

# Governance Committee Meeting

Nov 19, 2020 9:00 AM - 10:00 AM EST

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UNIVERSITY OF CENTRAL FLORIDA

**Board of Trustees  
Governance Committee  
Virtual Meeting  
November 19, 2020, 9:00 - 10:00 a.m.**

**Livestream:**

<https://ucf.webex.com/ucf/onstage/g.php?MTID=e21363727e6607ec04a25825fc0083a40>

**Conference call number: 1-408-418-9388, access code: 132 398 1019#**

**AGENDA**

1. Call to order *Bill Yeargin, Chair, Governance Committee*
2. Roll Call *Tanya Perry, Coordinator, Legal Affairs*
3. Minutes of the October 14, 2020 meeting *Chair Yeargin*
4. New Business *Chair Yeargin*
  - INFO-1 *Board Self-Assessment Process  
Karen Monteleone, Assistant Vice President for Board Relations*
  - GOVC-1 *Resolution on Presidential Authority  
Scott Cole, Vice President and General Counsel  
Janet Owen, Vice President for Government and Community Relations*
  - GOVC-2 *Board Operating Procedures  
Karen Monteleone*
  - GOVC-3 *Amendments to University Regulation UCF-2.033  
Copyright and Works  
Sherry Andrews, Associate General Counsel and Associate Provost*
  - GOVC-4 *Amendments to University Regulation UCF-2.036  
College Credit for Nontraditional Courses Prior to Initial Enrollment  
Youndy Cook, Senior Deputy General Counsel*

GOVC-5	Amendments to University Regulation UCF-3.044 Compensation <i>Youndy Cook</i>
GOVC-6	Amendments to University Regulations UCF-5.008 Rules of Conduct and UCF-5.012 Organizational Rules of Conduct <i>Youndy Cook</i>
GOVC-7	Amendments to University Regulation UCF-7.130 Administration and Finance; Procurement Services <i>Youndy Cook</i>
5. Adjournment	Chair Yeargin



UNIVERSITY OF CENTRAL FLORIDA

Board of Trustees  
Governance Committee Meeting  
October 14, 2020  
Virtual Meeting

**MINUTES**

**CALL TO ORDER**

Trustee Bill Yeargin, chair of the Governance Committee, called the meeting to order at 10:45 a.m. Committee members Alex Martins, Ken Bradley, Joseph Harrington, Sabrina La Rosa, and John Sprouls attended virtually. Chair Seay and Trustees Harold Mills and David Walsh also attended virtually.

**MINUTES**

Trustee Martins made a motion to approve the minutes from the August 12, 2020, Governance Committee meeting. Trustee Harrington seconded the motion.

The committee unanimously approved the minutes of the August 12, 2020, Governance Committee as submitted.

**NEW BUSINESS**

**FY21 Governance Committee Annual Plan (INFO-1)**

Chair Yeargin introduced the Governance Committee Annual Plan for fiscal year 2021. The plan is a summary of the purpose, priorities, and future schedule of the committee. The plan will be revised and updated as needed throughout the year.

**Amendments to University Regulation UCF- 2.003 Admission of Graduate Students (GOVC-7)**

Youndy Cook, Senior Deputy General Counsel, presented proposed amendments to regulation UCF- 2.003 Admission of Graduate Students. This regulation, which sets out basic admissions requirements for graduate students, is amended to allow doctoral academic programs to waive test score requirements for applicants of the Spring, Summer, and Fall 2021 admission cycles. Dr Elizabeth Klonoff, Vice President for Research and Dean of the College of Graduate Studies, shared that many applicants have had difficulties taking the exams due to the current pandemic situation. Trustee Harrington made a motion to approve the proposed regulation amendments and Trustee Bradley seconded. The motion was approved unanimously.

#### Resolution on the Delegation of Authority to the President (GOVC-1)

Janet Owen, Vice President for Government and Community Relations, presented a new resolution which details the authorities delegated to from the Board to the President. All authorities not specifically delegated in this resolution are retained by the Board. The resolution was developed based on the Board of Governors best practices and the practices at other SUS institutions. All trustee feedback was incorporated into the document. The proposed resolution would rescind and replace the existing Delegation of Authority to the President which was approved on May 16, 2019. Trustee Bradley made a motion to approve the resolution and rescind the prior delegation and Trustee LaRosa seconded. Owen indicated that she discovered a mistake in the resolution and will correct it upon conclusion of the meeting. Trustee Bradley amended his motion to approve the resolution with authority to correct errors. Trustee Harrington seconded. The motion was approved unanimously.

#### Ninth Amended and Restated Bylaws of the University of Central Florida Board of Trustees (GOVC-2)

Scott Cole, Vice President and General Counsel, presented proposed revisions to the Bylaws of the Board of Trustees. One prominent revision is shifting the election of the chair and vice chair to occur prior to the start of a fiscal year. The chair and vice chair terms will then align with the university's fiscal year. The term "affiliated organizations" is also being added as it is a broader term that encompasses all entities of the university, not just direct support organizations. Trustee Martins made a motion to approve the amended bylaws and Trustee Bradley seconded. The motion was approved unanimously.

#### Amendments to University Regulation UCF-3.001 Non-Discrimination; Affirmative Action Programs and UCF-3.0134 Complaints and Grievances Alleging Discrimination, Discriminatory Harassment or Retaliation (GOVC-3)

Cook updated the committee on the status of the emergency regulations that were mentioned at the August committee meeting. Those regulations were adopted on August 13<sup>th</sup> in order to comply with the new U.S. Department of Education Title IX regulations which took effect on August 14<sup>th</sup>. The emergency regulations must then move forward through the regular regulation process, which are being proposed for approval at this meeting. Regulations UCF-3.001 and UCF-3.0134 relate to the university's nondiscrimination program, which includes sex discrimination. Some of the proposed changes were highlighted and Trustee Martins asked to have any changes not made in response to the Title IX regulations addressed. No public comments were received on either of these regulations. Trustee Harrington made a motion to approve the proposed regulation amendments and Trustee LaRosa seconded. The motion was approved unanimously.

#### Amendments to University Regulations UCF-3.0191 Disciplinary Action – USPS, UCF-3.033 USPS Predetermination and Arbitration Procedures for Employees with Regular Status, UCF-3.0133 USPS Non-unit Grievance Procedure, UCF-3.0124 Discipline and Termination for Cause of Non-unit Faculty Employees, UCF-3.036 Grievance Procedure for Non-unit Faculty Employees and UCF-3.037 Grievance Procedure for Non-unit AP Employees (GOV-4)

Cook also summarized the amendments to regulations UCF-3.0191, UCF-3.033, UCF-3.0133, UCF-3.0124, UCF-3.036 and UCF-3.037. These regulations relate to the university's personnel program, employee discipline, and internal grievance procedures for employees. UCF-3.0191 implements the new Title IX Grievance Policy and adds Title IX Sexual Harassment as grounds for disciplinary action. Various modifications are made in UCF-3.033 to the disciplinary process to accommodate the procedures required by Title IX when there is an allegation of Title IX sexual harassment. Separately, language

related to administrative leave pending investigation or disciplinary action is amended to defer to existing administrative leave provisions; and rather than arbitration, USPS employees are referred to applicable grievance procedures. In UCF-3.0133 changes are made to clarify that the grievance procedure is not to be used where the employee has an appeal available under the Title IX Grievance Policy. UCF-3.0124 is amended to add new language regarding Title IX Sexual Harassment investigations. UCF-3.036 and UCF-3.037 are amended to clarify that the grievance procedure is not to be used for Title IX Sexual Harassment appeals under the Title IX Grievance Policy. No public comments were received for these regulations. Trustee Sprouls made a motion to approve the proposed regulation amendments and Trustee Martins seconded. The motion was approved unanimously.

Amendments to University Regulations UCF-5.006 Student Rights and Responsibilities, UCF-5.008 Rules of Conduct, UCF-5.009 Student Conduct Review Process; Sanctions, UCF-5.010 Student Conduct Appeals, UCF-5.012 Organizational Rules of Conduct, and UCF-5.013 Organizational Conduct Review Process; Sanctions; Appeals (GOVC-5)

Cook presented the proposed amendments to UCF-5.006, UCF-5.008, UCF-5.009, UCF-5.010, UCF-5.012, and UCF-5.013. These regulations relate to the student and student organization conduct program and procedures. UCF-5.006 is amended to update definitions, including several that are changed to conform to new Title IX Sexual Harassment Procedures. UCF-5.008 updates the description of discriminatory harassment and differentiates between sex-based misconduct and Title IX Sexual Harassment. UCF-5.009 updates the procedures for student conduct cases involving sex-based misconduct as compared to matters involving Title IX Sexual Harassment. UCF-5.010 is amended to clarify the grounds for appeals of student conduct cases involving sex-based misconduct and Title IX Sexual Harassment. UCF-5.012 updates the descriptions of discriminatory harassment and sex-based misconduct. UCF-5.013 is amended to add clarifying language related to the procedures to address sex-based misconduct allegations and updates the link to the CREED program website. No public comments were received for these regulations. Trustee Martins made a motion to approve the proposed regulation amendments and Trustee Bradley seconded. The motion was approved unanimously.

Amendments to University Regulations UCF-3.018 Conflict of Interest or Commitment; Outside Activity or Employment (GOVC-6)

Cook presented the proposed amendments to UCF-3.018 which outlines the conflict of interest and commitment disclosure process. New language has been added that references Florida Statute 1012.977 which requires that individuals engaged in the design, conduct or reporting of research for the university disclose outside activities and financial interests and receive a determination from the university that the outside activity and financial interest does not affect the integrity of the university. No public comments were received for this regulation. Trustee Martins made a motion to approve the proposed regulation amendments and Trustee Bradley seconded. The motion was approved unanimously.

Appointment of Board Member to Central Florida Clinical Practice Organization (GOVC-8)

Jeanette Schreiber, Secretary of the Central Florida Clinical Practice Organization, presented for approval the appointment of Dr. Mehul Patel to the Central Florida Clinical Practice Organization Board of Directors. Dr. Patel is an ophthalmologist who practices at UCF Health. He was selected pursuant to the CFCPO bylaws and will serve a three-year term. Trustee Bradley made a motion to approve the appointment and Trustee Harrington seconded. The motion was approved unanimously.

UCF Foundation Articles of Incorporation (GOVC-9)

Jennifer Cerasa, Senior Associate General Counsel, UCF Foundation, presented the Amended Articles of Incorporation for the UCF Foundation. They were last amended in 1979. The Articles have been completely rewritten and are now consistent with the UCF Foundation bylaws. Trustee Bradley made a motion to approve the amended UCF Foundation Articles of Incorporation and Trustee Harrington seconded. The motion was approved unanimously.

Governance Committee Charter Amendments (GOVC-10)

Cole presented amendments to the Governance Committee charter. These amendments align the Governance Committee to the new format that other committees have incorporated. It also adds new language regarding the process for election of chair and vice chair. The approval of these amendments will rescind the separate Nomination Process for Chair and Vice Chair document that the committee currently uses to avoid duplication. Trustee Martins made a motion to approve the amended charter and Trustee LaRosa seconded. The motion was approved unanimously.

**ADJOURNMENT**

The meeting adjourned at 11:51 a.m.

