AMENDED AND RESTATED EMPLOYMENT AGREEMENT

THIS AMENDED AND RESTATED EMPLOYMENT AGREEMENT ("Agreement") is executed by and between the **BOARD OF GOVERNORS OF MISSOURI STATE UNIVERSITY** ("University") and Clifton M. Smart, III ("the President" or "Mr. Smart"), and is effective as of July 1, 2021 ("Effective Date").

WHEREAS, Mr. Smart has been employed as President of the University since on or about July 27, 2011;

WHEREAS, Mr. Smart's current employment agreement, which was executed effective October 16, 2012 ("Prior Agreement"), has been amended on six (6) occasions, in order to extend the term of his appointment and/or to adjust his compensation in appreciation for the exceptional leadership and services he has provided to the University; and

WHEREAS, the parties desire to replace the Prior Agreement with the instant Agreement as of the Effective Date indicated above.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein set forth, and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto covenant and agree as follows:

1. **Term of Employment; Termination of Prior Agreement.** The term of this Agreement shall commence on the Effective Date and continue through June 30, 2026 ("Term"), subject to renewal or termination as provided herein. This Agreement hereby terminates, supersedes, and replaces the Prior Agreement as of the Effective Date.

2. **Duties.** Throughout the Term, Mr. Smart shall well and faithfully serve the University in the role of President and chief administrative and executive officer, and shall at all times devote his whole time, attention, and energies to the management, superintendence, and improvement of the University to the utmost of his ability. He shall serve under the direction and oversight of the University's Board of Governors ("Board"), and is subject to the Board's Bylaws, policy statements, and directives. The President shall not engage in conduct which would constitute a conflict of interest under University policy or law and will refrain from service on compensated boards or other employment unless approved by the Board. The parties recognize the value to the University from the President's participation in community leadership positions; however, Mr. Smart will consult with the Chair of the Board before accepting positions on not-for-profit boards or other significant commitments of time.

3. **Compensation.**

(a) Annual Salary. The University shall pay Mr. Smart an annual base salary of Three Hundred Ninety-One Thousand Four Hundred Dollars ($391,400.00)("Salary"), payable in equal incremental sums at such intervals as the University has established for its payroll procedure.

(b) Across-the-Board Raises. Mr. Smart's Salary in subsequent years in which he serves as President shall increase by at least the same percentage increase as provided across the board for faculty and staff ("Across-the-Board Raises"), and Mr. Smart shall be entitled to additional compensation and/or entitlements as specifically approved by the Board during the remainder or extensions of this Contract.

(c) Annual Cash Retention Bonus. Effective June 30, 2023 (and each June 30th thereafter that Mr. Smart remains employed by the University), Mr. Smart shall also be entitled to an annual cash retention bonus of $50,000 ("Retention Bonus").

4. **Housing Allowance.** The University will provide the President with a housing allowance in the annual amount of Forty Thousand Dollars ($40,000.00) to permit the President to obtain housing suitable for the duties of the position, which include entertaining groups and individuals. The President and his family will live in this residence, which shall be located a driving distance of not more than fifteen (15) miles from Carrington Hall.

5. **Additional Entitlements.** In addition to the Salary and Retention Bonus indicated in Section 3, above, the President shall receive or be eligible to participate in the following:

(a) Health Insurance. President Smart will be eligible to participate in the University's health, dental, and vision insurance plans, to the extent the same are provided for the faculty and staff of the University.

(b) Life Insurance. The University will provide life insurance to Mr. Smart in an amount equal to his Salary.

(c) Long Term Disability Insurance. The University shall provide Mr. Smart with Long Term Disability Insurance, consistent with that currently provided for members of the faculty and staff. In the case of disability which prevents the President from performing the essential duties of the position, during the 180-day waiting period required by the policy provided for the faculty and staff, the University will continue to pay Mr. Smart's Salary.

(d) Worker's Compensation Insurance. Consistent with Missouri law, the University participates in the State of Missouri's worker's compensation self-insurance program, as administered by the State of Missouri's Office of Administration, Central Accident Reporting Office ("CARO"). Coverage under such program is available in the event that the President suffers an injury or incurs an occupational disease arising out of and in the course of his employment at the University.

(e) MOSERS Retirement Fund. Mr. Smart shall participate in and receive retirement benefits from the Missouri State Employees' Retirement System ("MOSERS") pursuant to Mo. Rev. Stat. §§ 104.1003 and 104.1093.

