



**THE OHIO STATE  
UNIVERSITY**

**EMPLOYMENT AGREEMENT**

The Ohio State University (“Ohio State”) and Eugene D. Smith (“Director”) wish to enter into this Employment Agreement (“Agreement”) effective as of July 1, 2021. This Agreement is subject to Director’s continued employment in his current position with Ohio State through June 30, 2021. If Director does not remain in such position through June 30, 2021, this Agreement and all terms and conditions within it shall immediately be null and void. The parties agree as follows:

**1.0 Employment**

- 1.1 Subject to the terms and conditions of this Agreement, Ohio State shall continue to employ the Director as Senior Vice President and Wolfe Foundation Endowed Athletics Director. The Director represents and warrants that he is fully qualified to serve, and is available for employment, in this capacity.
- 1.2 The Director shall be responsible and report directly to Ohio State’s President (“President”) and shall confer with the President or the President’s designee(s) on a regular basis as determined by the President and on major matters as necessary and appropriate.
- 1.3 The Director shall oversee, administer, review, and periodically evaluate the Department of Athletics (“Department”), including the entire intercollegiate athletic program at Ohio State, and shall perform such other duties, consistent with his status as Director, as the President may assign.
- 1.4 The Director agrees to represent Ohio State positively in public and private forums and shall not engage in conduct or act in such a manner that reflects adversely on Ohio State or its athletic programs. The Director shall perform his duties and personally comport himself at all times in a manner consistent with the high moral, ethical and academic standards of Ohio State and the Department.
- 1.5 Principally, the Director acknowledges that he is an Ohio State official who holds the leadership position of the Department. He shall be assigned to one or more Ohio State executive groups where he shall exercise his Ohio State leadership and his Department leadership in conjunction with the activities and goals of such groups.
- 1.6 The Director recognizes that his Senior Vice President title signifies that he is part of “One University” at Ohio State, and agrees to lead the Department in a manner to optimize the broader academic, student, community and financial interests of Ohio State as well as the Department’s interests.

**2.0 Term**

- 2.1 This Agreement is for a fixed-term appointment commencing on July 1, 2021, and terminating, without further notice to the Director on June 30, 2026. For purposes of this Agreement, a “Contract Year” will be from July 1<sup>st</sup> through June 30<sup>th</sup>.

- 2.2 This Agreement is renewable solely upon an offer from Ohio State and an acceptance by the Director, both of which must be in writing and signed by the parties. This Agreement in no way grants the Director a claim to tenure in employment, nor shall the Director's service pursuant to this Agreement count in any way toward tenure at Ohio State.

### 3.0 **Compensation**

- 3.1 a. For each Contract Year through the term of this Agreement, Ohio State shall pay the Director an annual base salary of \$1,580,000. The annual base salary will be subject to applicable taxes and withholdings, and payable in substantially equal monthly installments in accordance with normal Ohio State procedures. The Director shall be eligible for annual merit increases, subject to Ohio State's usual and customary compensation practices beginning in September 2021. The President of Ohio State and Director will meet no later than August of each Contract Year to review Director's compensation in relation to the compensation of other athletic directors in Ohio State's peer groups.
- b. The Director shall be entitled to participate in all employee retirement and welfare benefit plans and programs made available to Ohio State's senior administrative and professional employees as a group, as such plans and programs may be in effect from time to time and subject to the Director satisfying any eligibility requirements of such plans and programs. Notwithstanding the foregoing, nothing in this Agreement shall prevent Ohio State from amending or terminating any retirement, welfare or any other employee benefit plans, programs or policies from time to time as Ohio State deems appropriate in its sole discretion.
- c. In addition, Ohio State will enter into a joint and survivor split dollar life insurance arrangement (the "Senior Vice President and Wolfe Foundation Endowed Athletics Director Executive Benefit Agreement") with the Director, as described in Appendix A of this Agreement.
- d. Director shall be entitled to a lump sum payment totaling \$125,000, subject to applicable withholdings, on July 1, 2021. Such payment shall be paid to Director no later than July 31, 2021.
- 3.2 **Media, Promotions and Public Relations.** Ohio State recognizes that the nature, presence and impact of the media and other promotional and communication vehicles increases the opportunities and impact for Ohio State, and further recognizes the importance of the Director's leadership and representation in media promotions and public relations. In accordance with this responsibility, for each Contract Year through the term of the Agreement, Ohio State shall pay the Director \$480,000 as annual supplemental compensation to fulfill the duties set forth in Section 4.1 of this Agreement and the broader responsibilities set forth herein. This amount shall be paid in substantially equal monthly installments and subject to applicable taxes and withholdings.
- 3.3 **Exceptional Athletic Achievements.** For each of the athletic achievements listed in subsections a.-c. below, the Director shall receive in consideration of his efforts the amount set forth below as supplemental compensation within sixty (60) days after the applicable achievement. The supplemental compensation from subsections a.-c. below shall in no event exceed a maximum total of \$150,000 for each Contract Year. All amounts are subject to applicable taxes and withholdings.

Notwithstanding the maximum amount set forth in the above paragraph, the Director's maximum bonus for both exceptional athletic achievements set forth in this Section 3.3 and exceptional academic achievements set forth in Section 3.4 below shall not exceed \$250,000 for each of the Contract Years through the term of the Agreement.

- a. Capital One Cup final ranking – Women's Champion
- i. \$50,000 for a top-10 final ranking, or
  - ii. \$75,000 for a top-5 final ranking, or

- iii. \$100,000 for a first place final ranking.

Subject to the maximum amount set forth in 3.3 above, the Director is only eligible for one of the awards listed in 3.3(a).

- b. Director's Cup final ranking (calculated following the conclusion of the NCAA<sup>1</sup> Baseball World Series):
  - i. \$50,000 for a top-10 final ranking; or
  - ii. \$75,000 for a top-5 final ranking; or
  - iii. \$100,000 for a first place final ranking.

Subject to the maximum amount set forth in 3.3 above, the Director is only eligible for one of the awards listed in 3.3(b).