Reviewed by:

\_\_\_\_\_  
Bill Yeargin  
Chair, Nominating and Governance  
Committee

\_\_\_\_\_  
Date

Respectfully submitted:

\_\_\_\_\_  
Janet Owen  
Associate Corporate Secretary

\_\_\_\_\_  
Date

**UCF BOARD OF TRUSTEES****Agenda Item Summary**

Governance Committee

November 19, 2020

**Title:** Board Self-Assessment Process

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 **Information** **Information for upcoming action** **Action****Meeting Date for Upcoming Action:** February 10, 2021**Purpose and Issues to be Considered:**

As outlined in the UCF Board of Trustees Statement on Board Self-Assessment, the Governance Committee will lead a bi-annual board self-assessment process, commencing in the fall, beginning with a discussion and approval of an electronic survey to be administered prior to the Board's spring retreat.

The board self-assessment timeline is presented as follows:

November 19, 2020	Governance Committee Meeting: Review draft Board Self-Assessment Survey
February 10, 2021	Governance Committee Meeting: Approve final Board Self-Assessment Survey
March 1 – April 2, 2021	Survey is administered
April 2021	Results analyzed; briefings with President, Chair, and Vice Chair
May 20, 2021	Presentation and trustee discussion at the spring BOT Retreat

**Background Information:**

A University of Central Florida Board of Trustees Statement on Board Self-Assessment was approved by this Board on June 18, 2020.

As noted on the Self-Assessment Process document, according to the Association of Governing Boards (AGB), a high-functioning board is composed of members who make service to the institution and its effectiveness in fulfilling its public mission their top priority. Willingness to engage in a regular Board self-assessment is a sign of commitment to this fiduciary standard.

Additionally, Section 4 of the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) 2018 Principles of Accreditation requires governing boards to define and regularly evaluate their responsibilities and expectations as a Board.

**Recommended Action:**

This item is being provided for information only.

**Alternatives to Decision:**

N/A

**Fiscal Impact and Source of Funding:**

N/A

**Authority for Board of Trustees Action:**

N/A

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**Contract Reviewed/Approved by General Counsel**  N/A

**Committee Chair or Chair of the Board has approved adding this item to the agenda**

**Submitted by:**

Karen Monteleone, Assistant Vice President, Board Relations

**Supporting Documentation:**

Attachment A: UCF Board of Trustees Statement on Board Self-Assessment

Attachment B: Draft Board Self-Assessment Survey

**Facilitators/Presenters:**

Karen Monteleone



UNIVERSITY OF CENTRAL FLORIDA

## **UCF Board of Trustees Statement on Board Self-Assessment**

This Statement on Board Self-Assessment provides a framework and timeline for administering a Board self-assessment survey, sharing the results, and implementing action items based on the Board's direction.

### **Purpose**

According to the Association of Governing Boards (AGB), a high-functioning board is composed of members who make service to the institution and its effectiveness in fulfilling its public mission their top priority. Willingness to engage in a regular Board self-assessment is a sign of commitment to this fiduciary standard.

Additionally, Section 4 of the Southern Association of Colleges and Schools Commission on Colleges (SACSCOC) 2018 Principles of Accreditation requires governing boards to define and regularly evaluate their responsibilities and expectations as a Board.

### **Timeline and Presentation of Results**

Led by the Governance Committee, every two years the Board will engage in a comprehensive, Board self-assessment process. This process will commence in the fall, beginning with a discussion and approval of an electronic survey to be administered prior to the Board's spring retreat. The Board Office, in consultation with the president and Board chair, will administer the electronic survey and collect the results. The results will be distributed to the Board and president prior to the Board's spring retreat.

### **Implementation of Action Items**

The Board Office, in coordination with the president and Board chair, will be responsible for the coordination and assurance that implementation of action items determined as an outcome of the assessment process are executed and tracked for appropriate follow-up.

*The UCF Board of Trustees is committed to practicing good governance and hereby accepts this statement as part of its role as a public higher education governing board.*

*Approved by the Board of Trustees on June 18, 2020*

## UCF Board of Trustees Board and Self-Assessment

This survey is designed to focus on the Board's overall performance. It is not an evaluation of any individual Board member. Your responses will remain anonymous, and the results will be consolidated for discussion at the Board's spring retreat.

Indicate the degree to which you agree or disagree with the following statements.

### Knowledge of Institution

1. The Board has a clear understanding of UCF's mission.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

2. The Board is well-informed about UCF's educational programs and academic quality.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

3. The University has a three-to-five-year strategic plan or a set of clear long-ranging goals and priorities.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

4. The Board has a good understanding of the needs, concerns, and perspectives of UCF's constituents.

- Students
- Faculty
- Staff
- Alumni
- Cabinet
- Donors and friends

*(For each)*

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

### The Role of the Board

1. I am informed of and understand my powers and duties as outlined in [Board of Governors Regulation 1.001](#) and the [UCF Board of Trustees Bylaws](#).

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

2. The Board serves as an effective strategic partner to the administration by providing sound advice, offering new perspectives, lending support and by making connections.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

3. Board members come to each meeting prepared and ready to debate issues fully and openly.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

4. Board members receive appropriate training to allow them to discharge their responsibilities.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

5. The Board collectively adheres to the [Board Statement of Expectations](#).

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

6. There is open two-way communication between the Board and administration.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

7. The Board and University administration well understand and operate within their respective roles and responsibilities.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

### **Board Oversight and Relationship with the President**

1. Board members have a clear understanding of their legal and fiduciary responsibilities and carry them out at the proper level of oversight.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

2. The Board effectively participates in strategic planning, monitors financial, educational and administrative performance, sets appropriate performance goals and assesses achievement of those goals.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

3. The Board effectively delegates responsibility for institutional management to the President and refrains from involvement in operational matters except as necessary to fulfill its fiduciary responsibilities.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

4. The Board effectively ensures that institutional policies and processes are current, in legal compliance and properly implemented.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

5. The Board evaluates the performance of the President of the University and has an appropriate mechanism for feedback.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

6. The Board promotes an environment where Board members feel engaged, respected, and empowered to raise issues for discussion.

Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

### Board Meetings and Trustee Engagement

1. The Board's meeting agenda clearly reflects the institution's strategic priorities.  
Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree
2. The format of the **full Board** meeting agendas is conducive for the proper balance of oversight, problem solving, strategic discussion and continuing Board education.  
Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree
3. The **committee** meeting agendas are conducive for the proper balance of oversight, problem solving, strategic discussion and continuing Board education.
4. The number of full Board meetings is appropriate to address the work of the UCF Board of Trustees.  
Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree
5. My time is well utilized when participating in university engagements.  
Strong Agree    Agree    Neither Agree or Disagree    Disagree    Strongly Disagree

### Open Ended Questions

1. What would you like to see the Board accomplish in the next two years?
2. What change or action would most improve the Board's performance?
3. What do you think the Board does well?
4. What are areas in which the Board could improve?
5. What are topics you would like to see the Board address during future meetings?
6. In what ways have you found your role as a board member rewarding?

## UCF BOARD OF TRUSTEES

## Agenda Item Summary

Governance Committee

November 19, 2020

**Title:** Amendment to Resolution on Presidential Authority

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 Information Information for upcoming action Action**Meeting Date for Upcoming Action:** \_\_\_\_\_**Purpose and Issues to be Considered:**

At the October 22, 2020, Board of Trustees meeting Trustee Conte requested additional consideration of the following:

1. Leases and contracts expanded to include those of affiliated organizations.
2. Changing the requirement of contracts that need board of approval from “greater than \$5 million *and* five years” to “greater than \$5 million *or* 5 years.”

Chair Yeargin agreed to take up these issues at the next Governance Committee meeting. Accordingly, changes are proposed to address and resolve these issues in a manner which will balance the need for the university to operate efficiently, while ensuring appropriate Board oversight.

**Background Information:**

The Resolution on Presidential Authority was approved by the Board of Trustees at the October 22, 2020 meeting, replacing all previous delegations. The updated resolution aligns the UCF Board’s delegation of presidential authority with the Board of Governors’ delegation to the individual boards of trustees and with the recommended best practices. Two further amendments to the October 22, 2020 Resolution are recommended to clarify the thresholds for contracts and leases requiring prior approval by the Board of Trustees.

**Recommended Action:**

Approve the two proposed amendments to the Resolution on Presidential Authority.

**Alternatives to Decision:**

N/A

**Fiscal Impact and Source of Funding:**

N/A

**Authority for Board of Trustees Action:**

Board of Governors Regulation 1.001

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**Contract Reviewed/Approved by General Counsel**  N/A **Committee Chair or Chair of the Board has approved adding this item to the agenda** **Submitted by:**

Scott Cole, Vice President and General Counsel

**Supporting Documentation:**

Attachment A: Resolution on Presidential Authority (redline)

Attachment B: Resolution on Presidential Authority (clean copy)

**Facilitators/Presenters:**

Scott Cole, Vice President and General Counsel

## Resolution on Presidential Authority

**WHEREAS**, Article IX, section 7, Florida Constitution provides that the Board of Governors shall establish the powers and duties of the university board of trustees as set forth therein and as may be established in Board of Governors' regulations, and

**WHEREAS**, Board of Governors Regulation 1.001, University Boards of Trustees Powers and Duties, delegates powers and duties to the university boards of trustees so that the university boards have all of the powers and duties necessary and appropriate for the direction, operation, management, and accountability of each state university, and

**WHEREAS**, Board of Governors Regulation 1.001, University Boards of Trustees Powers and Duties, further provides that the university president shall serve as the chief executive officer and corporate secretary of the board of trustees and is responsible to the board of trustees for all operations of the university and for setting the agenda for meetings of the board of trustees in consultation with the chair, and

**WHEREAS**, the University of Central Florida Board of Trustees has revised and updated its delegation of certain authorities to the President, consistent with state law, regulations and policies of the Board of Governors, and regulations and policies of this Board, and hereby rescinds all previously delegated powers and duties to the President on October 26, 2017, January 24, 2019 and May 16, 2019 and intends this Resolution to supersede and replace the previously approved delegations of presidential authority, and

**WHEREAS**, the University of Central Florida Board of Trustees intends that any power or duty not delegated to the President in this Resolution be reserved in the Board of Trustees.

**NOW THEREFORE, RESOLVED** that:

(A) The University of Central Florida Board of Trustees, adopts this Resolution effective October ~~22~~22, 2020, rescinding all existing delegations previously adopted by the Board, and

(B) The University President's powers and duties specified in Florida law, regulations and policies of the Board of Governors, and in the Board of Trustees regulations and bylaws are hereby affirmed; and

(C) The President is hereby authorized, in the name of the University Board of Trustees and the University, to exercise the following authorities and to take the following actions, all as the President deems appropriate, advisable, and in the interests of the University:

**(1) University Administration and Oversight.**

(a) Direct the day-to-day operations of the University.

(b) Organize the University to efficiently and effectively achieve its goals, and periodically review and provide reports to the Board of Trustees on University operations in order to determine how effectively and efficiently it is being administered and whether are meeting the goals of the strategic plan adopted by the Board of Governors and other strategic goals for the advancement of the University as endorsed by the Board of Trustees.

(c) Prepare a strategic plan in alignment with the Board of Governors' systemwide strategic plan and regulations, and the University's mission, to first be submitted to the Board of Trustees for approval and then to the Board of Governors for approval.

(d) Prepare an annual accountability plan and all other significant reports for consideration and approval by the Board of Trustees, and for submission to the Board of Governors, outlining the University's top priorities, strategic directions, and specific actions for achieving the priorities, as well as progress toward previously approved institutional and systemwide goals.

(e) Prepare and periodically update a policy addressing conflicts of interest for the Board of Trustees, Affiliated Organizations, and University and Affiliated Organization employees, and when appropriate, for students, independent contractors, and volunteers.

(f) Maintain an effective information system to provide accurate, timely, and cost-effective information about the University, meeting all data and reporting requirements of the Board of Trustees and Board of Governors.