(f) Vacation. The President shall be entitled to 20 days of paid vacation per year. Vacation leave not taken may be accumulated and paid for either at the time of termination, or at a time chosen by the President not to exceed 40 days, at the rate at which it has been earned. The University will pay the reasonable expenses for the President's attendance at seminars, conventions, or other meetings normally attended by a University President in order to represent the University, which will not be counted as vacation time.

(g) Sick Leave. The President shall accrue paid sick leave at the rate of eight (8) hours per pay period. Use of sick leave will be consistent with that outlined in Section 7.2 of the *Employee Handbook for Administrative, Professional, and Support Staff Employees.*

(h) Entertainment Expenses. The University will provide the President with adequate budgeted funds for purposes of entertaining the faculty, staff, students, and business guests of the University, and for carrying out the duties of his office, both on-campus and off campus, including the President's residence, and membership at Hickory Hills Country Club. The University will arrange for the payment of these expenses in a manner which is mutually acceptable to the parties and in accord with University policy. Tickets for university events and venues will be made available to the President's office as determined reasonably necessary by the President for entertainment and hosting, including without limitation Hammons Student Center, Plaster Sports Complex, JQH Arena, Coger Theater, and Juanita K. Hammons Hall for the Performing Arts.

(i) Retention Incentive Compensation. In the Prior Agreement, the University established a deferred compensation package in an effort to induce Mr. Smart to serve as President of the University through June 30, 2022. Accordingly, beginning with the contractual year ending June 30, 2015, the University implemented a mechanism by which Mr. Smart has the opportunity to earn retention incentive compensation ("Retention Pay") in the amount of

$50,000 per year for each full contract year that Mr. Smart serves as President (defined as a 12-month period running from July 1 through June 30), subject to the vesting schedule set forth below:

Year Ending	**Total Amount**	**Vesting**
June 30, 2015	$50,000	0%
June 30, 2016	$100,000	0%
June 30, 2017	$150,000	0%
June 30, 2018	$200,000	60%
June 30, 2019	$250,000	70%
June 30, 2020	$300,000	80%
June 30, 2021	$350,000	90%
June 30, 2022	$400,000	100%

In the event that Mr. Smart serves as President for a partial contract year, he shall receive no Retention Pay, or portion thereof, for that partial contract year. Any Retention Pay owed and due to Mr. Smart under this provision will be paid within 30 days after the conclusion of his employment with University.

For example, in the event that Mr. Smart retires as President of the University on June 30, 2022, the University shall pay him $400,000 (i.e., $50,000 per year times 8 years of service for the years ending June 30th of 2015, 2016, 2017, 2018, 2019, 2020, 2021, and 2022). In the event, however, that Mr. Smart retired as President of the University on June 30, 2018, the University would have paid him $120,000 (i.e., $50,000 per year times 4 years of service for the years ending

June 30th of 2015, 2016, 2017, and 2018, vested at 60%). In the event that Mr. Smart retired *prior to* June 30, 2018, he would have received no Retention Pay, as he would not be vested in any such Retention Pay.

It is the intention of the parties that all Retention Pay ultimately paid to Mr. Smart will be eligible for MOSERS or an equivalent retirement program to the extent permissible by law.

The parties acknowledge that the intent of this provision is to induce Mr. Smart to serve as President of the University for the entirety of his Term. As such, the Retention Pay contemplated by this provision is in addition to the other forms of compensation (including, without limitation, base salary and housing allowance) set forth in the Contract. It is the intention of the parties that this provision comply with applicable requirements of the Internal Revenue Code, including I.R.C. § 457(f), so that there is no taxable incident to Mr. Smart until receipt of the payment following the end of his employment with University.

The parties acknowledge that there is substantial risk of forfeiture in that Mr. Smart will forfeit any entitlement to Retention Pay if he is discharged for cause prior to the conclusion of his Term.

It is anticipated (though not required) that the University will set aside toward its potential obligation the amount of $50,000 at the end of each year of Mr. Smart's tenure as President, and earnings thereon, if any, will be included in the payment made to Mr. Smart. Should such payments be set aside, all vested amounts plus any earnings thereon, shall be paid over to Mr. Smart in the event of termination of his employment as President prior to the end of the Term due to disability, as defined in I.R.C. § 409A, or to the President's designated beneficiary (i.e., his spouse unless another beneficiary is designated in writing) in the event of Mr. Smart's death prior to the end of the Term.