- c. Football:
  - i. \$20,000 for winning the football Big Ten<sup>2</sup> Conference Championship; and
  - ii. \$35,000 for Ohio State's football team participation in a post-season, College Football Playoff ("CFP") bowl game (or other similar Division 1 bowl game if the CFP system is no longer in existence); or
  - iii. \$35,000 for Ohio State's football team participation in the semi-finals (but not the finals) of the CFP; or
  - iv. \$50,000 for Ohio State's football team participation in the finals of the CFP.

Subject to the maximum amount set forth in 3.3 above, the Director is only eligible for one of the awards listed in 3.3(c)(ii),(iii) or (iv).

- d. Women's Basketball:
  - i. \$20,000 for either winning the Big Ten women's basketball tournament OR for being awarded the title of Big Ten regular season Champion or Co-Champion (but not both); and
  - ii. \$15,000 for team participation in either the NCAA or NIT tournaments; or
  - iii. \$25,000 for team participation in the "Sweet 16" round of the NCAA post-season tournament; or
  - iv. \$35,000 for team participation in the semifinals ("Final Four") of the NCAA post-season tournament; or
  - v. \$50,000 for team participation in the finals of the NCAA post-season tournament.

Subject to the maximum amount set forth in 3.3 above, the Director is only eligible for one of the awards listed in 3.3(d)(ii), (iii), (iv) or (v).

- e. Men's Basketball:
  - i. \$20,000 for either winning the Big Ten men's basketball tournament OR for being awarded the title of Big Ten regular season Champion or Co-Champion (but not both); and
  - ii. \$15,000 for team participation in either the NCAA or NIT tournaments; or

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<sup>1</sup> "NCAA" shall mean the National Collegiate Athletics Association and its successors.

<sup>2</sup> "Big Ten" or "Big Ten Conference" shall mean the Big Ten Conference, its successor or any other athletic conference of which Ohio State may be a member.

- iii. \$25,000 for team participation in the “Sweet 16” round of the NCAA post-season tournament; or
- iv. \$35,000 for team participation in the semifinals (“Final Four”) of the NCAA post-season tournament; or
- v. \$50,000 for team participation in the finals of the NCAA post-season tournament.

Subject to the maximum amount set forth in 3.3 above, the Director is only eligible for one of the awards listed in 3.3(e)(ii), (iii), (iv) or (v).

- 3.4 **Exceptional Academic Achievements.** For each of the academic achievements listed below (which achievements shall be reviewed by Ohio State as described herein and refined as appropriate), the Director shall also receive, in consideration of his efforts, the amount set forth below as supplemental compensation. Such supplemental compensation shall in no event exceed a maximum total of \$150,000 for each Contract Year. All amounts are subject to applicable taxes and withholdings.

Notwithstanding the maximum amount set forth in the above paragraph, the Director’s maximum bonus for both exceptional athletic achievements set forth in Section 3.3 above and exceptional academic achievements set forth in this Section 3.4 shall not exceed \$250,000 for each of the Contract Years through the term of this Agreement.

- a. Annual cumulative average grade point average (“GPA”) for all teams as calculated after each of the Fall and Spring semesters each year:
  - i. \$55,000 for an average GPA of 3.0 to 3.29; or
  - ii. \$75,000 for an average GPA of 3.3 to 3.49; or
  - iii. \$90,000 for an average GPA of 3.5 or greater.

Subject to the maximum amount set forth in 3.4 above, the Director is only eligible for one of the awards listed in 3.4(a) per contract year.

- b. Percentage of all student-athletes identified as scholar-athletes at the end of each Spring semester by Ohio State pursuant to established standards:
  - i. \$25,000 for a scholar-athlete rate of 60% or better for the academic year; or
  - ii. \$35,000 for a scholar-athlete rate of 65% or better for the academic year; or
  - iii. \$50,000 for a scholar-athlete rate of 70% or better for the academic year.

Subject to the maximum amount set forth in 3.4 above, the Director is only eligible for one of the awards listed in 3.4(b) per contract year.

- c. Annual percentage of all student-athletes who have graduated during the preceding Spring or Fall semesters and who have returned Ohio State’s graduation survey, and are employed in a position for which a college degree is required or preferred, are in the military, are pursuing additional education or are engaged in a similar career-oriented pursuit as calculated by May 30 of each year:
  - i. \$25,000 for 85% student-athlete placement; or
  - ii. \$35,000 for 90% student-athlete placement; or
  - iii. \$50,000 for 95% student-athlete placement.

Subject to the maximum amount set forth in 3.4 above, the Director is only eligible for one of the awards listed in 3.4(c) per contract year.

- d. Supplemental compensation under this Section 3.4 will only be paid if the Director remains employed as the Senior Vice President and Wolfe Foundation Endowed Athletics Director at the end of each semester or year, as applicable in the above 3.4(a) through (c) above, and will be paid within sixty (60) days following the end of such applicable semester or year. All sums are subject to applicable taxes and withholdings.

3.5 Retention Award. Subject to the Director remaining continuously employed as Senior Vice President and Wolfe Foundation Endowed Athletics Director through June 30, 2022, and his performance through such date being deemed satisfactory by the President, the Director shall be entitled to receive a retention award equal to \$300,000. If the Director becomes entitled to such retention award, it shall be paid to him no later than August 31, 2022. Notwithstanding the foregoing, if the Director's employment is terminated by Ohio State other than for cause (as described in Section 5.2 of this Agreement) after June 30, 2021 but prior to June 30, 2022, the Director will be entitled to receive a retention award equal to \$150,000. If the Director becomes entitled to such retention award, it shall be paid to him no later than 60 days following his date of termination.

Subject to the Director remaining continuously employed as Senior Vice President and Wolfe Foundation Endowed Athletics Director through June 30, 2023, and his performance through such date being deemed satisfactory by the President, the Director shall be entitled to receive a retention award equal to \$200,000. If the Director becomes entitled to such retention award, it shall be paid to him no later than August 31, 2023.

Subject to the Director remaining continuously employed as Senior Vice President and Wolfe Foundation Endowed Athletics Director through June 30, 2024, and his performance through such date being deemed satisfactory by the President, the Director shall be entitled to receive a retention award equal to \$200,000. If the Director becomes entitled to such retention award, it shall be paid to him no later than August 31, 2024.