(g) Propose regulations for approval by the Board of Trustees, when appropriate; take routine administrative actions on behalf of the Board of Trustees prior to the exercise of the Board's authority for final approval, related to the development, adoption, amendment or repeal of University regulations, or any action required under the Florida Administrative Procedures Act, Chapter 120, Florida Statutes.

(h) Establish policies and procedures related to data and technology, including information systems, communications systems, computer hardware and software, and networks.

(i) Secure comprehensive general liability insurance pursuant to sections 1001.706(4)(d) and 1004.24, Florida Statutes, and develop, approve, implement, and oversee the risk management program and implementation of an appropriate insurance strategy.

(j) Develop, approve, implement and oversee a systematic approach to identify, manage, and mitigate various types of risk, regardless of origin, and define the risk appetite for the University and Affiliated Organizations.

(k) Provide for payment of the cost of civil actions against trustees, officers, employees, or agents of the Board of Trustees, as the Board of Trustees is a corporation primarily acting as an instrumentality of the state pursuant to Section 768.28, Florida Statutes, for the purposes of sovereign immunity.

(l) Govern traffic on the grounds of the University and in other areas in accordance with law and any mutual aid agreements entered into with other law enforcement agencies.

(m) Develop and implement initiatives to promote inclusive excellence in all aspects of University programs and functions, fostering a diverse, equitable and inclusive environment in which free expression of different viewpoints is valued. The President will report annually on the University's progress in implementing strategic initiatives and performance relating to diversity, equity and inclusion as they pertain to student enrollment, academic service and programs,

equity in employment, and athletics, as a part of the Board's consideration of the Florida Equity Report.

(n) Establish the program for campus safety and emergency preparedness, including safety and security measures for University personnel, students, and campus visitors.

(o) Develop, approve, implement and oversee the programs, policies, procedures and systems to support and maintain the University's and Affiliated Organization's compliance with applicable federal, state, and local laws, rules, regulations, and other requirements.

(p) Consult with the Board of Trustees in a timely matter on any matters appropriate to its policy-making and fiduciary functions, recommend changes to governance documents, and promptly notify the Board Chair of any facts or circumstances that may materially and adversely affect the reputation of the University or its Affiliated Organizations.

(q) Close all or portions of the University campus and cease normal operations and services in the event of an emergency, when, in the President's judgment, such action would protect the safety, health and welfare of the University faculty, students and staff, and the University facilities and grounds. In exercising this authority, the President is authorized to determine and assign those employees who are required to provide essential services. Closures for non-emergencies greater than three days require consultation with the Chair.

(r) Consult with the Chancellor of the State University System prior to recommending any acquisition, establishment, reclassification, relocation, or closure of additional campuses or special purpose centers to the Board of Trustees.

(s) Take all actions necessary or desirable, including serving as the signatory on all documents and agreements, necessary or desirable to carry out the powers and duties enumerated in this Resolution and those reasonably inferable therefrom.

(t) As appropriate and consistent with this Resolution, delegate and authorize the sub-delegation of powers and duties provided in this Resolution, electronically or in writing to an employee of the University who:

1. is a University Vice President with responsibility in an area relating to the subject matter of the delegation; or

2. is a manager with responsibility in an area relating to the subject matter of the delegation who reports directly to a position at or above the level of Vice President; or

3. holds a position at the University that is equivalent in seniority or responsibility to a Vice President or such manager, as determined by the President or Chief Human Resources Officer; or

4. is deemed by the President to have the appropriate capabilities, provided that the delegation specified the date of the delegation, the name and title of the delegee, the particular authority or portion of authority being delegated, and a copy of the delegation is filed with the delegee and with the Vice President and General Counsel of the University.

## **(2) Academic Programs and Student Affairs.**

(a) Propose regulations for Board of Trustees' approval, and establish policies, when appropriate, in the area of academic programs and student affairs as follows, and in such additional areas as from time to time may be designated by the Legislature, Board of Governors as requiring Board of Trustees' approval:

1. Authorization and discontinuance of degree programs;
2. Articulation and access;
3. Admission and enrollment of students;
4. Minimum academic performance standards for the award of a degree;
5. Student financial assistance;
6. Student activities and organizations;
7. Student records and reports;
8. Antihazing, related penalties, and program for enforcement;
9. Reasonable accommodation of religious observances;
10. Textbook and instructional materials affordability; and
11. Student code of conduct and related penalties.

The President is authorized to adopt and revise policies as required or deemed appropriate in the areas of academic and student affairs which are not specifically listed above.

(b) Develop, approve, and implement non-degree and non-college credit granting educational programs of the University.

(c) Award degrees and certificates or other evidence of satisfying the graduation criteria approved by the Board of Trustees for degree-granting programs or of satisfying the completion criteria approved by the President for non-degree granting programs; award posthumous and in memoriam degrees; initially approve and recommend to the Board of Trustees for its final approval all honorary degrees; develop, approve, implement and govern the administrative and academic terms, policies, procedures and systems for awarding such degrees and certificates.

(d) Develop, approve, and implement student exchange programs, including without limitation those that are ancillary to the degree, non-degree and non-college credit granting programs of the University.

(e) Establish the internal academic calendar of the University within any applicable general guidelines of the Board of Governors.

(f) Establish a committee, which shall include student representation, for the periodic evaluation of the student disciplinary system, in accordance with applicable law and regulation.

(g) Approve the internal procedures of student government organizations.

(h) Establish, develop, approve, implement and govern the programs, terms, policies, procedures and systems for childcare facilities, including educational research centers for child development as authorized in s. 1011.48, Florida Statutes, for the purpose of providing childcare services for

members of the University community as well as providing research and internship opportunities.

(i) Develop, approve, implement and govern the inter- and intra-collegiate athletics programs, policies, and procedures of the University, with periodic reports to the Board of Trustees on the operations of the program including, but not limited to, finances, audit and compliance, and changes in key personnel.

(j) Establish policies regulating the administration and operation of the Office of Research. The President, or designee, is authorized to negotiate, enter into, and execute research contracts; to solicit and accept research grants and donations; and to fix and collect fees, other payments, and donations that may accrue from these methods. The president or designee may negotiate, enter into, and execute contracts on a cost-reimbursement basis and may provide temporary financing of those costs prior to reimbursement from moneys on deposit in a sponsored research development fund, except as prohibited elsewhere by law. All purchases of a division of sponsored research will be made in accordance with the policies and procedures of the University and the purchasing regulations of the Board of Governors; however, upon certification addressed to the President that it is necessary for the efficient or expeditious prosecution of a research project, the President may exempt the purchase of material, supplies, equipment, or services for research purposes from the general purchasing requirement of the Florida Statutes.

(k) Recommend to the Board of Trustees for approval, the creation and termination of masters and undergraduate degree-granting programs subject to BOG final approval of limited access programs and undergraduate programs requiring more than 120 credits for graduation if and as required by law;

(l) Subject to final approval of the Board of Governors:

1. Recommend to the Board of Trustees the creation and termination of doctoral and professional graduate degree-granting programs of the University; and
2. If, and as required by law, recommend and seek final Legislative approval for the creation of new colleges, schools and functional equivalents offering a program leading to a degree that is a credential for a specific license issued under a state statute or constitution.

### **(3) Personnel.**

(a) Establish and implement policies and procedures to recruit, appoint, transfer, promote, compensate, evaluate, reward, demote, discipline, and remove personnel, in accordance with regulations and policies of the Board of Trustees and Board of Governors. Pursuant to law and Board of Governors' regulation, the Board of Trustees will evaluate the President's performance annually against the strategic goals of the University, approve compensation of the President. Renewals of the President's employment contract is subject to confirmation by the Board of Governors and is limited to one-year terms.

(b) With the exception of the positions described in (3)(c), below, consult with the Chair of the Board of Trustees, or other trustee designee, regarding the hiring, dismissal, or any annual increase of more than five (5) percent in the compensation of any Vice President or other direct

report to the President, and any athletics personnel earning over \$1 million in compensation. The President and Board Chair will annually review the positions covered by this provision.

(c) Secure approval of the Board of Trustees for the hiring, firing, or reduction in compensation of individuals serving in the positions of Vice President and General Counsel, Chief Compliance Officer, and Chief Audit Executive, which positions have a reporting relationship to the Board of Trustees in addition to reporting to the President.

(d) Approve travel in accordance with s. 112.061, Florida Statutes.

(e) Administer collective bargaining agreements and matters related thereto, including the appointment of University collective bargaining team members to negotiate collective bargaining agreements; recommend for Board of Trustees' approval actions to be taken on collective bargaining agreements under negotiation; and execute Board of Trustees' approved collective bargaining agreements.

(f) Employ private attorney services after consulting with the University's General Counsel.

(g) Recommend to the Board of Trustees the awarding of tenure.

(h) Consult with the Board Chair regarding employment contracts in excess of one year.

#### **(4) Financial Management.**

(a) Recommend for Board of Trustees' approval financial commitments, contractual obligations, contingent risks, or the assumption of liabilities of any kind of more than (i) \$25 million or (ii) greater than five (5) years in duration, ~~and, or~~ an aggregate net value of greater than \$5 million dollars ~~or greater~~, options, renewals, extensions or amendments ~~thereto~~ any of the above which increase the approved liability in an amount greater than or equal to ten percent (10%) of the total approved value, other than grants, contracts, terms required in gift agreements, and other agreements for research, sponsored training, clinical trials, patents and licensing, technology transfer and research compliance. This authority applies to Affiliated Organizations.

(b) Keep the Board of Trustees apprised of the financial condition of the University and all Affiliated Organizations, subject to the oversight of the Board of Trustees.

(c) Prepare an institutional budget request, including a request for fixed capital outlay, for approval by the Board of Trustees.

(d) Recommend to the Board of Trustees a schedule of tuition and fees to be charged by the University pursuant to law and regulations established by the Board of Governors.

(e) Recommend to the Board of Trustees a regulation for the waiver for tuition and fees pursuant to law and regulations established by the Board of Governors.

(f) Prepare the operating budget of the University, carryforward spending plan, and a fixed capital outlay budget, if required, as prescribed by law, regulations of the Board of Governors,

policies of the Board of Trustees, and provisions of the General Appropriations Act, for approval by the Board of Trustees, with the following requirements:

1. The proposed expenditures, plus transfers, and balances must not exceed the estimated income, transfers, and balances.
2. The budget and each part must balance.
3. If at any time the unencumbered balance in the education and general fund of the Board of Trustees approved operating budget goes below seven (7) percent, the President must provide written notification to the Board of Governors.
4. Any changes to the operating budget in an amount greater than the lower of \$5 million or .5 percent of the budget requires approval of the Board of Trustees.
5. Provide quarterly budget-to-actual reporting to the Board of Trustees' Finance and Facilities Committee and annual budget-to-actual analysis to the Board of Trustees.

(g) Enter into agreements for, and accept, credit card payments as compensation for goods, services, tuition, and fees.

(h) Establish policies and procedures for the performance of annual internal audits of finances, controls and operations of the University and Affiliated Organizations.

(i) Establish policies and procedures for the implementation of appropriate financial controls, with review by the University's internal auditor.

(j) Sign checks and authorize other forms of payment to pay legal obligations of the University, in accordance with section 1011.42(7), Florida Statutes.

(k) Enter into agreements for banking services and perform banking transactions. Further delegation of authority to withdraw funds or other assets from a University account at a depository institution is limited to a vice president or other position deemed by the President or senior designee reporting to the President to have responsibility for financial matters.

(l) Enter into agreements for collection services when deemed advisable in collecting delinquent accounts and charging off and settling uncollectible accounts. The President will annually report the status of accounts receivable charge-offs to the Board, which may be provided through the university's financial statements or reports.

