

## **GRANT AGREEMENT**

This grant agreement (this "Agreement") is made effective on May 7, 2020 (the "Effective Date") between the **University of Nebraska Foundation**, a Nebraska nonprofit corporation (the "Foundation"), the **Board of Regents of the University of Nebraska**, by and on behalf of the **University of Nebraska-Lincoln** (the "University"), an instrumentality of the state of Nebraska, and the **Charles Koch Foundation**, a Kansas nonprofit corporation (the "Donor"). This Agreement is for the benefit of the Nebraska Governance and Technology Center (the "Program"), which is housed jointly in the Colleges of Law, Business, and Engineering (the "Colleges") at the University. The Foundation, the University, and the Donor are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. **Promoting Academic Freedom.** Consistent with the Donor's principles of supporting open inquiry and a diversity of ideas in higher education, the Donor's grant is intended to help promote a republic of science at the University where ideas can be exchanged freely and useful knowledge will benefit the well-being of individuals and society. Thus, the Parties agree that the academic freedom of the University, the Program, and their faculty, students, and staff is critical to the success of the Program's research, scholarship, teaching, and service.

2. **The Foundation and the University's Proposal.** The Parties enter into this Agreement based on the Foundation and the University's proposal, which is hereby incorporated into and made part of this Agreement, and attached as Attachment A (the "Proposal"). The Proposal reflects the vision of and relies on the leadership of Dr. Justin Hurwitz, who was selected by the University, according to its normal procedures, to be the director of the Program (the "Program Director"). As stated in the Proposal and consistent with the Program Director's vision, the mission of the Program is to support research on how governance principles fit into technology regulation, bring scholars together to help translate this work into real-world application for public benefit, and foster student interest on this issue (the "Program's Mission").

3. **The Program Activities.**

a. **Generally.** To support the Program's Mission, the University desires to create the following positions and activities to affiliate with the Program, collectively referred to as the "Program Activities." The Program Activities are described more fully in the Proposal and include the "Program Director," an "Executive Director," a "Communications & Events Director," two "Tenure-Track Professorships," a "Visiting Scholar," "Programming Series," and "Research Support." The Foundation and the University shall each use any funds received under this Agreement to support the Program Activities in accordance with the terms of this Agreement. According to the University's policies and procedures, the Program Director is responsible for directing the Program Activities, which includes allocating and administering the Program's budget, supervising Program staff, mentorship, and other duties to advance the Program's Mission as deemed appropriate by the Program Director.

b. **University Approval.** The Parties mutually agree that the selection of the foregoing positions and fellowships by the University will follow the University's normal procedures for selecting such positions and fellows for the applicable academic units. As a matter of academic freedom for academic units at the University, individuals who hold positions with or are affiliated with the Program must be approved in accordance with the Colleges' and University's normal procedures.

4. **The University's Support for the Program.** The University shall support the Program Activities to advance the University's mission. As part of this support, the University shall ensure that the faculty, students, and staff working with the Program have adequate space to achieve the Program's Mission.

Therefore, The University shall provide the Program with sufficient office space including conference and meeting spaces.

**5. The Donor's Support for the Program Activities.**

a. Contributed Amount. Subject to the terms of this Agreement, the Donor will contribute funds to the Foundation solely to fully support the Program Activities described below, to advance the Program's Mission (all or part of such funds are referred to as the "Contributed Amount(s)"). The aggregate maximum Contributed Amount is \$1,320,090. The budget allocation for each Program Activity is set forth below. Contributions from third-party donors shall be used to provide funding for the Program Activities in excess of the Donor's aggregate maximum Contributed Amount indicated in section 6(b) below. Changes to the budget-category allocations may be made by mutual written agreements of the Parties (by way of clarification, an email agreement is sufficient for these purposes).