Subject to the Director remaining continuously employed as Senior Vice President and Wolfe Foundation Endowed Athletics Director through June 30, 2025, and his performance through such date being deemed satisfactory by the President, the Director shall be entitled to receive a retention award equal to \$250,000. If the Director becomes entitled to such retention award, it shall be paid to him no later than August 31, 2025.

Subject to the Director remaining continuously employed as Senior Vice President and Wolfe Foundation Endowed Athletics Director through June 30, 2026, and his performance through such date being deemed satisfactory by the President, the Director shall be entitled to receive a retention award equal to \$300,000. If the Director becomes entitled to such retention award, it shall be paid to him no later than August 31, 2026.

3.6 Ohio State agrees to fly the Director by private (not commercial) aircraft for business purposes only for up to twenty-five (25) hours each Contract Year during the term of the Agreement. Each hour the aircraft is contracted for such use, including but not limited to, empty "deadhead" legs of the flight, will count toward the twenty-five (25) hours per year (except Ohio State shall only count the "deadhead" hours if Ohio State is charged for such "deadhead" hours).

3.7 Additional Supplemental Compensation. As additional supplemental compensation, during the term of this Agreement, Ohio State shall:

- a. During the term of Director's employment as the Senior Vice President and Wolfe Foundation Endowed Athletics Director, Ohio State shall provide Director with an annual fringe benefit allowance, subject to applicable withholdings, to be used towards, and in lieu of, fringe benefits customarily provided to executives (e.g., automobile, financial and/or tax planning services,

etc.). For Contract Year July 1, 2021 through June 30, 2022, the annual allowance will be \$30,000. For Contract Year July 1, 2022 through June 30, 2023, the annual allowance will be \$40,000. For Contract Years July 1, 2023 through June 30, 2026, the annual allowance will be \$50,000 per year. Such allowance shall be paid in substantially equal monthly installments and subject to applicable taxes and withholdings.

- b. Provide an annual travel cost of \$12,000 for the Director's spouse to attend away athletic contests. Such travel cost does not account for travel under Section 3.6, and shall be paid in substantially equal monthly installments and subject to applicable taxes and withholdings.
  - c. Provide to the Director, while the Director is employed as the Senior Vice President and Wolfe Foundation Endowed Athletics Director, two full family memberships at mutually agreed-upon local country clubs, a social family membership at a mutually agreed-upon local country club, and a full membership at the Columbus Club; however, personal expenses associated with such club memberships will be paid by the Director.
- 3.8 All salary or compensation provided to Director for the performance of his duties as Director shall be paid only by Ohio State. To that end, Director will not solicit or accept cash (or its equivalent), a gift, or hospitality (including travel expenses) that is related to the Director's university responsibilities from any person or organization other than Ohio State. As a public official, the Director is subject to the Ohio Ethics Law.
- 3.9 All fringe benefits and payments under this Article 3 shall be subject to applicable tax laws and, if appropriate, will be treated as taxable income subject to applicable withholding and other payroll taxes.

#### **4.0 Director's Specific Duties and Responsibilities**

- 4.1 In consideration of the compensation specified in this Agreement, the Director shall devote his full time and best efforts to the performance of his duties under this Agreement. Such duties shall include all duties that the President may assign as provided in Section 1.0 hereof, all duties as set forth in the Director's then-current job description on file with the Department, and the specific duties listed in this Section 4.1, which list is intended to be illustrative and not exhaustive. Among his specific duties, the Director shall:
- a. Develop and implement plans, policies, procedures and programs that are in compliance with Ohio State, Big Ten Conference, NCAA rules and regulations and applicable local, state and federal laws, and which promote the mission of the Department, Ohio State's high standard of academic excellence and the general welfare of student-athletes. The Director shall consult with Ohio State's Provost and others, as appropriate, to encourage and monitor academic progress of student-athletes toward graduation. The Director shall also ensure that all Department staff members actively support the Department's commitment to academic achievement for each student-athlete;
  - b. Manage and oversee the Department's men's and women's intercollegiate sports through each coach and, senior athletic staff, including coordinating and/or overseeing the recruitment, selection (negotiates and approves contracts) and evaluation (including approving salaries) of all coaches consistent with Ohio State policy and practice. The Director shall promote athletic excellence on local, conference and national levels for the men's and women's intercollegiate athletic program;
  - c. Manage and oversee all Department staff members, including coordinating and/or overseeing the recruitment, selection and evaluation (including approving salaries,, of all Department staff members consistent with Ohio State policy and practice;