Note: Mr. Smart shall not continue to earn Retention Pay after June 30, 2022. Rather, effective July 1, 2022, he shall be eligible to earn an annual cash incentive bonus in the amount of $50,000, as set forth in Section 3(c), above.

(j) Other Faculty/Staff Privileges Not Enumerated Herein. Such other privileges and benefits accorded the faculty and staff, not enumerated or inconsistent herein, will likewise be accorded to Mr. Smart.

6. **Evaluation.** On or before November 1 of each year of this Agreement, the Board will provide to the President an evaluation of the performance of his duties as President, in form and substance as determined appropriate by the Board.

7. **Termination for Cause.** Notwithstanding any of the provisions of this Agreement, Mr. Smart's employment with the University in any capacity may be terminated by the Board for material breach of this Agreement, and the Board's determination of just cause shall not be set aside unless it is determined arbitrary and capricious. In the event the University desires to terminate the employment of the President for cause, it shall provide the President with at least 10 calendar days' written notice, stating the nature and cause of removal, and providing Mr. Smart with the opportunity to make a defense before the Board by counsel or otherwise, and to introduce testimony which shall be heard and determined by the Board.

8. **Termination Without Cause.** Notwithstanding any provision of this Agreement to the contrary, the Board shall have the right to terminate, without any cause whatsoever, upon 60 days written notice, this Agreement, and thereby its employment relationship with Mr. Smart as President, at any time during said employment. In such case of termination without cause, Mr. Smart shall be paid liquidated damages in an amount equal to 12 months of Mr. Smart's Salary at the time of said termination, unless there is less than 12 months remaining on the term of this Agreement, in which case Mr. Smart shall be paid liquidated damages in an amount equal to the base salary for the remainder of the Agreement. The parties agree that actual damages in the case of termination without cause are difficult, if not impossible, to determine. Any liquidated damages due under this provision shall be paid within thirty (30) days following the last day of Mr. Smart's employment as President.

9. **Cancellation or Retirement.** Notwithstanding any provision of this Agreement to the contrary, Mr. Smart shall have the right to terminate this Agreement, at his discretion, by providing at least 180 days prior notice to the Board.

10. **Extension.** Unless terminated prior to the Term in accordance with Sections 7, 8, or 9 above, the parties may extend the Agreement by mutual agreement, memorialized in a formal amendment to the Agreement. In the event either party elects not to extend the Agreement, they shall give written notice of that decision no later than 365 days prior to conclusion of the Term.

11. **Construction of Agreement.** The laws of the State of Missouri shall govern this Agreement. In the event of a conflict between a provision within this Agreement and applicable law, the Agreement shall be construed in accordance with applicable law, such that applicable law superseding any inconsistent contractual provision.

12. **Entire Agreement.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and may be amended only by a writing signed by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date(s) indicated below, such that the Agreement shall take full force and effect as of the Effective Date. This Agreement supersedes and replaces all prior oral or written agreements between the parties as of the Effective Date.

BOARD OF GOVERNORS OF MISSOURI STATE UNIVERSITY

Amelia Counts
Amelia Counts
Chairperson, Board of Governors

8/6/21
Date

Clifton M. Smart III
Clifton M. Smart, III
President

8/6/21
Date

ATTEST:

Rowena Stone
Rowena Stone
Secretary, Board of Governors

8/6/2021
Date

FIRST AMENDMENT TO AMENDED AND RESTATED EMPLOYMENT AGREEMENT

This First Amendment to the Amended and Restated Employment Agreement ("First Amendment") by and between the Board of Governors of Missouri State University ("Board") and Clifton M. Smart, III ("Mr. Smart") is effective this 1st day of July, 2022.

WHEREAS, the parties entered into an Amended and Restated Employment Agreement on or about July 1, 2021 ("Agreement"), under which Mr. Smart is presently employed by the Board and serving in the capacity of President of Missouri State University;

WHEREAS, in light of Mr. Smart's effective and successful leadership, the Board desires to amend the Agreement as it pertains to Mr. Smart's compensation, subject to the terms and conditions set forth herein.