(m) Recommend for Board of Trustees' approval:

1. All borrowing of funds by the University or Affiliated Organizations and any material changes to such loans, including internal University resources borrowed via internal loan;
2. Any debt issuance; and
3. Public private partnerships.

The Board of Trustees will be presented with sufficient information for prudent decision-making for all such projects and comply with the guidelines established by the Board of Governors in connection with the authorization, issuance and sale of University and Affiliated Organization debt.

(n) Make budget transfers to and from depositories and accounts, to include, the transfer funds from one depository to another, within a depository, to another institution, or from another

institution to a depository for investment purposes; and may transfer funds to pay expenses, expenditures, or other disbursements, evidenced by an invoice or other appropriate documentation.

(o) Account for University and Affiliated Organization expenditures of any state, local, federal, and other funds in accordance with guidelines or regulations established by the Board of Governors, and as provided by law, including the submission of annual financial statements for the University and all Affiliated Organizations.

(p) Ensure University funds are invested in accordance with the investment program approved by the Board of Trustees and in compliance with applicable federal and state laws and regulations. The President will inform the Board of Trustees of any proposed material change to the University's investment program.

### **(5) Property and Purchasing.**

(a) Administer a program for the maintenance and construction of facilities, pursuant to Chapter 1013, Florida Statutes, to include the following activities:

1. Prepare a campus master plan for adoption by the Board of Trustees, prepare a campus development agreement for execution by the Board of Trustees, pursuant to section 1013.30, Florida Statutes, and report on progress under the master plan.
2. Recommend for Board of Trustees' prior approval any construction project (new, remodeling, site work) with a projected construction cost, in one or a series of related transactions, in an amount greater than \$2 million (Major Project), and any material changes to the projects, from any funding source(s) not specifically appropriated by the Legislature.
3. Initiate and manage construction projects (new, remodeling, or site work) with a projected construction cost, in one or a series of related transactions, in the amount equal to or less than \$2 million (Minor Project) in addition to Board of Trustees' approved Major Projects. Minor Projects and associated change orders of \$100,000 or more, will be reported on a quarterly basis to the Board of Trustees Finance and Facilities Committee.
4. Approve a facilities program for each Major Project.
5. Exercise responsibility for the fire safety, maintenance and sanitation of facilities.
6. Conduct plan reviews, issue permits and construction inspections to enforce building code compliance for projects subject to the Florida Building Code.
7. Approve additional service authorizations and change orders in the name of the Board of Trustees on Major Projects. Any change order(s) related to a facilities' construction or renovation project, in one or a series of related transactions, that increases the approved project budget in an amount greater than or equal to ten percent (10%) of the total approved value of a project, requires the prior approval of the Board of Trustees. All change orders shall be reported to the Board and entered into the official minutes as soon as practicable at a regular meeting of the Board.
8. Establish policies and procedures for the selection of vendors providing design and construction services incorporating applicable competitive solicitation requirements.
9. Contract for all required design, engineers and construction services, including design-build services.
10. Provide a comprehensive report on construction-related activities at each regular meeting of the Board's Finance and Facilities Committee, including information regarding change order activity.

(b) Recommend for Board of Trustees' approval, regulations setting forth competitive solicitation requirements and other criteria related to the procurement of commodities, goods, equipment and other types of personal property, software and contractual services.

(c) Contract for the purchase, sale, lease, license, or acquisition of commodities, goods, equipment and other types of personal property, software and contractual services, including private attorney services in accordance with the regulations approved by the Board of Trustees'.

(d) Contract for the lease-purchase equipment and software in accordance with the Board of Governors Debt Management Guidelines.

(e) Recommend for Board of Trustees' approval any real property leases or licenses with total University expenditures as a tenant which are greater than \$1,000,000 and ~~/or~~ a term longer than five (5) years as well as any amendment or extension of real property leases or licenses which increases the approved lease in an amount greater than or equal to ten percent (10%) of the total approved value. This authority applies to Affiliated Organizations.

(f) Enter into real property licenses for use of University owned or controlled property.

(g) Recommend for Board of Trustee approval the acquisition, sale or encumbrance of real property for any donated property or for donated property with a value of greater than \$500,000. This authority applies to Affiliated Organizations.

(h) Notify the Board of Trustees prior to the commencement of construction of any facility that requires and has not yet received state funding by the Legislature for facility operating and maintenance costs.

(i) Act for the Board of Trustees as custodian of all University personal property, to include:  
1. Recommending for Board of Trustees' approval, policies and procedures for the disposal of personal property no longer needed by the University, in accordance with state law and Board of Governors regulation; and  
2. The disposal, use or sale of lost or abandoned personal property found within areas under the University's jurisdiction in accordance with section 705.18, Florida Statutes.

(j) Regulate the use, maintenance, protection, and control of, and the imposition of charges for, University-owned or University-controlled buildings and grounds, property and equipment, name trademarks and other proprietary marks, and the financial and other resources of the University.

(k) Recommend to the Board of Trustees naming opportunities for exterior buildings, colleges, schools, departments, institutes, academic centers, or major programs for any individual, corporation or other entity; and (if and as required by law in connection with living individuals, to recommend such name to the BOG and/or Legislature for its final approval.

(l) Protect, develop, and transfer the work products of University personnel and other University agents and contractors, including licensing, assigning, selling, leasing, or otherwise allowing the

use of or conveying such work products and securing and enforcing patents, copyrights, and trademarks therein. The President must consult with the Board Chair before initiating, appealing or settling any litigation related to the enforcement of patents, copyrights and trademarks.

## **(6) Miscellaneous Powers and Duties.**

(a) Recommend for Board of Trustees' approval the creation, certification, decertification, dissolution, and change of governing documents of Affiliated Organizations.

(b) Serve or appoint a presidential designee to serve on the board of directors and the executive committee of all direct support organizations, university health services support organizations and Affiliated Organizations established to benefit the University pursuant to sections 1004.28 and 1004.29, Florida Statutes and recommend for approval by the Board of Trustees any other appointments to Affiliated Organizations. The Chair of the Board of Trustees shall appoint at least one representative to the board of directors and the executive committee of any such entity. The Board of Trustees shall approve all other director appointments.

(c) Recommend for Board of Trustees' approval annual operating and capital budgets for Affiliated Organizations.

(d) Present to the Board of Trustees all internal and external audits of Affiliated Organizations.

(e) Recommend to the Board of Trustees for approval any transfer of funds to or among Affiliated Organizations, unless under an agreement approved by the Board of Trustees.

(f) Develop, approve, implement and oversee the programs, systems, terms, policies, procedures and strategies for the operations of faculty practice plans.

(g) Oversee the University's fundraising operations and accept and administer gifts, grants, bequests, and devises made to the University.

(h) Initiate, appeal and settle lawsuits involving University or Affiliated Organizations, and join amicus briefs, after consultation with the Board Chair, other than routine claims and lawsuits (i) covered by the State of Florida's Division of Risk Management which may be appealed and settled without Board Chair consultation, and (ii) for Affiliated Organizations claims covered by their insurance.

(i) Perform such other duties as are not retained by the Board of Trustees and as may be necessary or appropriate for the administration of the University, in compliance with any applicable laws, Board of Trustees and Board of Governors' regulations, policies, and resolutions.

For the purposes of this Resolution the following terms are used as follows:

**Affiliated Organizations:** Direct Support Organizations, Practice Plan Corporations, and other legal entities under the control of the BOT.

**Board or BOT:** UCF Board of Trustees

**Board Chair:** Chair of the UCF Board of Trustees

**Board of Governors** or **BOG**: Board of Governors of the State University System of Florida  
**President**: President of the University of Central Florida  
**UCF** or **University**: University of Central Florida  
**Vice President**: University vice president or senior vice president.

## Attachment B

# Resolution on Presidential Authority

**WHEREAS**, Article IX, section 7, Florida Constitution provides that the Board of Governors shall establish the powers and duties of the university board of trustees as set forth therein and as may be established in Board of Governors' regulations, and

**WHEREAS**, Board of Governors Regulation 1.001, University Boards of Trustees Powers and Duties, delegates powers and duties to the university boards of trustees so that the university boards have all of the powers and duties necessary and appropriate for the direction, operation, management, and accountability of each state university, and

**WHEREAS**, Board of Governors Regulation 1.001, University Boards of Trustees Powers and Duties, further provides that the university president shall serve as the chief executive officer and corporate secretary of the board of trustees and is responsible to the board of trustees for all operations of the university and for setting the agenda for meetings of the board of trustees in consultation with the chair, and

**WHEREAS**, the University of Central Florida Board of Trustees has revised and updated its delegation of certain authorities to the President, consistent with state law, regulations and policies of the Board of Governors, and regulations and policies of this Board, and hereby rescinds all previously delegated powers and duties to the President on October 26, 2017, January 24, 2019 and May 16, 2019 and intends this Resolution to supersede and replace the previously approved delegations of presidential authority, and

**WHEREAS**, the University of Central Florida Board of Trustees intends that any power or duty not delegated to the President in this Resolution be reserved in the Board of Trustees.

**NOW THEREFORE, RESOLVED** that:

(A) The University of Central Florida Board of Trustees, adopts this Resolution effective October 22, 2020, rescinding all existing delegations previously adopted by the Board, and

(B) The University President's powers and duties specified in Florida law, regulations and policies of the Board of Governors, and in the Board of Trustees regulations and bylaws are hereby affirmed; and

(C) The President is hereby authorized, in the name of the University Board of Trustees and the University, to exercise the following authorities and to take the following actions, all as the President deems appropriate, advisable, and in the interests of the University:

### **(1) University Administration and Oversight.**

(a) Direct the day-to-day operations of the University.

(b) Organize the University to efficiently and effectively achieve its goals, and periodically review and provide reports to the Board of Trustees on University operations in order to determine how effectively and efficiently it is being administered and whether are meeting the goals of the strategic plan adopted by the Board of Governors and other strategic goals for the advancement of the University as endorsed by the Board of Trustees.

- (c) Prepare a strategic plan in alignment with the Board of Governors' systemwide strategic plan and regulations, and the University's mission, to first be submitted to the Board of Trustees for approval and then to the Board of Governors for approval.
- (d) Prepare an annual accountability plan and all other significant reports for consideration and approval by the Board of Trustees, and for submission to the Board of Governors, outlining the University's top priorities, strategic directions, and specific actions for achieving the priorities, as well as progress toward previously approved institutional and systemwide goals.
- (e) Prepare and periodically update a policy addressing conflicts of interest for the Board of Trustees, Affiliated Organizations, and University and Affiliated Organization employees, and when appropriate, for students, independent contractors, and volunteers.
- (f) Maintain an effective information system to provide accurate, timely, and cost-effective information about the University, meeting all data and reporting requirements of the Board of Trustees and Board of Governors.
- (g) Propose regulations for approval by the Board of Trustees, when appropriate; take routine administrative actions on behalf of the Board of Trustees prior to the exercise of the Board's authority for final approval, related to the development, adoption, amendment or repeal of University regulations, or any action required under the Florida Administrative Procedures Act, Chapter 120, Florida Statutes.
- (h) Establish policies and procedures related to data and technology, including information systems, communications systems, computer hardware and software, and networks.
- (i) Secure comprehensive general liability insurance pursuant to sections 1001.706(4)(d) and 1004.24, Florida Statutes, and develop, approve, implement, and oversee the risk management program and implementation of an appropriate insurance strategy.
- (j) Develop, approve, implement and oversee a systematic approach to identify, manage, and mitigate various types of risk, regardless of origin, and define the risk appetite for the University and Affiliated Organizations.
- (k) Provide for payment of the cost of civil actions against trustees, officers, employees, or agents of the Board of Trustees, as the Board of Trustees is a corporation primarily acting as an instrumentality of the state pursuant to Section 768.28, Florida Statutes, for the purposes of sovereign immunity.
- (l) Govern traffic on the grounds of the University and in other areas in accordance with law and any mutual aid agreements entered into with other law enforcement agencies.
- (m) Develop and implement initiatives to promote inclusive excellence in all aspects of University programs and functions, fostering a diverse, equitable and inclusive environment in which free expression of different viewpoints is valued. The President will report annually on the University's progress in implementing strategic initiatives and performance relating to diversity, equity and inclusion as they pertain to student enrollment, academic service and programs,

equity in employment, and athletics, as a part of the Board's consideration of the Florida Equity Report.