- d. Consult with and submit reports, recommendations and supporting documents to the President and/or other persons, Ohio State governing bodies or committees, as necessary, to make decisions regarding academics, capital expansion, staffing, budget appropriations or other aspects of Ohio State's athletic program or for other purposes as requested;
- e. Know, recognize and comply with all applicable laws, as well as all applicable policies, rules and regulations of Ohio State, the Big Ten Conference and the NCAA and supervise and take appropriate steps to ensure that all Department staff knows, recognizes and complies with all such laws, policies, rules and regulations. The Director shall work with Ohio State's Senior Vice President and General Counsel, the Vice President and Chief Compliance Officer and others as directed by the President to develop and implement a comprehensive ongoing program of compliance education for coaches, student-athletes and boosters. The Director shall immediately report to the Department's Office of Athletic Compliance and the Office of Institutional Equity if the Director has reasonable cause to believe that any person or entity, including without limitation, representatives of Ohio State's athletic interests, has violated or is likely to violate or may potentially have violated *any* such laws, policies, rules or regulations (with the exception of Ohio State's Sexual Misconduct Policy, which obligations are detailed in Section f below). The Director shall cooperate fully with the Department's Office of Athletic Compliance and the Office of Institutional Equity at all times. The Director shall also consult with Ohio State's Senior Vice President and General Counsel and others, as appropriate, regarding NCAA or similar rules compliance issues, and shall assist in investigating all cases where a violation has or may have occurred;
- f. The Director shall abide by Office of Human Resources Sexual Misconduct Policy 1.15. The Director shall report promptly to Ohio State's Title IX Coordinator any incident of sexual misconduct (as defined in Office of Human Resources Sexual Misconduct Policy 1.15, including but not limited to, sexual harassment, sexual assault, sexual exploitation, relationship violence, and stalking) when the Director receives a disclosure of sexual misconduct or becomes aware of information that would lead a reasonable person to believe that sexual misconduct may have occurred involving anyone covered by Ohio State's Sexual Misconduct Policy. This includes any incident or information whether related to the victim/survivor or the alleged perpetrator, or both;
- g. Oversee all fiscal operations (including short and long-term budgetary and fiscal planning and monitoring for budget performance) and assume overall responsibility for Department finances and facilities to ensure sound business practices;
- h. Maintain responsibility for the scheduling of intercollegiate sporting events, all aspects of the Department's operations and all aspects of Ohio State's athletic facilities including, but not limited to, evaluating the condition of athletic facilities for safety and comparison with State of Ohio, Big Ten Conference and national standards;
- i. Develop and implement programs to increase revenue sources for the Department, including effective plans for marketing and promotions as well as fundraising strategies to promote donor support of the athletic program. The Director shall participate in negotiations and presentations to promote the Department and Ohio State to sponsors and donors;
- j. Serve as a primary spokesperson for the Department, promoting the philosophy and mission of Ohio State and its athletic program with faculty, staff, students, alumni, the media and the general public on a local and national basis. As such spokesperson, the Director shall participate in, among others, speaking engagements, news conferences, radio, television and other media appearances;

- k. Represent the Department at Ohio State, Big Ten Conference, NCAA, community and other meetings and conventions. The Director shall also serve at the request of the President on any committees as appropriate;
  - l. Cultivate and advance a positive and respectful learning and working environment to provide an unsurpassed student-centered learning experience;
  - m. As Senior Vice President, oversee the Business Advancement unit (“Unit”) comprised of: the Schottenstein Center; Drake Union; Blackwell Hotel; Fawcett Center; Trademark & Licensing; affinity agreements; and the Nationwide Arena management agreement to ensure strong fiscal stewardship of facilities and programs within the Unit and increase the Unit’s existing revenue streams and pursue new revenue opportunities through creative collaboration and innovation; and
  - n. As Senior Vice President, provide leadership and representation to Ohio State in scenarios other than as the Senior Vice President and Wolfe Foundation Endowed Athletics Director at the request of the President, including, but not limited to, participate in and provide leadership to special projects, leadership, coaching, community engagements and other Ohio State initiatives.
- 4.2 The Director shall not undertake any business, professional or personal activities or pursuits that would prevent the Director from devoting the Director’s full time and best efforts to the performance of the Director’s duties under this Agreement, that would otherwise detract from those duties in any manner, or that, in the opinion of Ohio State, would reflect adversely upon Ohio State or its athletic programs. The Director shall comply with Ohio State’s Office of Human Resources Policy 1.30, “Conflict of Interest and Work Outside the University”. Any material violation of this Section 4.2 as determined by Ohio State will subject the Director to disciplinary action, up to and including discharge. Discharge under this Section 4.2 will constitute “for cause” termination under the Agreement.
- 4.3 The Director shall not be permitted to participate in any business transactions or endorse any products or appear on any radio or television programs which may discredit or bring undue criticism to Ohio State or which violate any contractual obligations of Ohio State or which, in Ohio State’s sole discretion, are otherwise not in the best interests of Ohio State or which violate Ohio State Rules<sup>3</sup> or state law. The Director may not associate Ohio State’s name, logos, trademarks, symbols, insignias, indicia, service marks or reputation in connection with any outside income arrangements without the prior written approval of the President and Ohio State’s Office of Trademark and Licensing Services. Such approvals shall not be unreasonably withheld. In the event that the President and Ohio State’s Office of Trademark and Licensing Services give permission to the Director to use Ohio State’s name, logos, trademarks, symbols, insignias, indicia, service marks or reputation, such permission shall be nonexclusive and non-transferable and such permission shall automatically expire upon the Director’s resignation or termination from employment or upon written notice from Ohio State.
- 4.4 In accordance with Governing Athletic Rules<sup>4</sup>, the Director, whenever reasonably requested, but in no event less than annually, shall provide a written detailed account to the President for all

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<sup>3</sup> “Ohio State Rules” shall mean any and all present or future enacted laws, rules, regulations, directives, written policies, bylaws, and constitution, and any and all amendments, supplements, or modifications thereto promulgated hereafter by Ohio State, including, without limitation, its President and the Senior Vice President and Wolfe Foundation Endowed Athletics Director or by Ohio State’s Board of Trustees.

<sup>4</sup> “Governing Athletic Rules” shall mean any and all present or future legislation, rules, regulations, directives, written policies, bylaws and constitutions, and official or authoritative interpretations thereof, and any and all amendments, supplements, or modifications thereto promulgated hereafter by the NCAA or the Big Ten Conference or any successor of such association or conference, or by any other athletic



athletically related income and benefits from sources outside Ohio State (including the amount and source of all such income). Sources of such income shall include, but are not limited to, the following: (i) income from annuities; (ii) non-Ohio State sports camps and clinics; (iii) sports commentary at non-Ohio State athletic events; (iv) country club memberships; and (v) fees for speaking engagements. The approval of such athletically-related income and benefits shall be consistent with Ohio State Rules related to outside income and benefits, if any, applicable to all full-time or part-time employees.

4.5 The Director agrees to provide the President with notice prior to engaging in any discussions or negotiations, directly or indirectly, for his prospective employment at any time before the expiration of this Agreement at any place other than Ohio State.

4.6 To the extent that any personnel matter is not addressed by the terms of this Agreement, Ohio State policies, practices and procedures applicable to staff will govern.

