

## **EMPLOYMENT AGREEMENT**

THIS EMPLOYMENT AGREEMENT (hereinafter "Agreement"), is made and entered into effective as of the 1st day of January, 2022, by and between the Marshall University Board of Governors on behalf of MARSHALL UNIVERSITY (hereinafter "Marshall" or "University") and Brad D. Smith (also referred to as "President", "you", or "your").

WHEREAS, Marshall wishes to employ you as President of the University and you wish to be employed as President and be its employee, subject to the terms and conditions of this Agreement;

WHEREAS, both Marshall and you desire to set forth their respective rights and obligations in this Agreement;

WHEREAS, this Agreement has been duly approved and its execution has been duly authorized by the Board of Governors;

WHEREAS, West Virginia State law does not permit Marshall to enter into a contract committing expenditures of State funds in excess of the amounts of the appropriated funds available for the particular fiscal year and the principles of tenure apply only to academic appointments, in order for Marshall to retain a competent and qualified President such individuals must be provided reasonable job security so as to permit the individual to demonstrate his/her ability to lead Marshall University. It is also apparent that in order to retain a successful President, a method of providing job security competitive with other colleges and universities programs is needed; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **A. Term**

Marshall shall employ you as its President for a term of five (5) years from January 1st, 2022 through December 31<sup>st</sup> 2026, unless terminated at an earlier date as provided herein. You hereby accept such employment on the terms and conditions set forth in this Agreement.

### **B. Duties and Authority**

1. You are hereby employed by Marshall as President and shall devote such time and attention necessary to satisfy the responsibilities for the position of President. You are responsible to the Board of Governors and you will report to the Board through the Chairperson.
2. You are required to have a comprehensive physical examination by a mutually agreed upon physician within fourteen (14) days of assuming your duties as President of Marshall University and annually, thereafter. The results of the physical examination shall remain confidential and will not be disclosed to the University, unless such results in the opinion of the physician, indicate a condition which would impact your ability to perform your duties as President. Should such a condition arise, the physician will be permitted to disclose such issues to the University's General Counsel and the Chairperson of the Board of Governors.

The University will cover any costs over and above your health insurance coverage for the physical examination.

3. You may not serve as a paid member of a board of directors of, or as a paid consultant of, any public or private corporate or association body while serving as President without permission of the Board of Governors. With respect to your current board commitments, the parties agree that you may continue in those roles and you will begin to transition out of those roles as soon as practicable with an intent to fully transition from these boards by January 2023. This date may be extended by agreement of the parties. The parties further agree that you may continue with your current philanthropic activities and personal investments provided no conflict of interest exists and your duties as President of Marshall are being effectively executed. You may not accept any salary supplement or deferred compensation from the Marshall University Foundation, Inc., or any other source, intended to compensate you for performing the duties of President of Marshall University without permission of the Board.
4. You will be expected to comply with and enforce all federal and state laws, rules and regulations attendant to your position as President, as well as the directives, policies, procedures, and rules of the Board of Governors and the directives and procedures issued by the Chairperson of the Board of Governors in keeping with his responsibilities as chief executive officer of the Board.
5. You will be required to comply with the West Virginia Ethics Act at all times during your service to the Board taking careful regard for provisions of the Act regarding conflicts of interest and use of public office for personal gain. In addition, you should be aware of any provisions of the West Virginia Ethics Act, which may affect your immediate family's relations with the University. The Board acknowledges that we have reviewed your numerous business relationships and find no conflicts of interest relative to your employment as President of the University.

The Board also acknowledges your work in support of the Wing 2 Wing Foundation's philanthropic efforts, including a partnership with the West Virginia University Brad & Alys Smith Outdoor Economic Development Collaborative and other inter-university collaborations conducted in the spirit of state economic development. The Board agrees you may continue in these efforts provided there are no legal conflicts of interest.