(n) Establish the program for campus safety and emergency preparedness, including safety and security measures for University personnel, students, and campus visitors.

(o) Develop, approve, implement and oversee the programs, policies, procedures and systems to support and maintain the University's and Affiliated Organization's compliance with applicable federal, state, and local laws, rules, regulations, and other requirements.

(p) Consult with the Board of Trustees in a timely matter on any matters appropriate to its policy-making and fiduciary functions, recommend changes to governance documents, and promptly notify the Board Chair of any facts or circumstances that may materially and adversely affect the reputation of the University or its Affiliated Organizations.

(q) Close all or portions of the University campus and cease normal operations and services in the event of an emergency, when, in the President's judgment, such action would protect the safety, health and welfare of the University faculty, students and staff, and the University facilities and grounds. In exercising this authority, the President is authorized to determine and assign those employees who are required to provide essential services. Closures for non-emergencies greater than three days require consultation with the Chair.

(r) Consult with the Chancellor of the State University System prior to recommending any acquisition, establishment, reclassification, relocation, or closure of additional campuses or special purpose centers to the Board of Trustees.

(s) Take all actions necessary or desirable, including serving as the signatory on all documents and agreements, necessary or desirable to carry out the powers and duties enumerated in this Resolution and those reasonably inferable therefrom.

(t) As appropriate and consistent with this Resolution, delegate and authorize the sub-delegation of powers and duties provided in this Resolution, electronically or in writing to an employee of the University who:

1. is a University Vice President with responsibility in an area relating to the subject matter of the delegation; or
2. is a manager with responsibility in an area relating to the subject matter of the delegation who reports directly to a position at or above the level of Vice President; or
3. holds a position at the University that is equivalent in seniority or responsibility to a Vice President or such manager, as determined by the President or Chief Human Resources Officer; or
4. is deemed by the President to have the appropriate capabilities, provided that the delegation specified the date of the delegation, the name and title of the delegee, the particular authority or portion of authority being delegated, and a copy of the delegation is filed with the delegee and with the Vice President and General Counsel of the University.

## **(2) Academic Programs and Student Affairs.**

(a) Propose regulations for Board of Trustees' approval, and establish policies, when appropriate, in the area of academic programs and student affairs as follows, and in such additional areas as from time to time may be designated by the Legislature, Board of Governors as requiring Board of Trustees' approval:

1. Authorization and discontinuance of degree programs;
2. Articulation and access;
3. Admission and enrollment of students;
4. Minimum academic performance standards for the award of a degree;
5. Student financial assistance;
6. Student activities and organizations;
7. Student records and reports;
8. Antihazing, related penalties, and program for enforcement;
9. Reasonable accommodation of religious observances;
10. Textbook and instructional materials affordability; and
11. Student code of conduct and related penalties.

The President is authorized to adopt and revise policies as required or deemed appropriate in the areas of academic and student affairs which are not specifically listed above.

(b) Develop, approve, and implement non-degree and non-college credit granting educational programs of the University.

(c) Award degrees and certificates or other evidence of satisfying the graduation criteria approved by the Board of Trustees for degree-granting programs or of satisfying the completion criteria approved by the President for non-degree granting programs; award posthumous and in memoriam degrees; initially approve and recommend to the Board of Trustees for its final approval all honorary degrees; develop, approve, implement and govern the administrative and academic terms, policies, procedures and systems for awarding such degrees and certificates.

(d) Develop, approve, and implement student exchange programs, including without limitation those that are ancillary to the degree, non-degree and non-college credit granting programs of the University.

(e) Establish the internal academic calendar of the University within any applicable general guidelines of the Board of Governors.

(f) Establish a committee, which shall include student representation, for the periodic evaluation of the student disciplinary system, in accordance with applicable law and regulation.

(g) Approve the internal procedures of student government organizations.

(h) Establish, develop, approve, implement and govern the programs, terms, policies, procedures and systems for childcare facilities, including educational research centers for child development as authorized in s. 1011.48, Florida Statutes, for the purpose of providing childcare services for members of the University community as well as providing research and internship opportunities.

(i) Develop, approve, implement and govern the inter- and intra-collegiate athletics programs, policies, and procedures of the University, with periodic reports to the Board of Trustees on the operations of the program including, but not limited to, finances, audit and compliance, and changes in key personnel.

(j) Establish policies regulating the administration and operation of the Office of Research. The President, or designee, is authorized to negotiate, enter into, and execute research contracts; to solicit and accept research grants and donations; and to fix and collect fees, other payments, and donations that may accrue from these methods. The president or designee may negotiate, enter into, and execute contracts on a cost-reimbursement basis and may provide temporary financing of those costs prior to reimbursement from moneys on deposit in a sponsored research development fund, except as prohibited elsewhere by law. All purchases of a division of sponsored research will be made in accordance with the policies and procedures of the University and the purchasing regulations of the Board of Governors; however, upon certification addressed to the President that it is necessary for the efficient or expeditious prosecution of a research project, the President may exempt the purchase of material, supplies, equipment, or services for research purposes from the general purchasing requirement of the Florida Statutes.

(k) Recommend to the Board of Trustees for approval, the creation and termination of masters and undergraduate degree-granting programs subject to BOG final approval of limited access programs and undergraduate programs requiring more than 120 credits for graduation if and as required by law;

(l) Subject to final approval of the Board of Governors:

1. Recommend to the Board of Trustees the creation and termination of doctoral and professional graduate degree-granting programs of the University; and
2. If, and as required by law, recommend and seek final Legislative approval for the creation of new colleges, schools and functional equivalents offering a program leading to a degree that is a credential for a specific license issued under a state statute or constitution.

### **(3) Personnel.**

(a) Establish and implement policies and procedures to recruit, appoint, transfer, promote, compensate, evaluate, reward, demote, discipline, and remove personnel, in accordance with regulations and policies of the Board of Trustees and Board of Governors. Pursuant to law and Board of Governors' regulation, the Board of Trustees will evaluate the President's performance annually against the strategic goals of the University, approve compensation of the President. Renewals of the President's employment contract is subject to confirmation by the Board of Governors and is limited to one-year terms.

(b) With the exception of the positions described in (3)(c), below, consult with the Chair of the Board of Trustees, or other trustee designee, regarding the hiring, dismissal, or any annual increase of more than five (5) percent in the compensation of any Vice President or other direct report to the President, and any athletics personnel earning over \$1 million in compensation. The President and Board Chair will annually review the positions covered by this provision.

(c) Secure approval of the Board of Trustees for the hiring, firing, or reduction in compensation of individuals serving in the positions of Vice President and General Counsel, Chief Compliance Officer, and Chief Audit Executive, which positions have a reporting relationship to the Board of Trustees in addition to reporting to the President.

(d) Approve travel in accordance with s. 112.061, Florida Statutes.

(e) Administer collective bargaining agreements and matters related thereto, including the appointment of University collective bargaining team members to negotiate collective bargaining agreements; recommend for Board of Trustees' approval actions to be taken on collective bargaining agreements under negotiation; and execute Board of Trustees' approved collective bargaining agreements.

(f) Employ private attorney services after consulting with the University's General Counsel.

(g) Recommend to the Board of Trustees the awarding of tenure.

(h) Consult with the Board Chair regarding employment contracts in excess of one year.

#### **(4) Financial Management.**

(a) Recommend for Board of Trustees' approval financial commitments, contractual obligations, contingent risks, or the assumption of liabilities of any kind of more than (i) \$25 million or (ii) greater than five (5) years in duration, and an aggregate net value of greater than \$5 million dollars, options, renewals, extensions or amendments to any of the above which increase the approved liability in an amount greater than or equal to ten percent (10%) of the total approved value, other than grants, contracts, terms required in gift agreements, and other agreements for research, sponsored training, clinical trials, patents and licensing, technology transfer and research compliance. This authority applies to Affiliated Organizations.

(b) Keep the Board of Trustees apprised of the financial condition of the University and all Affiliated Organizations, subject to the oversight of the Board of Trustees.

(c) Prepare an institutional budget request, including a request for fixed capital outlay, for approval by the Board of Trustees.

(d) Recommend to the Board of Trustees a schedule of tuition and fees to be charged by the University pursuant to law and regulations established by the Board of Governors.

(e) Recommend to the Board of Trustees a regulation for the waiver for tuition and fees pursuant to law and regulations established by the Board of Governors.

(f) Prepare the operating budget of the University, carryforward spending plan, and a fixed capital outlay budget, if required, as prescribed by law, regulations of the Board of Governors, policies of the Board of Trustees, and provisions of the General Appropriations Act, for approval by the Board of Trustees, with the following requirements:

1. The proposed expenditures, plus transfers, and balances must not exceed the estimated income, transfers, and balances.

2. The budget and each part must balance.
3. If at any time the unencumbered balance in the education and general fund of the Board of Trustees approved operating budget goes below seven (7) percent, the President must provide written notification to the Board of Governors.
4. Any changes to the operating budget in an amount greater than the lower of \$5 million or .5 percent of the budget requires approval of the Board of Trustees.
5. Provide quarterly budget-to-actual reporting to the Board of Trustees' Finance and Facilities Committee and annual budget-to-actual analysis to the Board of Trustees.

(g) Enter into agreements for, and accept, credit card payments as compensation for goods, services, tuition, and fees.

(h) Establish policies and procedures for the performance of annual internal audits of finances, controls and operations of the University and Affiliated Organizations.

(i) Establish policies and procedures for the implementation of appropriate financial controls, with review by the University's internal auditor.

(j) Sign checks and authorize other forms of payment to pay legal obligations of the University, in accordance with section 1011.42(7), Florida Statutes.

(k) Enter into agreements for banking services and perform banking transactions. Further delegation of authority to withdraw funds or other assets from a University account at a depository institution is limited to a vice president or other position deemed by the President or senior designee reporting to the President to have responsibility for financial matters.

(l) Enter into agreements for collection services when deemed advisable in collecting delinquent accounts and charging off and settling uncollectible accounts. The President will annually report the status of accounts receivable charge-offs to the Board, which may be provided through the university's financial statements or reports.

(m) Recommend for Board of Trustees' approval:

1. All borrowing of funds by the University or Affiliated Organizations and any material changes to such loans, including internal University resources borrowed via internal loan;
2. Any debt issuance; and
3. Public private partnerships.

The Board of Trustees will be presented with sufficient information for prudent decision-making for all such projects and comply with the guidelines established by the Board of Governors in connection with the authorization, issuance and sale of University and Affiliated Organization debt.

(n) Make budget transfers to and from depositories and accounts, to include, the transfer funds from one depository to another, within a depository, to another institution, or from another institution to a depository for investment purposes; and may transfer funds to pay expenses, expenditures, or other disbursements, evidenced by an invoice or other appropriate documentation.

(o) Account for University and Affiliated Organization expenditures of any state, local, federal, and other funds in accordance with guidelines or regulations established by the Board of Governors, and as provided by law, including the submission of annual financial statements for the University and all Affiliated Organizations.