## 5.0 Termination

5.1 Termination by Ohio State for Cause. At all times, the Director shall serve at the pleasure of the President. Ohio State may terminate this Agreement at any time *for cause*, which, in addition to any of its other normally understood meanings in employment contracts shall include, but not be limited to, the following:

- a. Neglect or inattention by the Director to the duties of the Director or the Director's refusal, unwillingness or inability to perform such duties in good faith after reasonably specific written notice has been given to the Director by the President, and the Director has continued such neglect, inattention, refusal, unwillingness or inability during a subsequent reasonable period specified by Ohio State; or
- b. A significant or repetitive or intentional violation (or a pattern of conduct which may constitute or lead to a Level I or Level II violation) of any Governing Athletic Rules (as determined by Ohio State) by the Director (or any other person under the Director's supervision and direction, including but not limited to, student-athletes, which the Director knew about or should have (in Ohio State's determination) reasonably known about); or
- c. A breach of contract terms of this Agreement, as determined by Ohio State, or a violation by the Director of a criminal statute (excluding minor traffic violations). If Ohio State, in its sole discretion determines that a breach is curable, then Ohio State shall give the Director notice of such breach and a reasonable opportunity to cure such breach in the time period specified by Ohio State; or
- d. A violation by the Director of any Ohio State Rules or violation of any law of the State of Ohio or the United States, including but not limited to, Ohio's ethics laws, as determined by Ohio State; or
- e. Fraud or dishonesty of the Director in the performance of his duties or responsibilities under this Agreement, as determined by Ohio State; or
- f. Fraud or dishonesty of the Director in the preparation, falsification, submission or alteration of documents or records required to be prepared or maintained by law, Governing Athletic Rules or Ohio State Rules, or permitting, encouraging or condoning such fraudulent or dishonest acts by any other person, provided that the Director had actual knowledge of such fraudulent or

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conference or governing body hereafter having regulatory power or authority relating to the athletic program of Ohio State. Governing Athletic Rules also shall include any acts of Congress or the State of Ohio regulating college athletics, officials, athletes, or competition

dishonest acts or reasonably should have known about such fraudulent or dishonest acts, as determined by Ohio State; or

- g. Failure by the Director to respond accurately and fully within a reasonable time to any reasonable request or inquiry relating to the performance of his duties hereunder or the performance of his duties during his prior employment at any other institution of higher learning required by law, Governing Athletic Rules or Ohio State Rules, as determined by Ohio State; or
- h. Instruction to any coach, student or other person to respond inaccurately and incompletely to any request or inquiry concerning a matter relevant to Ohio State's athletic programs or other institution of higher learning which shall be propounded by Ohio State, NCAA, the Big Ten Conference or other governing body having supervision over the athletic programs of Ohio State or such other institution of higher learning, or required by law, Governing Athletic Rules or Ohio State Rules, as determined by Ohio State; or
- i. Failure by the Director to manage the Department in a manner that reflects the academic values of Ohio State, as set forth in this Agreement, as determined by Ohio State; or
- j. Soliciting, placing or accepting by the Director of a bet on any intercollegiate or professional athletic contest, or permitting, condoning or encouraging by the Director of any illegal gambling, bookmaking or illegal betting involving any intercollegiate or professional athletic contest whether through a bookmaker, a parlay card, a pool or any other method of organized gambling; or furnishing by the Director of information or data relating in any manner to any sport to any individual known by the Director to be or whom he should reasonably know to be a gambler, better or bookmaker, or an agent of any such person, or the consorting or associating by the Director with such persons, as determined by Ohio State; or
- k. Use or consumption by the Director of alcoholic beverages, drugs, controlled substances, steroids or other chemicals in such degree and for such appreciable period as to impair significantly or materially his ability to perform his duties hereunder or failure by the Director to fully cooperate in the enforcement and implementation of any drug testing program established by Ohio State for student-athletes, as determined by Ohio State; or
- l. The Director's sale, use or possession, or the Director's permitting, encouraging or knowingly condoning by a student-athlete, coach or other athletic staff member of the sale, use or possession of any narcotics, drugs, controlled substances, steroids or other chemicals, the sale, use or possession of which by the Director or such student-athlete, coach or other athletic staff is prohibited by law or by Governing Athletic Rules, or Ohio State Rules, as determined by Ohio State; or
- m. Failure by the Director to report promptly to the President and to the Department's Office of Athletic Compliance and the Office of Compliance and Integrity any violations or potential violations known to the Director of Governing Athletic Rules or Ohio State Rules (with the exception of Ohio State's Sexual Misconduct Policy, which obligations are detailed in Section 5.1(p) below), including, but not limited to, those by the Director or a coach, athletic staff member, student-athlete or other person under the control or supervision of the Director, as determined by Ohio State; or
- n. Failure by the Director to obtain the prior approvals as required by Section 4.3 of this Agreement or to report accurately all sources and amounts of all income and benefits as required by Governing Athletic Rules and Section 4.4 of this Agreement, as determined by Ohio State; or

- o. Commission of or participation in by the Director of any act, situation, or occurrence which, in Ohio State's reasonable judgment brings the Director and/or Ohio State into public dispute, embarrassment, contempt, scandal or ridicule or which constitutes a substantial failure to perform in good faith the duties required of the Director in Section 4.1 herein or failure by the Director to conform his personal conduct to conventional standards of good citizenship, with such conduct offending prevailing social mores and values and/or reflecting unfavorably upon Ohio State's reputation and overall primary mission and objectives, including but not limited to, acts of dishonesty, misrepresentation, fraud or violence that may or may not warrant arrest by the relevant authorities; or
- p. Failure by the Director to promptly report to Ohio State's Title IX Coordinator any incident of sexual misconduct (as defined in Office of Human Resources Sexual Misconduct Policy 1.15, including but not limited to, sexual harassment, sexual assault, sexual exploitation, relationship violence, and stalking) when the Director receives a disclosure of sexual misconduct or becomes aware of information that would lead a reasonable person to believe that sexual misconduct may have occurred involving anyone covered by Ohio State's Sexual Misconduct Policy. This includes any incident or information whether related to the victim/survivor or the alleged perpetrator, or both.

It is recognized that this sub-section (5.1.a-p.) encompasses findings or determinations of violations during employment of the Director at Ohio State or any other institutions of higher learning.