<b>Program Activities</b>	<b>Contributed Amount</b>
Salary and fringe benefits for the Program Director	Up to \$ 300,000
Salary and fringe benefits for the Executive Director	Up to \$ 416,000
Salary and fringe benefits for the Communications & Events Director	Up to \$ 260,000
Salary and fringe benefits for the two Tenure-Track Professorships	Up to \$ 1,830,000
Salary and fringe benefits for the Visiting Scholar	Up to \$ 400,000
Costs and expenses for the Programming Series	Up to \$ 832,000
Costs and expenses for the Research Support	Up to \$ 1,057,000
<b>Total Budget Allocation:</b>	<b>\$ 5,095,000</b>

b. Other Support. If the University and Donor mutually agree, the Donor may also contribute in-kind services to the University to help promote the work of the University, the Program, or the University faculty, students, and staff.

c. Contingent Grant. The Donor's support under this Agreement is expressly contingent upon Menard, Inc. ("Menard"), executing an agreement providing for a grant from Menard, Inc. (the "Menard Grant Agreement") to support the Program Activities. Therefore, the Donor shall not provide any of the Contributed Amount or be obligated to fulfill any other obligation until the Menard Grant Agreement is executed and attached to this Agreement as Attachment B. The Donor's pledge to make contributions pursuant to this Agreement and Menard's pledge to make contributions pursuant to the Menard Grant Agreement are each contingent upon each other. Therefore, any breach of this Agreement, if caused by the Foundation or the University, is a separate and independent breach on the part of the Foundation or the University, as applicable, under the Menard Grant Agreement and entitles Menard, Inc. to exercise any and all of its remedies provided in the Menard Grant Agreement, up to and including the right to terminate the Menard Grant Agreement.

**6. Grant Process and Administration.**

a. The Foundation Grant Request. The Foundation shall submit an annual written request for the Contributed Amount according to the schedule below to the Donor for the Donor's consideration (the "Foundation Grant Request"). If the Donor approves the Foundation Grant Request, the Donor shall make a contribution up to the amount listed in the below schedule to the Foundation, and the Foundation shall accept such Contributed Amount on behalf of the University. If the Donor does not approve the Foundation Grant Request, the Donor is under no obligation to contribute any funds to the Foundation or the University.



b. The Foundation Grant Request and Proposed Grant Award Schedule.

<b>Foundation Grant Request Date</b>	<b>Donor Response and Proposed Contribution Date</b>	<b>Contributed Amount</b>
Submitted as the Proposal	Within sixty (60) days of the Parties signing this Agreement	Up to \$ 124,100
May 1, 2021	On or about July 1, 2021	Up to \$ 284,122
May 1, 2022	On or about July 1, 2022	Up to \$ 452,178
May 1, 2023	On or about July 1, 2023	Up to \$ 459,690
<b>Total Maximum Aggregate Contributed Amount:</b>		<b>\$1,320,090</b>

c. The Fund. The Foundation shall place all of the Contributed Amount in a segregated and restricted fund on its books and records called the "NGTC- CKF Fund" (the "Fund"). The Foundation and the University shall solely use the Fund to support the Program Activities as stated in this Agreement. The Foundation shall make the Fund available for contributions from other donors. If another donor makes a contribution to the Fund, the Foundation shall promptly notify the Donor of the amount donated and, if permitted by the other donor, the name of the other donor. The Fund shall be considered an expendable fund and shall be used at the direction of the Dean of the University of Nebraska College of Law, or his or her designee.