(p) Ensure University funds are invested in accordance with the investment program approved by the Board of Trustees and in compliance with applicable federal and state laws and regulations. The President will inform the Board of Trustees of any proposed material change to the University's investment program.

## **(5) Property and Purchasing.**

(a) Administer a program for the maintenance and construction of facilities, pursuant to Chapter 1013, Florida Statutes, to include the following activities:

1. Prepare a campus master plan for adoption by the Board of Trustees, prepare a campus development agreement for execution by the Board of Trustees, pursuant to section 1013.30, Florida Statutes, and report on progress under the master plan.
2. Recommend for Board of Trustees' prior approval any construction project (new, remodeling, site work) with a projected construction cost, in one or a series of related transactions, in an amount greater than \$2 million (Major Project), and any material changes to the projects, from any funding source(s) not specifically appropriated by the Legislature.
3. Initiate and manage construction projects (new, remodeling, or site work) with a projected construction cost, in one or a series of related transactions, in the amount equal to or less than \$2 million (Minor Project) in addition to Board of Trustees' approved Major Projects. Minor Projects and associated change orders of \$100,000 or more, will be reported on a quarterly basis to the Board of Trustees Finance and Facilities Committee.
4. Approve a facilities program for each Major Project.
5. Exercise responsibility for the fire safety, maintenance and sanitation of facilities.
6. Conduct plan reviews, issue permits and construction inspections to enforce building code compliance for projects subject to the Florida Building Code.
7. Approve additional service authorizations and change orders in the name of the Board of Trustees on Major Projects. Any change order(s) related to a facilities' construction or renovation project, in one or a series of related transactions, that increases the approved project budget in an amount greater than or equal to ten percent (10%) of the total approved value of a project, requires the prior approval of the Board of Trustees. All change orders shall be reported to the Board and entered into the official minutes as soon as practicable at a regular meeting of the Board.
8. Establish policies and procedures for the selection of vendors providing design and construction services incorporating applicable competitive solicitation requirements.
9. Contract for all required design, engineers and construction services, including design-build services.
10. Provide a comprehensive report on construction-related activities at each regular meeting of the Board's Finance and Facilities Committee, including information regarding change order activity.

(b) Recommend for Board of Trustees' approval, regulations setting forth competitive solicitation requirements and other criteria related to the procurement of commodities, goods, equipment and other types of personal property, software and contractual services.

(c) Contract for the purchase, sale, lease, license, or acquisition of commodities, goods, equipment and other types of personal property, software and contractual services, including private attorney services in accordance with the regulations approved by the Board of Trustees'.

(d) Contract for the lease-purchase equipment and software in accordance with the Board of Governors Debt Management Guidelines.

(e) Recommend for Board of Trustees' approval any real property leases or licenses with total University expenditures as a tenant which are greater than \$1,000,000 and a term longer than five (5) years as well as any amendment or extension of real property leases or licenses which increases the approved lease in an amount greater than or equal to ten percent (10%) of the total approved value. This authority applies to Affiliated Organizations.

(f) Enter into real property licenses for use of University owned or controlled property.

(g) Recommend for Board of Trustee approval the acquisition, sale or encumbrance of real property for any donated property or for donated property with a value of greater than \$500,000. This authority applies to Affiliated Organizations.

(h) Notify the Board of Trustees prior to the commencement of construction of any facility that requires and has not yet received state funding by the Legislature for facility operating and maintenance costs.

(i) Act for the Board of Trustees as custodian of all University personal property, to include:  
1. Recommending for Board of Trustees' approval, policies and procedures for the disposal of personal property no longer needed by the University, in accordance with state law and Board of Governors regulation; and  
2. The disposal, use or sale of lost or abandoned personal property found within areas under the University's jurisdiction in accordance with section 705.18, Florida Statutes.

(j) Regulate the use, maintenance, protection, and control of, and the imposition of charges for, University-owned or University-controlled buildings and grounds, property and equipment, name trademarks and other proprietary marks, and the financial and other resources of the University.

(k) Recommend to the Board of Trustees naming opportunities for exterior buildings, colleges, schools, departments, institutes, academic centers, or major programs for any individual, corporation or other entity; and (if and as required by law in connection with living individuals, to recommend such name to the BOG and/or Legislature for its final approval.

(l) Protect, develop, and transfer the work products of University personnel and other University agents and contractors, including licensing, assigning, selling, leasing, or otherwise allowing the use of or conveying such work products and securing and enforcing patents, copyrights, and trademarks therein. The President must consult with the Board Chair before initiating, appealing or settling any litigation related to the enforcement of patents, copyrights and trademarks.

## **(6) Miscellaneous Powers and Duties.**

- (a) Recommend for Board of Trustees' approval the creation, certification, decertification, dissolution, and change of governing documents of Affiliated Organizations.
- (b) Serve or appoint a presidential designee to serve on the board of directors and the executive committee of all direct support organizations, university health services support organizations and Affiliated Organizations established to benefit the University pursuant to sections 1004.28 and 1004.29, Florida Statutes and recommend for approval by the Board of Trustees any other appointments to Affiliated Organizations. The Chair of the Board of Trustees shall appoint at least one representative to the board of directors and the executive committee of any such entity. The Board of Trustees shall approve all other director appointments.
- (c) Recommend for Board of Trustees' approval annual operating and capital budgets for Affiliated Organizations.
- (d) Present to the Board of Trustees all internal and external audits of Affiliated Organizations.
- (e) Recommend to the Board of Trustees for approval any transfer of funds to or among Affiliated Organizations, unless under an agreement approved by the Board of Trustees.
- (f) Develop, approve, implement and oversee the programs, systems, terms, policies, procedures and strategies for the operations of faculty practice plans.
- (g) Oversee the University's fundraising operations and accept and administer gifts, grants, bequests, and devises made to the University.
- (h) Initiate, appeal and settle lawsuits involving University or Affiliated Organizations, and join amicus briefs, after consultation with the Board Chair, other than routine claims and lawsuits (i) covered by the State of Florida's Division of Risk Management which may be appealed and settled without Board Chair consultation, and (ii) for Affiliated Organizations claims covered by their insurance.
- (i) Perform such other duties as are not retained by the Board of Trustees and as may be necessary or appropriate for the administration of the University, in compliance with any applicable laws, Board of Trustees and Board of Governors' regulations, policies, and resolutions.

For the purposes of this Resolution the following terms are used as follows:

**Affiliated Organizations:** Direct Support Organizations, Practice Plan Corporations, and other legal entities under the control of the BOT.

**Board or BOT:** UCF Board of Trustees

**Board Chair:** Chair of the UCF Board of Trustees

**Board of Governors or BOG:** Board of Governors of the State University System of Florida

**President:** President of the University of Central Florida

**UCF or University:** University of Central Florida

**Vice President:** University vice president or senior vice president.

## UCF BOARD OF TRUSTEES

## Agenda Item Summary

Governance Committee

November 19, 2020

**Title:** Board Operating Procedures

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 Information       Information for upcoming action       Action**Meeting Date for Upcoming Action:** \_\_\_\_\_**Purpose and Issues to be Considered:**

Staff from the Board Relations Office conducted a review of the Board Operating Procedures, approved by this Board on July 18, 2019, to determine the approval process for this document.

For committee discussion today is whether the document should be revoked as an official Board document requiring approval, reconstituting it as a Board Operating Guidelines and Procedures reference document shared in Board orientation materials and posted under Resources on the Board of Trustees website. The Board Relations Office staff will be tasked with updating the document as amendments to primary governing documents are approved by the Board.

The meeting materials include an annotated procedures document citing the sources of all information contained in Board Operating Procedures.

**Background Information:**

The Board Operating Procedures document was developed to formalize processes as they relate to the operations of the Board. The Board Operating Procedures was adopted on July 18, 2019 and amended on September 19, 2019.

**Recommended Action:**

Recommend to the University of Central Florida Board of Trustees to revoke the Board Operating Procedures as an official board document requiring approval, reconstituting it as a Board Operating Guidelines and Procedures document to be shared in Board orientation materials and posted under Resources on the Board of Trustees website, and updated as amendments to primary governing documents are approved by the Board.

**Alternatives to Decision:**

Do not approve or suggest alternatives to the recommended action.

**Fiscal Impact and Source of Funding:**

N/A

**Authority for Board of Trustees Action:**

Section 2.3, UCF Board of Trustees Ninth Amended and Restated Bylaws

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**Contract Reviewed/Approved by General Counsel**    N/A   **Committee Chair or Chair of the Board has approved adding this item to the agenda**

**Submitted by:**

Karen Monteleone, Assistant Vice President, Board Relations

**Supporting Documentation:**

Attachment A: Board Operating Procedures, revised September 19, 2019, with outline

**Facilitators/Presenters:**

Karen Monteleone



## University of Central Florida Board of Trustees

### Board Operating Procedure

Title: Board Operating Procedure – Staffing; Meetings; Agendas

BOP No. 2019-1

Date of Adoption July 18, 2019, Revised 9-19-19.

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#### **Statement of purpose**

This Board Operating Procedure serves to articulate Board expectations for Board members and staff with regard to Board operations, including meetings. In the event of a conflict between any Board Operating Procedure and the bylaws, the terms of the bylaws shall take precedence.

#### **Staff Responsibilities**

Staff of the University will provide all materials and information necessary for the Board to make informed decisions and fulfill its fiduciary responsibilities.

*Note: this is covered in the Ninth Amended and Restated Bylaws, 7.4: Agenda*

#### **Committee liaisons**

The Board chair and president shall identify a senior leader for each Board committee to facilitate committee meetings, assist in agenda development, prepare meeting and agenda item materials, coordinate presentations, and fulfill other duties. Assignments to standing Board committees are typically as follows:

- Advancement – Chief of Staff and Vice President for Communications and Marketing; Vice President for Advancement; and Vice President for Government Relations
- Audit and Compliance – Chief Audit Officer; and Chief Compliance, Ethics, and Risk Officer
- Compensation and Labor – Associate Vice President and Chief Human Resources Officer; and Vice President and General Counsel
- Educational Programs – Provost and Vice President for Academic Affairs
- Finance and Facilities – Chief Financial Officer; and Chief Operations Officer
- Nominating and Governance – Vice President and General Counsel
- Executive – Vice President for Government Relations

*Note: this is covered in the Ninth Amended and Restated Bylaws, Article VI: Committees. Committee liaisons are listed on the UCF Board of Trustees website.*

### **Committee coordinators**

In addition, each committee will have an assigned committee coordinator, generally a staff member in the office of a Committee Liaison to the Board standing committee. It will be the role of the committee coordinator to:

- advise and support committee leadership and members of the committee to ensure successful committee operations;
- serve as a liaison between committee leadership and the senior leader committee liaison(s);
- facilitate annual work planning, agenda planning, and meeting material previews;
- review meeting materials, including agenda items, supporting documentation, and documents of committee action; and
- support the committee leadership and committee members in gathering information for committee business.
- Prepare minutes

*Note: this is covered in the individual committee charters, which are posted on the UCF Board of Trustees website.*

### **Board Operations – Meetings**

In addition to providing all materials and information necessary for the Board to make informed decisions and fulfill its fiduciary responsibilities, staff shall have primary responsibility for all logistical matters involved in scheduling meetings, in preparing Board meeting materials, in submitting agenda items, and in assuring that meetings are properly equipped and staffed to run efficiently and effectively.