The Director is hereby notified that in addition to the actions Ohio State may take in accordance with this Agreement, the Director may also be subject to disciplinary or corrective action by the NCAA as set forth in the provisions of the NCAA enforcement procedures if the Director is found by the NCAA or Ohio State to be in violation of NCAA Bylaws. The Director agrees that Ohio State shall implement any such disciplinary or corrective actions imposed by the NCAA.

- 5.1.1 Notice. If Ohio State terminates this Agreement *for cause* under this Section 5.1 or Section 4.2, it shall give written notice to the Director of its intention to so terminate this Agreement specifying the contractual provision(s) upon which Ohio State relies therefor and the intended effective date of termination.
- 5.1.2 Termination for Cause/Loss of Compensation and Benefits. In the event this Agreement is terminated *for cause* under this Section 5.1 or Section 4.2, the Director shall not be entitled to receive any further compensation or benefits under this Agreement, which have not been earned as of the date of termination (the Director shall not be deemed to have earned bonuses and supplemental compensation which the Director must repay to Ohio State in accordance with Section 5.8 hereof). In no case shall Ohio State be liable to the Director for the loss of any collateral business opportunities, or any other benefits, perquisites, income or consequential damages suffered by the Director as a result of Ohio State's termination *for cause* under this Section 5.1 or Section 4.2.
- 5.2 Termination by Ohio State Other Than for Cause. This Agreement may be terminated by Ohio State at any time other than for cause (as delineated in Section 5.1 or Section 4.2) upon fourteen (14) days written notice to the Director. In the event of such termination by Ohio State other than for cause, Ohio State shall pay to the Director as liquidated damages, in lieu of any and all legal remedies or equitable relief, the Director's base salary as provided in Section 3.1.a of this Agreement and the Media, Promotions and Public Relations compensation as provided in Section 3.2 of this Agreement for the lesser of two years or for the remainder of the term of this Agreement in substantially equal monthly installments (subject to all applicable taxes and withholdings) beginning the last day of the third month after the date of termination; provided that the first

payment shall be equal to the amount of the monthly installment, multiplied by three. This Section 5.2 is subject, however, to the following:

- a. Other than as described in Section 3.5, Ohio State shall not be liable to the Director for any benefits, performance bonuses or other supplemental compensation that may have been earned had the Director remained employed by Ohio State. All fringe benefits furnished by Ohio State shall terminate upon the date of termination of this Agreement.
- b. The Director is required to mitigate Ohio State's obligations under this Section 5.2 by making reasonable and diligent efforts (under the circumstances and opportunities then prevailing) to obtain an athletic director or other comparable employment position as soon as practicable following such termination.
- c. If the Director is employed elsewhere post-termination in an athletic director or other comparable employment position, Ohio State's obligations to pay the Director as set forth in this Section 5.2 shall be reduced by the Director's total compensation from all sources related to such position. Ohio State shall pay such reduced amount in substantially equal monthly installments after the date of the Director's first day of employment elsewhere for the remaining term of this Agreement.
- d. The Director agrees that as a condition of receiving any post-termination payment as set forth in this Section 5.2, except for earned but unpaid compensation to the date of termination and any legally protected rights the Director has under any employee benefit plan maintained by Ohio State, the Director must execute a comprehensive release within sixty (60) days of the date of the Director's termination of employment in the form determined from time to time by Ohio State in its sole discretion. Generally, the release will require the Director and the Director's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees, legatees and assigns to release and forever discharge Ohio State and its trustees, employees, officers, directors, agents, attorneys, successors and assigns from any and all claims, suits and/or causes of action that grow out of or are in any way related to the Director's employment with Ohio State, other than any claim that Ohio State has breached the terms of the release agreement. This release will include, but not be limited to, any claim under or out of the Equal Pay Act; the Civil Rights Acts of 1964, as amended; the Civil Rights Acts of 1866 and 1871 (42 U.S.C. Sections 1981, 1983, 1985, et seq.); Title VII of the Civil Rights Act of 1964; the United States Constitution; the Age Discrimination in Employment Act; the Older Worker's Benefit Protection Act; the Americans with Disabilities Act; the Family and Medical Leave Act; any state, federal law or local ordinance prohibiting discrimination, harassment or retaliation in employment; any claim for wrongful discharge in violation of public policy, claims of promissory estoppel or detrimental reliance, defamation, intentional infliction of emotional distress; or the public policy of any state; Chapter 4112 of the Ohio Revised Code and any other provision of the Ohio Revised Code; and any other federal, state or local law concerning employment, or in any other manner regulating or otherwise concerning wages, hours or any other terms or conditions of employment. Upon the Director's termination of employment with Ohio State, Director will be presented with a release and if Director fails to timely execute the release, the Director shall not be entitled to any payments under this Section 5.2. The Director acknowledges that the Director is an experienced person knowledgeable about the claims that might arise in the course of employment with Ohio State and knowingly agrees that the payments upon such termination provided for in this Agreement are satisfactory consideration for the release of all possible claims described in the release.
- e. For purposes of this Section 5.2, any reference to the Director's "termination of employment" by Ohio State (or any form of the phrase "termination of employment") shall mean the Director's "separation from service" within the meaning of Section 409A of the Internal

Revenue Code of 1986, as amended (the "Internal Revenue Code"), and Treasury Regulation Section 1.409A-1 (h).