6. As a condition of employment as President and for the convenience of your employer, you and your family are required to reside in the University's President's Residence, with the understanding that the house will be used for official functions. The University will be responsible for expenses associated with the President's Residence, including maintenance, utilities, taxes, insurance, domestic help, and decoration. The University reserves the right to make any repairs or improvements it deems necessary. You shall seek prior approval for the Board of Governors or its Executive Committee before undertaking any capital improvements to the home or its grounds.

7. You are authorized to incur travel, hospitality, and other reasonable expenses as necessary in the performance of your duties as President of Marshall University, for all of which you will be reimbursed by Marshall University, in accordance with prevailing laws, regulations, and guidelines of the Board.
8. You are authorized to accept automobile (unlimited use subject to institutional accounting standards), air service and other means of transportation from Marshall and Marshall University Foundation, Inc., for University related travel, including institutional advancement and representation at meetings or events in which Marshall may have an interest.
9. You are further authorized to accept a Presidential discretionary account in such amount as determined by the Foundation, which funds may be expended for any University related purpose, including business entertainment, institutional advancement and representation, and for discretionary assistance such as aid to students and similar purposes, but shall not be used for or considered as, a salary supplement. Neither Marshall nor the Board shall be responsible to continue the discretionary account support provided to you by the Foundation should the Foundation cease doing so.
10. You may also accept organization memberships provided by the Foundation.
11. The Board of Governors recognizes that the spouse of a University President is often called upon to devote substantial time and energy to activities, which benefit the University. Your spouse is hereby authorized to serve when called upon as a representative of Marshall, and to accept payment or reimbursement from the University or the Marshall University Foundation, Inc., for expenses incurred in connection with such activity, including travel on behalf of the University to the extent such payments are authorized by you or the Foundation, and it is understood that your spouse may use facilities and other resources of the University in the same manner as an employee when involved in such activity.
12. The Board will conduct an informal performance evaluation on an annual basis and a formal structured written performance evaluation shall be conducted every third year of your employment as President.
13. If the University, in its sole discretion, desires to procure "key man" insurance covering your life as the President of the University, you shall cooperate with the University in procuring such insurance and shall, at the request of the University, submit to such medical examinations, supply such information and execute such documents as may be required by the insurance company to which the University has applied for insurance. You shall use your reasonable efforts to qualify for the standard premium category of such insurance. You nor your spouse or heirs shall have any interest whatsoever in any "key man" insurance policy procured by the University.

**C. Compensation and Benefits**

1. Your state-funded salary will be at the annualized rate of \$470,000.00, effective January 1<sup>st</sup>, 2022, payable at such times as the University pays its other employees and/or administrators. In addition, you are entitled to receive the annual experience increment available to all state employees as provided by statute.
2. You shall receive \$180 per month for mobile phone usage payable throughout the term of the contract.
3. You will receive a monthly stipend of \$ 900.00 each for two (2) automobiles which includes insurance, purchase or rental, and expenses, subject to annual review and increases determined by the Board.
4. Your monthly dues will be paid at Guyan Golf & Country Club.
5. Family health and life insurance will be provided through the West Virginia Public Employees Insurance Agency (PEIA), and you will be eligible to participate in the retirement plan(s) available to employees of the University.
6. Annual leave will accumulate at the rate of two (2) days per month. You are authorized to accumulate up to two (2) times your yearly annual leave entitlement. Notice of annual leave or sick leave should be provided to the chairman of the Board of Governors or their designee.
7. Sick leave will accumulate at the rate of one and one-half (1½) days per month.

**D. Events of Default and Termination**

1. Your service in this position or termination from it is at the will and pleasure of the Board, subject to paragraphs D.2., D.3., D.4., D.5. and D.6. Should you elect to resign your presidency, the Board expects at least ninety (90) days notice before your last day in the office. Your presidency will also end when a new president assumes his or her duties as President of Marshall University, whichever should occur first.
2. The terms of this agreement shall be for a period of five (5) years ending December 31, 2026, unless you (a) voluntarily resign or retire, (b) are terminated for cause, all as provided for herein, or (c) are removed for reasons other than "cause." In the event of your removal for reasons other than "cause," the provisions contained in paragraph D.3. shall supersede this section.
3. Notwithstanding the provisions contained in paragraph D.1., should the Board determine to remove you from the office of president for reasons other than "cause" as defined herein, the Board commits to employ you in another capacity for the balance of the remaining period of the term of this Agreement at the salary level set forth in paragraph C.1. However, your automobile stipend will terminate, you will no longer reside in the University's President's Residence, and your entertainment stipend will not be paid by the University nor the Foundation.