*Note: this is covered in the Ninth Amended and Restated Bylaws, 4.5: Corporate Secretary*

### **Board Operations – Standard Format for Agenda Items**

Agenda items shall be prepared for all Committee and Board meetings using a standardized format that provides the following information for each proposed action:

- background information on the proposed action;
- issues to be decided by the Committee or Board;
- reasonable alternatives available to the decision being recommended;
- financial cost of the decision to the University, the specific funding source amount and any restrictions on the proposed funding source;
- the staff's recommendation on the item, stated with specificity; authority for the Board's action;
- confirmation that any contracts were reviewed and approved by General Counsel.
- confirmation that the agenda item was approved by the Committee Chair or Board Chair prior to placement on the agenda.
- Additionally, each Board agenda item shall identify the senior officer sponsoring the action, provide any supporting documentation, and list facilitators/presenters for the agenda item.

A form for this purpose has been created and is available on the Board website under the Resources tab. [See <https://bot.ucf.edu/files/2019/02/Agenda-Memorandum.pdf>]

*Note: the use of a standardized agenda memo was approved by the Board on January 24, 2019 and the agenda memo is listed under Resources on the UCF Board of Trustees website.*

### **Board Operations – Development of Agendas**

Committee liaisons must consult with their committee chair well in advance of finalizing agendas about the content and strategic issues to be included on each agenda.

Committee liaisons should arrange to discuss the agenda and materials in advance with the Committee Chairs to ensure the clarity and adequacy of the information provided.

The President, and Committee liaisons as appropriate, should arrange to discuss the agenda and materials in advance with the Board Chair to ensure the clarity and adequacy of the information provided.

Prior to distributing materials to the Board, the President, General Counsel, and the Vice President of Government Relations, along with other committee liaisons as appropriate, will, to the best of their knowledge, confirm the completeness and accuracy of materials.

Each agenda item for which statutory authority supports the Board's or Committee's action shall be additionally verified by General Counsel.

*Note: this is covered in the Ninth Amended and Restated Bylaws, 7.4: Agenda*

### **Board Operations – Delivery of Meeting Materials**

For regularly scheduled meetings of the Board, notice shall be provided and materials should be delivered to trustees at least two weeks in advance of a Board meeting to provide the trustees with the opportunity to study the materials and raise questions. Late additions are not permitted except in exceptional circumstances or to correct scrivener's errors.

For specially called meetings of the Board, notice shall be provided and materials should be delivered to trustees at least forty-eight (48) hours in advance of the meeting. Late additions are not permitted except in exceptional circumstances or to correct scrivener's errors.

For emergency meetings of the Board, notice shall be provided and materials should be delivered to trustees at least twenty-four (24) hours in advance of the meeting. Late additions are not permitted.

*Note: this is covered in the Ninth Amended and Restated Bylaws, Article VII: Meetings*

### **Board Operations – Minutes**

It is the expectation of the Board that staff shall prepare minutes of each Board meeting and Board Committee meeting that present a full and accurate report on Board and Committee deliberations and actions. Minutes shall be prepared with the following guidelines in mind:

Minutes should identify meeting start time, the trustees in attendance and the trustees not in attendance; minutes should also note trustees who leave early or arrive late (or who are not present for a particular item taken up on the agenda).

Minutes should follow the order of the agenda of the meeting and should reflect each action taken, including all votes.

Minutes should provide enough information to show how trustees reached their decisions and what actions were taken, but minutes should not record discussions verbatim and should not resemble a transcript.

Motions should be recorded with precise wording; minutes should identify the Trustees who made and seconded the motion, and the result of the vote on the motion. If there is a conflict of interest on any particular action item, that should be noted in the minutes and proper paperwork (Form F8) should be submitted by the trustee later.

Minutes should conclude with the date and time of adjournment.

*Note: this is covered in the Ninth Amended and Restated Bylaws, Article IV: Officers of the Board, Section 4.5: Corporate Secretary*

### **Board Operations – Current Calendar**

The Board expects staff to prepare and maintain a current calendar of all relevant deadlines and meetings for the Board and each Board Committee. This calendar shall include Board and Committee meetings dates, deadlines for approval and submission of meeting items, and any relevant Board oversight deadlines. This calendar may also include other dates of interest to Trustees, such as dates for Board of Governors meetings, or any other item the Board identifies as appropriate for inclusion. This calendar shall be updated regularly and shall be available on the Board website.

*Note: Committee and Board Annual Plans were developed by the Board Relations Office, and recently approved by individual committees and the Board. Dates of interest are listed on the Board of Trustees meeting agendas and special board related meetings are corresponded, as needed, by the Board Relations Office.*

## UCF BOARD OF TRUSTEES

## Agenda Item Summary

Governance Committee

November 19, 2020

**Title:** Amendments to University Regulation UCF-2.033 Copyright and Works

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 Information Information for upcoming action Action

**Meeting Date for Upcoming Action:** \_\_\_\_\_

**Purpose and Issues to be Considered:**

The University proposes to amend Regulation UCF-2.033 Copyright and Works to conform with Article 18 of the CBA which was ratified earlier this year. Several sections have been rearranged to enhance readability, in view of the substantive amendments. Additionally, several definitions were updated, and several were removed that are no longer relevant. Two new definitions were added, “Online Course” and “Independent Creative Efforts”. New language was added to clarify the respective rights of employees and the University in online course materials. Language was also added to clarify that the UCF Research Foundation, Inc is the university’s designated Intellectual Property owner.

This regulation was posted online October 30, 2020 for public comment. No comments were received as of the date of submission of these materials.

**Background Information:**

Florida Board of Governors Regulation 1.001 provides that “Each Board of Trustees is authorized to promulgate university regulations in accordance with the Regulation Development Procedure adopted by the Board of Governors.”

**Recommended Action:**

Approve amendments to University of Central Florida Regulation UCF-2.033 Copyright and Works.

**Alternatives to Decision:**

Do not amend UCF-2.033 as proposed and suggest alternative amendments.

**Fiscal Impact and Source of Funding:**

N/A

**Authority for Board of Trustees Action:**

Board of Governors Regulation 1.001

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**Contract Reviewed/Approved by General Counsel**  N/A

**Committee Chair or Chair of the Board has approved adding this item to the agenda**

**Submitted by:**

Scott Cole, Vice President and General Counsel

**Supporting Documentation:**

Attachment A: Proposed Amended Regulation UCF-2.033 (redline)

Attachment B: Article 18, Collective Bargaining Agreement

**Facilitators/Presenters:**

Sherry Andrews, Associate General Counsel and Associate Provost

## Attachment A

### UCF-2.033 Copyright and Works

#### (1) General.

- (a) This Regulation applies to all University Personnel, as defined in section (2)(a). Nothing herein shall be deemed to limit or restrict the University's full exercise of its legal rights and authority.
- (b) The University possesses all rights to and has the authority, at its option, to take any action necessary and proper to secure Intellectual Property owned by the University, and the University may take all steps necessary and proper to protect and enforce its rights. University profits derived from Intellectual Property subject to this Regulation shall be shared with the Inventor and/or Creator in accordance with this Regulation, Regulation UCF-2.029, any applicable collective bargaining agreements, and policies or procedures established by the University, including the Office of Research ~~and Commercialization, and the University's designated Intellectual Property owner, the University of Central Florida Research Foundation, Inc ("UCFRF")~~. In the unlikely event of a conflict between any departmental or university or direct support organization policy and this Regulation, this Regulation will control.
- (c) ~~The purpose of this Regulation is to describe rights in Copyright at the University and to encourage University Personnel to produce copyrightable works that contribute to their professional stature, public knowledge, and the University's mission. The University encourages the creation of original works of authorship and the free expression and exchange of ideas. This Regulation is intended to embody the spirit of academic tradition, which respects faculty's interests in their scholarly works, and is otherwise consistent with United States copyright law, which provides the University ownership rights to employment-related works.~~
- (d) ~~The ongoing revolution in the use of information technology for the production and dissemination of knowledge enables Faculty to create new forms or types of scholarly works, to communicate with new types of materials, and to reach new audiences. The dramatic changes in the manner and use of information technologies has caused the University to be increasingly involved in diverse use of media that generate and draw upon a variety of materials that may be protected by Copyright and that may also be suitable for patent, trademark, and/or trade secret~~

~~protection. The University, as both a producer and user of such materials, needs to provide clear guidance relating to ownership and use of such materials, as well as rights to income produced by distribution of such materials. Yet, the University recognizes that proper balance must be maintained between academic tradition and the University's commitment to providing an environment that supports creative endeavors in all academic areas. This Regulation is intended to clarify the rights of University Personnel by identifying copyrightable materials and by stating University wide policies governing ownership and use of copyrightable material and the rights to income produced from any distribution thereof.~~

- ~~(e)~~ This Regulation addresses only Copyrights in Works. Rights in Inventions, Trademarks, and Trade Secrets are addressed in University Regulation UCF-2.029, and -in applicable collective bargaining agreements.

(2) Definitions. For purposes of interpreting and applying the substantive provisions of this Regulation, the following definitions apply:

- (a) "University Personnel" shall mean all full-time and part-time employees of the University, whether or not they are members of a collective bargaining unit, including all faculty, staff, and post-doctoral fellows; appointees of the University who receive University Support (as defined below), including volunteers, adjuncts, and courtesy faculty; persons paid by or through the University, including contractors and consultants; and anybody working under University auspices and anybody receiving University Support. Students, including undergraduate, graduate and professional students, who are encompassed within any of these categories, shall be considered University Personnel for purposes of this Regulation.
- (b) "Copyright" means the intangible property right granted by federal law, Title 17 of the U.S. Code, to the Creator(s) of an original work of authorship fixed in a tangible form of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. An original work of authorship may be literary, dramatic, musical, artistic, or any other creative work, whether published or unpublished. Copyright provides the owner(s) with certain rights in a work, including the right to reproduce the work, to prepare derivative works, to distribute the work, to perform/display the work, and to prevent

others from doing same. The term also includes copyright protection that may be granted by foreign governments.

- (c) “Work” means, in accordance with Title 17 of the U.S. Code, any original work of authorship that is or may be subject to Copyright. “Work” includes but is not limited to printed material (such as books, articles, memoranda, and texts), computer software or databases, audio and visual material, circuit diagrams, architectural and engineering drawings, lecture, compositions (e.g. written, musical and/or dramatic), ~~compositions, musical works, dramatic works~~, motion pictures, multimedia works, web pages, sound recordings, choreographic works, ~~and~~ pictorial or graphic illustrations or displays, and any creative expression of a Trademark used in connection with these items. ~~Instructional Material and Instructional Technology Material are two types of Work.~~ “Work” does not include patentable material, which is encompassed within the definition of Invention; an Invention may also include a related Work. Rights to Inventions are addressed in University Regulation UCF-2.029 Patents, Trademarks, and Trade Secrets.
- (d) “Creator” shall mean any University Personnel who create(s) a Work.
- (e) “University Support” shall mean (i) the appreciable non-incidental use of University resources, such as funds, personnel, facilities, equipment, materials, technical information, or students, (ii) course release, and/or (iii) in creation or making of a Work or Invention; but does not include the inconsequential use of resources made available to the University community for common use. “University Support” ~~includes~~ support provided by other public or private organizations when it is arranged, administered or controlled by the University or a University direct support organization, including but not limited to research and investigations that are sponsored by the University and/or that are carried out by public funds. For a use of University resources to be appreciable, it must go beyond the resources commonly or routinely provided or made available to similarly situated employees for the performance of their assignment. For example, the routine use of resources such as the libraries; one’s office, office computer, and other University computer facilities; and office supplies, is not considered appreciable University Support.
- (f) “Work for Hire” shall mean, ~~as defined in Section 101 of the Copyright Code,~~