- 5.3 **Termination by the Director.** The Director recognizes that his promise to work for Ohio State for the entire term of this Agreement is an essential consideration in Ohio State's decision to enter into this Agreement and employ him as the Senior Vice President and Wolfe Foundation Endowed Athletics Director. This Agreement would be diminished were he to resign or otherwise terminate his employment as the Senior Vice President and Wolfe Foundation Endowed Athletics Director prior to the expiration of this Agreement. Accordingly, the Director understands and agrees that he may, nevertheless, resign or otherwise terminate his employment under this Agreement prior to the expiration of this Agreement, but only upon the following terms and conditions:
- a. In addition to the notice required under Section 4.5, the Director shall provide Ohio State with at least 6 months prior written notice of his termination of this Agreement;
  - b. The Director shall not be entitled to receive any further unearned compensation or benefits under this Agreement (the Director is not deemed to have earned bonuses and supplemental compensation which the Director must repay to Ohio State in accordance with Section 5.8 hereof);
  - c. If the Director terminates his employment as the Senior Vice President and Wolfe Foundation Endowed Athletics Director, for any reason other than he and/or an immediate family member is diagnosed with a serious and debilitating medical condition, prior to July 1, 2024, the Director will pay as liquidated damages, and not as a penalty, \$250,000 to reimburse Ohio State for expenses, including but not limited to: (i) searching for, recruiting and hiring a new director of Athletics, (ii) relocating a new director of Athletics, and (iii) buying out the contract, if necessary, of the new director of Athletics. The Director shall pay such amount to Ohio State within thirty (30) days of the date the Director terminates employment; and
  - d. The Director agrees that he will not obtain employment as the Director of Athletics with any school in the Big Ten Conference, for the time period remaining under the Agreement. The parties agree that money damages will be inadequate to remedy a breach of this covenant, and that Ohio State shall have the right to obtain such equitable, injunctive or other relief as may be appropriate, including but not limited to enjoining the Director from violating this provision.
- 5.4 **Suspension or Other Disciplinary Action.** If the Director is found by the NCAA or Ohio State to have violated any law or Governing Athletic Rule or Ohio State Rules, the Director may be subject to suspension or other disciplinary or corrective action by the NCAA as set forth in the NCAA enforcement provisions in addition to the actions Ohio State may take in accordance with Section 5.1 and Section 4.2 of this Agreement. In lieu of termination for cause, Ohio State may, at its sole discretion, suspend the Director for a period not to exceed ninety (90) days for any one or more of the acts or omissions representing grounds for termination for cause under Section 5.1 and Section 4.2 of this Agreement. During a period of suspension under this Section 5.4 in lieu of termination for cause, the Director shall not be entitled to receive the pro-rata portion of the base salary provided by Section 3.1.a, and shall not be entitled to any other compensation amounts set forth in Section 3 of this Agreement.
- 5.5. **Records and Information.** All materials or articles of information, including, without limitation, personnel records or any other material or data, furnished to the Director by Ohio State or developed by the Director on behalf of Ohio State or at Ohio State's direction or for Ohio State's use or otherwise in connection with the Director's employment hereunder are and shall remain the sole property of Ohio State. Within seventy-two (72) hours of the expiration of the term of this Agreement or its earlier termination as provided herein, the Director shall immediately cause any such materials in his possession or control, including, but not limited to, all building facility keys,

Ohio State credit cards, telephones and computers (including all other Ohio State issued technological devices) to be delivered to Ohio State.

- 5.6 **Death or Disability.** Notwithstanding any other provisions of this Agreement, this Agreement shall terminate automatically and shall be null and void upon the death of the Director or if the Director becomes totally or permanently disabled (as defined in Section 409A(a)(2)(C) of the Internal Revenue Code) or is otherwise unable to perform duties in the essential functions of the job, with or without a reasonable accommodation immediately upon demand by Ohio State.
- 5.7 **Interference with Coaches, Athletic Staff or Athletes.** In the event of termination, the Director agrees that he will not interfere with Ohio State's coaches, athletic staff or student-athletes or otherwise obstruct Ohio State's ability to transact business. If the Director violates this provision, the Director will not be entitled to any payments under Section 5.2 and will be required to return any that have been disbursed.
- 5.8 **Recovery of Bonus and Supplemental Compensation.** In the event this Agreement is terminated by Ohio State, the Director shall repay to Ohio State all supplemental compensation received by the Director for the achievement of any Exceptional Achievement as set forth in Sections 3.3 and 3.4, if such achievement is subsequently vacated by Ohio State or the NCAA, if such vacation is due, in whole or in part, to the wrongful actions of the Director or an Ohio State head coach, as determined by Ohio State or the NCAA.

#### **6.0 Board of Trustees**

This Agreement shall be subject to the approval of Ohio State's Board of Trustees. In addition, the payment of any compensation pursuant to this Agreement shall be subject to the approval of Ohio State's annual operating budget by Ohio State's Board of Trustees and the sufficiency of legislative appropriations.

#### **7.0 Waiver**

No waiver of any default in the performance of this Agreement shall be effective unless in writing and signed by the waiving party. The waiver of a particular default in the performance of this Agreement shall not constitute a waiver of any other or subsequent default. The resort to a particular remedy upon a default shall not constitute a waiver of any other available remedies.

The financial consequences of termination of this Agreement or suspension thereunder are exclusively set forth herein. Therefore, with the sole exception of payments required by this Agreement, in any instance of termination for cause or without cause or suspension effected in accordance with the procedures established this Agreement, neither the Director nor Ohio State shall be entitled to receive, and each hereby waives any claim against the other and their respective officers, Board of Trustees, directors, agents, employees, successors, heirs and personal representatives, for consequential damages allegedly sustained by reason of any alleged loss of business opportunity, loss of perquisites, loss of outside income, or expectation income, or damages allegedly sustained by reason of alleged humiliation, emotional distress, defamation or loss of consortium resulting from the fact of termination, the public announcement thereof or the release by Ohio State or the Director of information or documents which are required to be released by law. The Director acknowledges that in the event of termination of this Agreement for cause or otherwise, or suspension, hereunder, he shall have no right to occupy the position of the Director and his sole remedies are provided herein and shall not extend to injunctive relief.

#### **8.0 Severability**

If any provision of this Agreement is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected and shall remain in effect.

**9.0 Assignment**

Neither party may assign its rights or delegate its obligations under this Agreement without the consent of the other party, which shall not be unreasonably withheld.

**10.0 Governing Law and Jurisdiction**

This Agreement shall be subject to and construed in accordance with Ohio law. Any action based in whole or in part on this Agreement must be brought in a court of competent jurisdiction in the State of Ohio.

**11.0 Entire Agreement; Amendments**

Beginning July 1, 2021, this Agreement constitutes the entire agreement of employment between the parties and supersedes all prior understandings, letters and agreements, written or oral, with respect to the subject of employment. No amendment or modification of this Agreement shall be effective unless in writing and signed by both parties.