7. Contributed Amount Used Solely for Charitable Purposes for the Program Activities.

a. Tax Status. According to IRS records, the Foundation is an organization described within the meaning of Internal Revenue Code (the "Code") sections 501(c)(3) and 509(a)(1). The University has furnished the Donor with records showing that it is an organization described in Code section 170(c)(1) or 511(a)(2)(B). The Foundation and the University shall immediately notify the Donor if their respective tax statuses change.

b. Charitable Purpose. The Foundation and the University shall use the Contributed Amount solely for the Program Activities, which is a charitable purpose described in section 170(c)(2)(B) of the Code. The Foundation and the University shall not use the Contributed Amount to influence legislation as described in section 4945(d)(1) of the Code, to influence the outcome of any election, for a political campaign or intervention, to carry on any voter registration drive, or any other purpose that would jeopardize the Donor's tax-exempt status or subject the Donor to penalties under Chapter 42 of the Code.

c. Program Activities. The Foundation and the University shall return to the Donor any Contributed Amount not spent for the Program Activities.

8. General Terms.

a. Term. The term of this Agreement is from the Effective Date to the later of July 31, 2024, or until the Foundation and the University have spent all of the Contributed Amount, unless earlier terminated pursuant to this Agreement.

b. Termination. The Donor has the right to terminate this Agreement if: (i) the Foundation or the University materially breaches any term of this Agreement; (ii) the Program Activities are not advancing the Program's Mission; or (iii) such action is necessary to comply with any law applicable to the Foundation, the University, or the Donor. The University has the right to terminate this Agreement if the Donor materially breaches any term of this Agreement. Such termination is effective upon the expiration of thirty days from the date notice was provided by the terminating party to the non-terminating Party. If

the Agreement is terminated, the Foundation and the University shall return all unspent Contributed Amounts to the Donor within fifteen days of the Donor's request. The Foundation and the University are not relying on the Donor's proposed funding under this Agreement to incur any obligation or take any action or inaction.

c. Publicity. The Parties shall give each other a reasonable opportunity to review any public announcement related to the Agreement. The Parties shall not use each other's logos without the applicable Party's express written consent.

d. Public Records. The Foundation and the University shall notify the Donor upon receiving records requests for this Agreement or related information.

e. Entire Agreement. The terms contained in this Agreement supersede all prior oral or written agreements and understandings between the Parties related to the matters contained in this Agreement and constitute the entire agreement between the Parties with respect to the matters contained in this Agreement.

f. Order of Precedence. If there is a conflict between the terms of this Agreement and the terms in the Proposal, this Agreement controls.

g. Amendments. No amendment to this Agreement will be effective unless it is in writing and signed by the Parties.

h. Severability. The terms of this Agreement are severable. If any court of competent jurisdiction construes any term of this Agreement to be illegal, invalid, or unenforceable, the legality, validity, and enforceability of the remaining terms of this Agreement will not be affected.

i. No Waiver. No delay or failure by any Party to enforce any right or claim under this Agreement is a waiver of such right or claim. Any waiver by any Party of any term of this Agreement is not a further or continuing waiver of such term.

j. Third Party Rights. This Agreement relates to and is for the benefit of the charitable and educational mission of Menard, Inc. Therefore, Menard, Inc. has rights under this Agreement. Otherwise, this Agreement does not give any rights or remedies to any third party other than the permitted assigns of the Parties.

k. Governing Law; Venue. This Agreement is governed, interpreted, and enforced in accordance with the laws of the Commonwealth of Virginia, without regard to conflict of law provisions. Any action or proceeding filed relating to this Agreement must be commenced and maintained exclusively in the state courts located in Arlington County, Virginia, or the federal courts located in the Eastern District of Virginia. Each of the Parties consent to the exclusive personal jurisdiction of such courts for any such action or proceeding.

l. No Assignment. The Foundation and the University shall not transfer or assign their respective interests in the Agreement or any amount to be contributed pursuant to this Agreement without the express written consent of the Donor.

m. Notice. All notices in connection with this Agreement must be in writing and are effective when delivered personally by hand or one business day after the day sent by overnight courier at the address below, or to another address provided by a Party to the other Parties.

