

**AMENDED AND RESTATED  
UNIVERSITY OF NEBRASKA  
DEFERRED COMPENSATION AGREEMENT**

This AMENDED AND RESTATED DEFERRED COMPENSATION AGREEMENT (the "Agreement"), originally effective as of July 1, 2002, 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 **DOUGLAS A. KRISTENSEN** ("Chancellor Kristensen").

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 Kristensen was hired by the Board to serve as Chancellor of the University of Nebraska-Kearney ("Chancellor") on July 1, 2002; and

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

WHEREAS, the University would suffer loss if Chancellor Kristensen were to accept another offer of employment, and it is thus ordinary, necessary and reasonable to provide Chancellor Kristensen 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 Kristensen 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; and

WHEREAS, counsel has recommended that the Agreement be amended and restated to assure the Agreement's compliance with Code Section 409A.

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

**Section 1. Credits to Account.** The University shall, during the month of July, 2002, credit to a separate account owned by the University, entitled the "Chancellor

Kristensen Deferred Compensation Account" (the "Account"), 11.5% of Chancellor Kristensen's base salary as Chancellor (the "Annual Credit Amount"), which amount shall be attributable to services to be performed by Chancellor Kristensen as Chancellor during the July 1, 2002 - June 30, 2003 fiscal year. For purposes of this Agreement, "Fiscal Year" shall mean July 1 to June 30 of each year. For each subsequent Fiscal Year, if Chancellor Kristensen continues to serve as Chancellor as of July 1 of such Fiscal Year, then the University shall, during the month of July of such Fiscal Year, credit an additional 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 Kristensen as Chancellor for the Fiscal Year in which the contribution 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 Kristensen 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 Fiscal Year shall be subject to the following contingencies:

(a) Termination of Employment. If the employment of Chancellor Kristensen 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. If the termination is voluntary or involuntary for cause, the University shall retain all of the assets credited to the Account and Chancellor Kristensen 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 Kristensen as provided in Section 3(d) herein.

"Termination of Employment" or "Terminates Employment" means the termination of Chancellor Kristensen'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 Kristensen's employment and whether the University and Chancellor Kristensen intended for Chancellor Kristensen to provide significant services for the University following such termination. A termination of employment will not be considered a Termination of Employment if Chancellor Kristensen 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 Kristensen's employment relationship will be treated as continuing intact while Chancellor Kristensen 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 Kristensen'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 Kristensen 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, and the Account shall be distributed to Chancellor Kristensen as provided in Section 3(e) herein.

(c) Death. If Chancellor Kristensen shall die during the term of this Agreement, no further sums shall be credited to the Account following Chancellor Kristensen's date of death, and the Account shall be distributed to the personal representative of Chancellor Kristensen's estate as provided in Section 3(f) herein.

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

(a) Vesting/Distribution at End of Fifth Year of Service. If Chancellor Kristensen shall continue as Chancellor through June 30, 2007, fifty percent (50%) of the assets credited to the Account by the University through June 30, 2007, 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 Kristensen in a lump sum on or before July 31, 2007.

(b) Vesting/Distribution at End of Seventh Year of Service. If Chancellor Kristensen shall continue as Chancellor through June 30, 2009, all remaining assets credited to the Account by the University through June 30, 2009, including all investment earnings attributed on the books of the University thereto through such date, shall vest and shall be distributed (less required withholding) to Chancellor Kristensen in a lump sum on or before July 31, 2009.

(c) Vesting/Distributions After Seventh Year of Service. If Chancellor Kristensen shall continue as Chancellor for a period of two additional full Fiscal

Years beyond July 1, 2009, 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 July 1 following the end of such second Fiscal Year, and shall be distributed (less required withholding) to Chancellor Kristensen in a lump sum on or before July 31 following the second such Fiscal Year. For example, if Chancellor Kristensen's service as Chancellor extends through July 1, 2011, the assets so credited to the Account through June 30, 2011, including all investment earnings attributed on the books of the University thereto, shall vest on July 1, 2011, and shall be distributed (less required withholding) to Chancellor Kristensen in a lump sum on or before July 31, 2011. This two-year credit/vesting program shall continue for as long as Chancellor Kristensen shall continue to serve as Chancellor, unless terminated by the Board, upon written notice to Chancellor Kristensen not less than sixty (60) days prior to the beginning of the first Fiscal Year of any such two-year credit/vesting period.

(d) Vesting/Distribution Following Involuntary Termination Not For Cause. If the employment of Chancellor Kristensen 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 shall be distributed (less required withholding) to Chancellor Kristensen in a lump sum within thirty (30) days following such date of termination.

(e) Vesting/Distribution Following Disability. In the event that Chancellor Kristensen 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 at the time of termination of employment due to such disability shall vest. If he is Disabled, as described in the next sentence, the assets credited to his Account will be distributed (less required withholding) to Chancellor Kristensen in a lump sum within thirty (30) days following the date of Disability determination. Chancellor Kristensen will be deemed Disabled if Chancellor Kristensen: (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 Kristensen must submit proof to the acceptable to the Plan Administrator of Disability, including, but not limited to, the Social Security Administration's determination.

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

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

(a) Chancellor Kristensen shall not knowingly commit any substantial violation of the rules and regulations of the Board pertaining to his duties as Chancellor of the University.

(b) Chancellor Kristensen shall not knowingly 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) Chancellor Kristensen shall not commit any dishonest or fraudulent act or any misappropriation of funds of the University.

(d) Chancellor Kristensen shall not 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) Chancellor Kristensen shall not 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 Kristensen violates any one or more of the above specified conditions, 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. No Present Rights.** Neither Chancellor Kristensen , 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 Kristensen 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 Kristensen 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 Kristensen, nor 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 Kristensen 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, including but not limited to taxes owed under Section 409A of the Code and regulations thereunder, from the benefits provided under this Agreement. Chancellor Kristensen 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 Section 409A of the Code. If any amount is required to be included in income by Chancellor Kristensen prior to receipt due to a failure of this Agreement to meet the requirements of Code Section 409A, Chancellor Kristensen may petition the University for a distribution of that portion of the amount accrued with respect to the University's obligations hereunder that is required to be included in Chancellor Kristensen's income. Upon the grant of such a petition, which grant shall not be unreasonably withheld, the University shall cause to be distributed to Chancellor Kristensen immediately available funds in an amount equal to the portion of the amount accrued with respect to the University's obligations hereunder required to be included in income as a result of the failure of this Agreement to meet the requirements of Code Section 409A, within ninety (90) days. Such a distribution shall affect and reduce Chancellor Kristensen's benefits to be paid under this Agreement.

(i) 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 Kristensen and the University have executed this Agreement on December [REDACTED], 2008.

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

By: [REDACTED]

David E. Lechner, Vice President for  
Business & Finance

[REDACTED]  
Douglas A. Kristensen