**12.0 Notice**

Any notice provided for herein shall be in writing and shall be deemed to have been given, delivered, or served when delivered personally to the party who is to receive such notice or when mailed by U.S. registered or certified mail, postage prepaid, to such party.

Unless hereinafter changed by written notice to the Director, any notice to Ohio State shall be sent to:

Office of the President  
205 Bricker Hall  
190 North Oval Mall  
Columbus, Ohio 43210

With a copy to:  
Office of the Senior Vice President & General Counsel  
100 Bricker Hall  
190 North Oval Mall  
Columbus, Ohio 43210

Unless hereinafter changed by written notice to Ohio State, any notice to the Director shall be hand-delivered to the Director or delivered or mailed to the following address or home address on file:

Eugene D. Smith  
The Department of Athletics  
410 Woody Hayes Drive  
Columbus, Ohio 43210

**13.0 Tax Advice /Internal Revenue Code Section 409A**

Ohio State will not provide tax advice to the Director or the Director's beneficiaries regarding the tax effects of this Agreement, and does not make any promises or warranties regarding the tax treatment of any compensation or benefits described in this Agreement. Ohio State encourages the Director to consult with his own tax advisors concerning the federal, state, and local tax effects of this Agreement. This Agreement is intended to comply with the requirements of Sections 409A and 457(f) of the Internal Revenue Code and, to the maximum extent permitted by law, shall be administered, operated and construed consistent with this intent. Each payment of compensation under this Agreement shall be treated as a separate payment of

compensation for purposes of applying the exclusion from Section 409A of the Code for certain short-term deferral amounts. Ohio State does not promise or guarantee any specific tax outcome, and shall not be liable for any additional tax, interest, penalty or damages that may be imposed on you by any section of the Code or Internal Revenue Service.

The parties understand and acknowledge that the Director is currently employed under an Employment Agreement effective as of July 1, 2020 ("2020 Employment Agreement"). The parties understand and acknowledge that the 2020 Employment Agreement remains in effect, and that this Agreement will only take effect if the Director remains employed as Senior Vice President and The Wolfe Foundation Endowed Athletics Director through June 30, 2021.

This Agreement is signed by the parties or their duly authorized representative to be effective as of July 1, 2021.

THE OHIO STATE UNIVERSITY

DIRECTOR



Kristina M. Johnson, PhD  
President

Eugene D. Smith

Date: 3-12-2021

Date: 3-15-2021



**APPENDIX A**

**EXECUTIVE BENEFIT AGREEMENT TERM SHEET**

Ohio State will enter into an Executive Benefit Agreement with Eugene D. Smith (the "Director") reflecting the following material terms and conditions:

<b>General Benefit:</b>	Split dollar life insurance arrangement
<b>Application and Issuance of Life Insurance Policies:</b>	<p>You and your spouse will apply for one or more life insurance policies (referred to herein as "policy").</p> <p>Policy will be issued by an insurer or insurers selected by Ohio State.</p> <p>You and, upon your death, your spouse will have all rights of the "owner," including the right to designate beneficiaries and the right to take withdrawals (see below).</p> <p>Ohio State will maintain possession of policy until all contributions, plus interest at an at-market rate of return, have been repaid (collateral).</p>
<b>Contributions:</b>	<p>Ohio State will make a contribution of \$200,000 to the policy in July 2022 if you remain continuously employed as Director through June 30, 2022.</p> <p>Ohio State will make a contribution of \$200,000 to the policy in July 2023 if you remain continuously employed as Director through June 30, 2023.</p> <p>Ohio State will make a contribution of \$200,000 to the policy in July 2024 if you remain continuously employed as Director through June 30, 2024.</p> <p>Ohio State will make a contribution of \$200,000 to the policy in July 2025 if you remain continuously employed as Director through June 30, 2025.</p> <p>Ohio State will make a contribution of \$200,000 to the policy in July 2026 if you remain continuously employed as Director through June 30, 2026.</p> <p>All contributions will be treated as loans for tax purposes.</p>
<b>Vesting and Forfeiture Events</b>	<p><u>June 30, 2026.</u> If Director is employed as Director on June 30, 2026, he shall be 100% vested in the ownership of the policies, notwithstanding the loan endorsements to Ohio State.</p> <p><u>Termination for cause.</u> If the Director is terminated for cause prior to June 30, 2026, the policies' endorsements shall not transfer to Director and Ohio State shall retain the policies and rights to payment without further payment due to or from the Director.</p> <p><u>Death or disability.</u> If Director's employment terminates prior to June 30, 2026 due to his death or disability, he will be entitled to the contributions that would have, but have not yet, been made in July of 2022, 2023, 2024,</p>

	<p>2025, and 2026 if he had remained continuously employed as Director.</p> <p><u>Other than for cause or the Director's voluntary early termination of employment.</u> If prior to June 30, 2026, Ohio State terminates the Director's employment other than for cause, or the Director elects to terminate the Agreement, the Director vests in the contributions made to the policies at the time of the termination.</p>
<b>Withdrawals Prior to Death Benefit:</b>	<p>No withdrawals may be made under policy until after your termination of employment with Ohio State or, if earlier, your disability. Following such event, withdrawals may be made from the cash value.</p> <p>Following your and your spouse's deaths, the death benefit of policy will be payable as follows:</p> <ul style="list-style-type: none"> <li>Contributions paid plus interest at an at-market rate of return to Ohio State; and</li> <li>Balance of the death benefit to your and your spouse's beneficiaries.</li> </ul>
<b>Death Benefits:</b>	<p>Intended to comply with the IRS's "loan regime." The parties acknowledge that Ohio State has not and will not provide tax advice to you regarding this benefit. Ohio State encourages you to consult with your own tax advisors concerning the tax consequences of the benefit.</p>

By initialing below, Ohio State and the Director agree to the material terms and conditions set forth in this Term Sheet, and understand that an Executive Benefit Agreement will be forthcoming for execution.

  


Eugene D. Smith

Kristina M. Johnson, President