by dividing the number of full months that Coach Cook remained in his position as head coach before his employment ended by the number of months that he was expected to remain employed as the head coach during the time period between the date that this Addendum is fully executed and the Vesting Date. The University will pay or cause this prorated share to be paid, less any required withholdings, within thirty (30) calendar days (a) following Coach Cook’s death to the personal representative of his estate, (b) following a determination by the UNL’s Chancellor that Coach Cook is permanently disabled, or (c) following the University’s involuntary termination of Coach Cook’s employment for any reason other than for cause. Neither Coach Cook nor his estate shall be entitled to receive any further retention compensation from the University following the payment of this prorated share. For the purposes of this Addendum, Coach Cook shall be deemed to be “permanently disabled” if he is unable to engage in any substantial gainful work activity due to a medically determinable physical or mental impairment that is expected to result in his death or continue for a period of not less than twelve (12) months. Coach Cook will be responsible for providing documentation deemed suitable by the UNL Chancellor for establishing any claimed permanent disability, such as without limitation any pertinent

medical records or any disability determination rendered by the United States Social Security Administration. Notwithstanding the foregoing, Coach Cook shall be entitled to deliver an assignment to the University which assigns payment of the prorated portion of the retention bonus, in the event of his death, to the trustee of a revocable trust established by him for estate planning purposes.

3. **Forfeiture of the Retention Bonus.** If Coach Cook's employment as the head coach should end prior to the Vesting Date, whether voluntarily or involuntarily, for any reason other than one of those specified in Paragraph 2 above, Coach Cook shall forfeit all rights that he may have to receive the retention bonus referenced in this Addendum. Circumstances giving rise to Coach Cook's forfeiture of the retention bonus shall include, without limitation, his voluntary resignation, his involuntary termination for cause as defined within his Contract with the University, or any leave of absence from his duties as head coach that exceeds six (6) calendar months in duration. Coach Cook also shall forfeit any right to a retention bonus if he is found in good faith by the UNL Chancellor to have committed (a) any substantial violation of the University's bylaws, policies, rules, regulations or practices, or any lawful directive of the University's President, the UNL Chancellor or the UNL Director of Athletics, (b) any substantial violation of any applicable rules or regulations imposed by the National Collegiate Athletic Association, (c) any dishonest or fraudulent act or any act involving the misappropriation of University funds or property, or (d) any act of moral turpitude that discredits or harms the reputation or status of Coach Cook, the University, the Department of Intercollegiate Athletics, or the women's volleyball program. Any violation committed by a subordinate or a student associated with or involved in the women's volleyball program will not be attributable to Coach Cook, unless the UNL Chancellor finds in good faith that Coach Cook participated in the violation or failed to act appropriately upon learning of the violation.

4. **Tax Implications.** The Parties intend for this Addendum to be construed, and for the retention bonus to be paid to Coach Cook, in a manner that adheres to and complies with the requirements imposed under Sections 409A and 457 of the Internal Revenue Code and all corresponding regulations. Accordingly, this Addendum should not be construed as an election by Coach Cook to defer any compensation to which he may be or is already entitled through his current employment with the University. The Parties do not intend for Coach Cook to presently hold any vested rights in the retention bonus, to have any ability to assign or dispose of any interest in that bonus, or to possess any discretion with regard to the distribution of that bonus. The Parties agree that Coach Cook's right to receive the retention bonus is conditioned upon his future performance of substantial services on behalf of the University and is subject to forfeiture if he does not perform those services. The Parties further agree that the retention bonus shall be paid only at a specified time and that the form and timing of the payment of that bonus may not be accelerated, delayed or otherwise modified, except as otherwise provided for in Code Section 409A. Because the payment of the retention bonus constitutes income to Coach Cook, the University shall withhold all necessary deductions from that payment. Coach Cook acknowledges and agrees that he shall be solely liable for any tax consequences arising out of the payment of the retention bonus to him and that the University's only responsibility is to report and forward any withheld amounts to the appropriate taxing authorities.

5. **Contractual Provisions.** This Addendum creates certain contractual obligations for the payment of a retention bonus under specified circumstances and conditions. The Addendum is not intended, and therefore should not be construed, to establish any trust for the benefit of Coach Cook or to grant him any right to or interest in any separate account that may be created for the purpose of setting aside funds for the eventual payment of the retention bonus. Any provisions of Coach Cook's Contract that are inconsistent with the terms of this Addendum shall be deemed null and void and superseded by the terms of this Addendum. Except to the extent expressly modified by the terms of this Addendum, all other provisions of Coach Cook's Contract with the University shall remain in full force and effect, including without limitation its duration and annual compensation provisions. Coach Cook acknowledges and agrees that he shall continue to be compensated for his services as a head coach at his current annual rate of six hundred seventy-five thousand dollars (\$675,000.00) throughout the duration of his Contract.

6. **Governing Law.** The laws of the State of Nebraska shall govern the validity, performance and enforcement of this Addendum. Any action brought to enforce this Addendum may only be instituted in accordance with the provisions of the State Contract Claims Act (Neb. Rev. Stat. §§ 81-8,302 to 81-8,306), as amended.

7. **Voluntary Agreement.** Coach Cook acknowledges that he has carefully read and fully understands each of the provisions contained within this Addendum and that he is entering into this Addendum with full knowledge of its significance. Coach Cook also acknowledges that he is entering into this Addendum freely and voluntarily, that he has not relied upon any representation or statement by any representative of the University that is not contained within this Agreement, and that he has been advised and provided an opportunity to consult with his attorney.

8. **Entire Agreement.** This Addendum represents the entire agreement of the Parties, and supersedes all prior agreements, understandings, and negotiations, both written and oral, between the Parties with respect to the subject matter hereof. This Addendum may not be changed, modified, extended, terminated, waived, or discharged, except by an instrument in writing signed by authorized representatives of both Parties. These terms and conditions shall be binding upon each of the Parties and their respective heirs, personal representatives, successors and assigns. The headings for each paragraph contained within this Addendum are illustrative only and are not to be given any legal effect. Any electronic or copied versions of this Addendum will be afforded the same effect as an original.

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

**JOHN G. COOK**

**THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA**

 03/02/2020  
\_\_\_\_\_  
John G. Cook Date

By  03/04/2020  
\_\_\_\_\_  
Ronnie D. Green Date  
Chancellor

 03/04/2020  
\_\_\_\_\_  
William H. Moos Date  
Director of Athletics