4. For purposes of this contract, "cause" is defined as used herein shall include but not be limited to:
  - a. dishonesty, gross immorality, conviction (including a plea of no contest) of a felony or other crime involving moral turpitude, misappropriation of funds, habitual insobriety, substance abuse, managerial incompetence, professional incompetence, willful misconduct or gross negligence in the performance of your duties and responsibilities hereunder; or
  - b. failure to observe or perform the material duties of your employment, including, without limitation, those set forth in this Agreement, and such other duties and responsibilities as may be assigned to you from time to time by the Board, or insubordination to the Board; or
  - c. conduct, as determined by the Board, that is clearly contrary to the character and responsibilities of a person occupying the position of President of the University; offends the traditions of the University; brings discredit to the University; or negatively or adversely affects the University's reputation; or
  - d. other cause as provided by law which is not set forth in D.1., D.2. or D.3 above.
  - e. Termination of employment shall occur immediately upon written notice thereof when attributable to cause pursuant to subparagraph 4.a., 4.c. and 4.d. Prior to termination of employment for cause pursuant to subparagraph 4.b., the Board shall be required to give you written notice of the deficient conduct and a reasonable opportunity under the circumstances (as determined by the Board, but in no event fewer than ten (10) business days or more than thirty (30) calendar days following receipt of written notice) to cure: provided, however, that no opportunity to cure shall be provided in the event that the basis or timing for cause is such, as determined by the Board in its sole, reasonable discretion, is not susceptible to cure.
5. Further, if during any period of reassignment, it is determined that while you served as President you engaged in material acts of moral turpitude, dishonesty in the performance or professional duties, personal conduct which substantially impaired your fulfillment of institutional responsibilities or was materially detrimental to your institution, or intentionally committed a substantive violation for the West Virginia Ethics Act the Board may terminate your employment immediately.
6. You may be terminated as President or from any position to which you are reassigned during the term hereof if you have any physical or mental disability that prevents you from performing your essential duties as President with accommodations, or the essential duties of any position to which you are reassigned with accommodations.

**E. Taxes**

Marshall University shall address and accommodate any applicable taxation-related matters including, but not limited to, IRC Section 409A and 457(f).

**F. Severability**

If any provision of this contract is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby, and such remaining provisions shall remain in full force and effect.

**G. Governing Law**

This contract shall be construed in accordance with and governed by the laws of the State of West Virginia. In the event that either party seeks to enforce, litigate or contest the terms and conditions of this employment contract, they mutually agree that the action shall be filed in the United States District Court for the Southern District of West Virginia at Huntington and if that federal court lacks jurisdiction, then it shall be filed in the Circuit Court of Cabell County, West Virginia.

**H. Electronic Signatures**

Both parties agree that an electronic signature of a party, whether digital or encrypted, included in this contract is intended to authenticate this writing and to have the same force and effect as a manual signature. Delivery of a copy of this contract bearing an original or electronic signature by electronic mail in "portable document format" (".pdf") form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.

**I. Entire Agreement**

This instrument contains the entire contract between the parties and no amendment or modification hereto shall be valid unless in writing and signed by the parties hereto. All prior verbal representations are superseded by the terms of this contract. This contract supersedes and replaces all existing Employment Contracts, agreements, and supplements of every kind between you and Marshall University. This contract and the corresponding obligations and benefits thereunder shall become effective when executed by the parties. Following a successful background check and approval from the Marshall University Board of Governors, this shall be a legally binding agreement.

**J. Headings**

The paragraph headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning of the other party.