NOW THERFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. Effective July 1, 2022, Mr. Smart's annual salary shall be increased by 4% (i.e., $15,656), in accordance with the across-the-board salary increase provided to all full-time employees as of July 1, 2022. Mr. Smart's resulting Salary shall be Four Hundred Seven Thousand and Fifty-Six Dollars and No Cents ($407,056.00). Accordingly, Section 3(a) of the Agreement shall be stricken in its entirety and replaced with the following:

> 3. **Compensation.**
>
> (a) Annual Salary. The University shall pay Mr. Smart an annual base salary of Four Hundred Seven Thousand and Fifty-Six Dollars and No Cents ($407,056.00) ("Salary"), payable in equal incremental sums at such intervals as the University has established for its payroll procedure.

2. Provided that Mr. Smart remains employed by the Board in the capacity of President of Missouri State University through December 1, 2022, Mr. Smart shall be entitled to a one-time retention bonus in the amount of Twenty-Five Thousand Dollars ($25,000), which bonus shall be payable on or before December 31, 2022.

3. Section 3(c) of the Agreement shall be stricken in its entirety and replaced with the following:

> 3. **Compensation.**
>
> (c) Annual Cash Retention Bonus. Effective June 30, 2023, Mr. Smart shall also be entitled to an annual cash retention bonus in the amount of Fifty

Thousand Dollars and No Cents ($50,000) ("Retention Bonus"). Effective June 30, 2024, and each June 30th thereafter that Mr. Smart remains employed by the University, Mr. Smart shall be entitled to a Retention Bonus in the amount of Seventy-Five Thousand Dollars and No Cents ($75,000). Such Retention Bonus(es) shall be paid on or before July 31st of the calendar year in which it is earned.

4. Except as expressly provided herein in this First Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties have executed this First Amendment on the date first indicated above.

BOARD OF GOVERNORS MISSOURI STATE UNIVERSITY	**PRESIDENT OF MISSOURI STATE UNIVERSITY**
Carol Silvey	Cliff Smart III
Carol Silvey, Chair	Clifton M. Smart, III

<u>SECOND AMENDMENT TO AMENDED AND RESTATED EMPLOYMENT AGREEMENT</u>

This Second Amendment to the Amended and Restated Employment Agreement ("Second Amendment") by and between the Board of Governors of Missouri State University ("Board") and Clifton M. Smart, III ("Mr. Smart") is effective this 1st day of July 2023.

WHEREAS, the parties entered into an Amended and Restated Employment Agreement on or about July 1, 2021 ("Agreement"), under which Mr. Smart is presently employed by the Board and serving in the capacity of President of Missouri State University, which agreement was subsequently amended on July 1, 2022, to increase Mr. Smart's compensation in light of his exceptional performance; and

WHEREAS, in light of Mr. Smart's effective and successful leadership, the Board desires to again amend the Agreement as it pertains to Mr. Smart's compensation, subject to the terms and conditions set forth herein.

NOW THERFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties covenant and agree as follows:

1. Effective July 1, 2023, Mr. Smart's annual salary shall be increased by 5% (i.e., $20,353), in accordance with the across-the-board salary increase provided to all full-time employees as of July 1, 2023. Mr. Smart's resulting Salary shall be Four Hundred Twenty-Seven Thousand and Four Hundred and Nine Dollars and No Cents ($427,409.00). Accordingly, Section 3(a) of the Agreement shall be stricken in its entirety and replaced with the following:

> 3. **<u>Compensation</u>.**
>
> (a) <u>Annual Salary</u>. The University shall pay Mr. Smart an annual base salary of Four Hundred Twenty-Seven Thousand and Four Hundred and Nine Dollars and No Cents ($427,409.00) ("Salary"), payable in equal incremental sums at such intervals as the University has established for its payroll procedure.

2. Provided that Mr. Smart remains employed by the Board in the capacity of President of Missouri State University through December 1, 2023, Mr. Smart shall be entitled to a one-time retention bonus in the amount of Twenty-Five Thousand Dollars ($25,000), which bonus shall be payable on or before December 31, 2023.

3. Except as expressly provided herein in this Second Amendment, the terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF the parties have executed this Second Amendment on the date first indicated above.

BOARD OF GOVERNORS
MISSOURI STATE UNIVERSITY

____
Christopher Waters, Chair

PRESIDENT OF
MISSOURI STATE UNIVERSITY

______________________________ III
Clifton M. Smart, III