If to the Foundation:

University of Nebraska Foundation  
1010 Lincoln Mall, Suite 300  
Lincoln, NE 68508  
Attn: Brian Hastings

If to the University:

University of Nebraska-Lincoln  
201 Varner Hall  
3835 Holdrege Street  
Lincoln, NE 68583-0745  
Attn: Bren Chambers

If to the Donor:

Charles Koch Foundation  
1320 N. Courthouse Road, Suite 500  
Arlington, VA 22201  
Attn: Grant Administrator  
Cc: General Counsel's Office

n. Counterparts. This Agreement may be executed in several counterparts, each of which constitutes an original and all of which, when taken together, constitute one agreement or direction. Copies of signatures (whether facsimile or other electronic transmission) to this Agreement are deemed to be originals and may be relied upon to the same extent as the originals.

The Parties have hereby executed this Agreement as dated below, but agree that this Agreement is effective as of the Effective Date.

**UNIVERSITY OF NEBRASKA FOUNDATION**

By: Brian F. Hastings  
Name: Brian F. Hastings  
Title: President & CEO  
Date: \_\_\_\_\_

**THE BOARD OF REGENTS OF THE  
UNIVERSITY OF NEBRASKA-LINCOLN**

By: Ted Carter  
Name: Ted Carter  
Title: President  
Date: \_\_\_\_\_

**CHARLES KOCH FOUNDATION**

By: Ryan Stowers  
Name: Ryan Stowers  
Title: Executive Director  
Date: 5/14/2020

Attest: Carmen K. Mauer  
By: Carmen K. Mauer  
Name: Carmen K. Mauer  
Title: Corporation Secretary



## ATTACHMENT A

### University of Nebraska Foundation and University of Nebraska-Lincoln Proposal to Support the Nebraska Governance and Technology Center ("Program")

#### **Mission**

The mission of the Program, which is housed jointly in the Colleges of Law, Business, and Engineering at the University is to support interdisciplinary research and study of emerging technologies and their impact on society/the real-world impact of innovation.

The Program's Mission and the University's Proposal are consistent with and will abide by all University Bylaws and Policies for academic freedom, employment, research, scholarship, teaching, and service.

#### **Program Activities**

**The University proposes the following Program Activities in the form of staffing and support for the Program and are described as roles or programs to be performed, not necessarily specific job titles.**

#### **Program Director**

The Program Director, Dr. Justin Hurwitz, will be responsible for overseeing staff and programs as are related to the Center's Mission, which will require a significant amount of time and resources.

#### **Executive Director**

The University will select an individual for the Executive Director position by the end of the Fall 2020 semester. This individual will be responsible for overseeing staff and programs as it relates to the Program's Mission.

#### **Tenure-Track Professorships**

The University will select two individuals for the Tenure-track Professorships by the Fall 2020 and Fall 2021 semesters respectively. One of the faculty lines will be a joint appointment between the College of Law and College of Business. This faculty member will teach one course relevant to the Program in the College of Law and in the College of Business, co-teach a Program-specific course, and teach one service course in the College of Law. The other faculty line will be a joint appointment between the College of Law and the College of Engineering. This faculty member will teach one course relevant to the Program in the College of Law and in the College of Engineering, co-teach a Program-specific course, and teach one service course in the College of Law. Both individuals will devote a significant amount of time and resources to work related to the Program.

#### **Visiting Scholar**

The University will appoint one or more visiting faculty or post-doctoral researchers for 1-year terms, to give new faculty the opportunity to engage with the Program and be mentored by center/program scholars over an extended period.

#### **Programming Series**

The Program will host research workshops, conferences, and lectures that share the Program's research, as well as contribute to the academic and national conversation as it relates to the Program's Mission.

#### **Research Support**

NGTC funds will be utilized to enable faculty across the University to engage with the Program to produce rigorous research that relates to the Program's Mission.

**Communications & Events Director**

The University will select an individual for the Communications & Events Director position by the end of the Fall 2020 semester. Through building University and community relationships, promoting research and activities, and communicating the Program's work, this individual will help share the work of the center.