FIFTH AMENDMENT TO EMPLOYMENT CONTRACT

This Fifth Amendment to the Employment Contract ("Fifth Amendment") by and between the Board of Governors of Missouri State University ("Board") and Clifton M. Smart, III ("Mr. Smart") is executed this 10th day of August, 2018, but effective as of July 1, 2018 ("Effective Date").

WHEREAS, the parties entered into an Employment Contract on or about October 15, 2012 ("Contract"), under which Mr. Smart is presently employed by the Board and serving in the capacity of President of Missouri State University ("University");

WHEREAS, the Contract was amended on or about August 11, 2014 for the purpose of extending the Term of the Contract by four (4) years ("First Amendment);

WHEREAS, the Contract was again amended on September 11, 2015 for the purposes of increasing Mr. Smart's base salary by 1.8% and inducing Mr. Smart to serve the duration of his contractual term of employment by providing him with certain deferred retention incentive compensation subject to a vesting schedule ("Second Amendment");

WHEREAS, the Contract was again amended effective July 1, 2016, for the purpose of increasing Mr. Smart's base annual salary by Twenty-Five Thousand Dollars and No Cents ($25,000.00), thereby bringing Mr. Smart's base annual salary to Three Hundred Thirty-Four Thousand, Nine Hundred and Eighty-One Dollars and No Cents ($334,981.00) ("Third Amendment");

WHEREAS, the Contract was again amended effective July 1, 2017, for the purpose of adjusting and accelerating the vesting schedule for his deferred retention incentive compensation ("Fourth Amendment"); and

WHEREAS, in light of Mr. Smart's exceptionally effective and successful leadership, the Board desires to again amend the Contract in order to extend the Term of the Contract by four (4) additional years and to incentivize his continued service to the University by increasing his base annual salary during such extension.

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

1. Section 1, Term of Employment, shall be deleted in its entirety and replaced with the following:

> 1. **Term of Employment.** The Board does hereby employ Mr. Smart for a term beginning October 16, 2012 ("Start Date") and continuing through June 30, 2026 ("End Date"), as President, the chief administrative and executive officer of the University, subject to renewal or

termination and other terms and conditions, as hereinafter provided. This period of employment shall be referred to hereinafter as the term ("Term").

2. Section 3, Compensation, shall be deleted in its entirety and replaced with the following:

3. **Compensation.** The Board shall pay Mr. Smart an annual base salary of Three Hundred Thirty-Four Thousand, Nine Hundred and Eighty-One Dollars and No Cents ($334,981.00) ("Salary"), payable in equal incremental sums at such intervals as the University has established for its payroll procedure. 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.

(a) Salary Increase Effective July 1, 2022.To incentivize Mr. Smart to continue his employment beyond June 30, 2022, effective July 1, 2022, Mr. Smart shall be guaranteed a Salary of no less than $380,000.

(b) Annual Cash Retention Bonus. Effective, June 30, 2023, Mr. Smart shall also be entitled to an annual cash retention bonus of $50,000.

3. Section 4, Housing Allowance, of the Contract is hereby affirmed and restated as follows:

4. **Housing Allowance.** The Board 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.

4. Section 5.j) of the Contract is hereby affirmed and restated as follows:

j) Retention Incentive Compensation.

University desires to induce Mr. Smart to serve as President of the University through June 30, 2022), consistent with all other terms and conditions of his Contract. Accordingly, beginning with the contract year ending June 30, 2015, Mr. Smart shall have 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 retires as President of the University on June 30, 2018, the University will pay 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 retires *prior to* June 30, 2018, he shall receive no Retention Pay, as he will 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(a)-(d), above.

5. Capitalized terms not otherwise defined in this Fifth Amendment shall have the same meaning as that ascribed to them in the underlying Contract, as previously amended.

6. Except as expressly provided herein in this Fifth Amendment, the terms and conditions of the Contract, as previously amended, shall remain in full force and effect.

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

BOARD OF GOVERNORS **MISSOURI STATE UNIVERSITY**	**PRESIDENT OF** **MISSOURI STATE UNIVERSITY**
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Carrie Tergin, Chairperson

Clifton M. Smart, III