- ~~(i) a Work that is prepared by an employee within the scope of his or her employment;~~  
~~or~~
- ~~(ii) a Work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in writing that the work shall be considered a work made for hire. In accordance with academic tradition, scholarly or artistic works for which the intended purpose is to disseminate the results of academic research, scholarly study, or artistic expression, and much intellectual content developed by faculty for ITV and Web-based courses, are selectively excluded by the University from the definition of Work for Hire for the purposes of this Regulation (see Section (3)(a)(iii).~~
- ~~(g) “Outside Activity” means private practice, private consulting, additional teaching or research, financial interest, or other personal commitment, e.g., service on a Board of Directors, participation in a civic or charitable organization, political activity, etc., whether compensated or uncompensated, that: (i) is not part of the University Personnel’s assigned duties, (ii) is not compensated by the University, and (iii) that does not involve University Support. Outside Activity is subject to the requirements of Chapter 112, Part III, Florida Statutes, “Code of Ethics for Public Officers and Employees,” this Regulation and other University Policies and Regulations, including but not limited to University Regulation UCF-3.018.~~
- ~~(h) “Instructional Material” means a Work that is developed by University Personnel to be used by students or instructors as a learning resource to help students acquire knowledge or skills or develop cognitive processes. Instructional Material may be printed material (such as a class notes packet) or may be embodied in Instructional Technology Material (such as a digital transmission).~~
- ~~(i) “Instructional Technology Material” means Instructional Material that requires the availability of electronic, electro-mechanical, or solid state physics-based equipment to be used as a learning resource. “Instructional Technology Material” includes video and audio recordings or transmissions, motion pictures, films, slides, photographic and other similar visual materials, live video and audio transmissions, electronic and digital media, computer programs, computer-assisted instructional~~

~~course work, programmed instructional materials, three dimensional materials and exhibits, web pages, electronic, electro-mechanical, or solid state physics-based equipment, and combinations of the above, which are prepared or produced to be used as a learning resource for or to enhance instruction. All distance and distributed learning courses and/or modules prepared by University Personnel are included in this definition.~~

- (g) “Intellectual Property” refers to Works, Inventions, Trademarks and Trade Secrets.
- (h) “Trademark” means a name, symbol, figure, letter, word or mark adopted and used to designate the source of goods and/or services arising from an Invention or a Work.
- (i) “Online Course” means a course that requires student access to an University online learning environment, and includes but is not limited to, courses taught under World Wide Web (“W”), Mixed Mode/Reduced Seat Time (“M”), Video Streaming (“V”), Video Streaming/Reduced Seat Time (“RV”), and Active Learning/Reduced Seat Time (“RA”) course modalities.
- (j) “Independent Creative Efforts” means, with respect to a Work: that the idea came from the employee Creator(s); that the Work was made without the use of University Support; and that the University is not responsible for any opinions expressed in the Work.

### (3) Rights to Copyrighted Works

- (a) ~~Works owned by University Personnel.~~
  - (i) ~~Works created as a result of Independent Creative Efforts. “Independent Efforts” means, with respect to a Work: that the idea came from the Creator(s); that the Work was made without University Support; and that the University is not responsible for any opinions expressed in the Work.~~ A Work made in the course of Independent Creative Efforts is the property of the University Personnel who created it, who each have the right to determine the disposition of such Work and the revenue derived from it, in accordance with U.S. copyright law. The Creator(s) of a Work made in the course of Independent Creative Efforts shall, upon request of the University, provide documentation to substantiate his or her or their Independent Creative Efforts.

(b) Works created as a result of University-Supported Efforts. A Work not made in the course of Independent Creative Efforts is the property of the University and is hereby assigned to the University by the Creator(s), and such Creator(s) shall share in any proceeds therefrom.

1. Notwithstanding the above,

a. the University shall not assert ownership rights to Works for which the intended purpose is to disseminate the results of academic research, scholarly study, and/or creative efforts.

b. the University shall not assert ownership rights to Works developed without appreciable University Support and used solely for the purpose of assisting or enhancing the employee's instructional assignment. Examples include case studies, textbooks, laboratory manuals, and class notes produced in connection with regular scheduled courses of instruction, regardless of modality.

c. Instructional material developed or substantially revised for an Online Course without University Support and without the use of UCF online instructional design services shall be the property of the Creator(s) and is hereby assigned to such Creator(s) by the University, subject to the retained rights set forth in section (3)(b)1d (i) through (iii).

d. Instructional material developed or substantially revised for an Online Course with the use of UCF online instructional design services shall be the property of the Creator(s), subject to a retained right by the University to continued internal use of the Online Course, including the instructional material, for instructional purposes, and subject to the retained rights set forth in section (3)(b)1d (i) through (iii). Unless Creator(s) agree otherwise, in writing as long as they are employed by the University, such Creator(s) shall have the exclusive right to revise the Online Course, provided that the University shall not be obligated to provide further resources for such revisions unless they are requested by the

University or agreed upon jointly by the University and the Creator(s).

(i) If a Creator who develops or substantially revises an Online Course ceases to be employed by the University, the University shall possess and expressly retains the right to continued internal use of such Online Course, including the right to revise, reproduce, or make derivative works, of the instructional materials for instructional purposes for no more than the five (5) full academic years following the employee's separation from the University. The owner (Creator) may continue to make personal and professional use of the instructional material, at no cost to and with no obligation by the University after termination of their employment, subject to any third-party obligations.

(ii) If a Creator who develops or substantially revises an Online Course is unexpectedly unable to complete that employee's instructional assignment as to such Online Course, the University shall possess and expressly retains the right to internal use of such Online Course, including the right to revise, reproduce, or make derivative works, of the instructional materials for instructional purposes and to the extent necessary to ensure successful completion of the instructional assignment.

(iii) In any Online Course where the University exercises its rights to internal use of instructional materials for instructional purposes, acknowledgment and attribution of the Creator(s) will be included.

2. Without limiting the above, the University asserts copyright ownership in any Work where:

a. the Creator was expressly commissioned in writing to produce or participate in the production of the Work with University funds for a specific University purpose; or

- b. the Creator was expressly assigned in writing by the University to produce, or participate in the production of the Work; or
- c. the Creator was a faculty administrator or a non-faculty employee acting within the scope of his or her employment; or
- d. authorship cannot be attributed to one or a discrete number of authors but rather results from simultaneous or sequential contributions over time by multiple University Personnel, such as software tools developed and improved over time by multiple individuals. Joint authorship is not the determining factor; rather, the University looks to determine whether authorship or creation is so diffuse as to be non-attributable.

(c) *Works created as a result of Outside Activity.* Subject to the requirements of Chapter 112, Part III, Florida Statutes, “Code of Ethics for Public Officers and Employees”, this Regulation and other University Policies and Regulations, including but not limited to University Regulation UCF-3.018, University Personnel may, after reporting the details in accordance with applicable University Regulation and procedures, engage in Outside Activity, including employment pursuant to a consulting agreement. An employee who proposes to engage in such Outside Activity shall furnish a copy of this Regulation and, where applicable, Article 18 of the Collective Bargaining Agreement, to the outside employer/party prior to the time a consulting or other agreement is signed or, if there is no written agreement, before the employment/activity at the outside employer/party begins. University Personnel engaged in Outside Activity should use great care to determine that the Intellectual Property clauses in any agreement(s) related to the Outside Activity do not involve conflict of interest problems or are not in actual conflict with sponsored grants or contracts, or with University regulation or policy. ~~If the individual seeking to engage in an Outside Activity is asked to sign an agreement relating to the Outside Activity that purports to waive any University right(s) in any Intellectual Property, a copy of this Regulation shall be provided to the person asking for a waiver before the Outside Activity begins.~~—University Personnel are not authorized to waive University rights, and any such waiver is deemed rejected by the University unless specifically accepted by, as appropriate,

the Provost or Vice President of Research ~~& Commercialization~~ or designees. All Works created from authorized Outside Activity, as defined in this Regulation, are the property of the Creator. University Personnel seeking to engage in Outside Activity -are advised to review the terms of University Regulation 3.018 and any applicable collective bargaining agreement.

~~(iii) *Scholarly or Artistic Works*—In accordance with academic tradition, and unless required by Federal and State laws or regulations, or the terms of any applicable sponsored agreements, or as excepted below in (3)(b), the University shall **not** assert rights to the following Works:~~

~~(A) —scholarly or artistic works, regardless of their form of expression, for which the intended purpose is to disseminate the results of academic research, scholarly study, or artistic expression, such as textbooks, other works of popular nonfiction, novels, monographs, articles submitted to or published by scholarly and professional journals, bibliographies, poems, novels, dramatic works, pictorial or sculptural works, films, videotapes, musical compositions, or other scholarly or artistic expressions in any medium;~~

~~(B) —the intellectual content developed by faculty for ITV and Web-based courses.~~

~~(b) *Works Owned by the University.*—Notwithstanding academic tradition, the availability and use of new media technologies has impacted the process of creation of scholarly or artistic Works. In many cases, the use of new media technologies requires increased involvement by the University in the form of financial support, expert services, equipment, and other facilities beyond the base level of support and common resources provided to University Personnel. The University shall hold rights in Copyright to Works that are created by University Personnel and that are supported by a direct allocation of University funds, are commissioned by the University, are Works for Hire, or are made with University Support. That is, subject to ownership terms specified and agreed upon in writing by the University, the University asserts copyright ownership in any Work where:~~

~~(i) —the Creator was expressly commissioned in writing to produce or participate in the production of the Work with University funds for a specific University purpose ; or~~

- ~~(ii) the Creator was expressly assigned in writing by the University to produce, or participate in the production of the Work; or~~
- ~~(iii) the Creator was a faculty administrator or a non faculty employee acting within the scope of his or her employment ; or~~
- ~~(iv) the Creator was substantially assisted by a support agency of the University, received assistance in the form of released time, or received University Support, including grants and contract funds administered by the University, for the creation of the Work; or~~
- ~~(v) the Creator employed in his/her developmental work, beyond incidental levels and without personal charge, the equipment, materials, or staff services of any centers, departments or agencies established or supported by the University primarily to assist in developing and producing Works; or~~
- ~~(vi) authorship cannot be attributed to one or a discrete number of authors but rather results from simultaneous or sequential contributions over time by multiple University Personnel, such as software tools developed and improved over time by multiple individuals. Joint authorship is not the determining factor; rather, the University looks to determine whether authorship or creation is so diffuse as to be non-attributable.~~

(4) Disclosure/University Review. Upon the creation of a Work and prior to any publication, Creator(s) shall disclose to All materials in which the University may have an interest under the provisions of this Regulation shall be disclosed to the University's representative Provost or designee, any Work that was not made in the course of Independent Creative Effort. The University's representative shall assess the relative equities of the Creator and the University in the Work who will review and make a recommendation to the President or designee for final determination.

- (a) ~~In general, the Creator(s) need not disclose Works described in section (3)(a) , except for Works also meeting the description in section (3)(b) .~~ Any University Personnel having questions, either in planning for or preparing a Work, as to whether certain materials will be considered Works Owned by the University should initiate an inquiry to Provost or designee; however, a resulting advisory opinion as to the character of a Work is subject to final clarification by the Provost or designee when creation of the Work is completed. Even if a Work is not

otherwise required -to be disclosed in accordance with this Regulation, a Work must be disclosed if its production, dissemination, or use raises a possible conflict of interest.

- (b) Disclosure of a Work shall include an outline of the project and the conditions under which the Work was completed.
- (c) The University shall inform the Creator(s) ~~promptly whether a disclosed Work should be considered a Work Owned by the University, within the meaning of this Regulation, and~~ within ninety days (90) days from the date of disclosure whether the University ~~will assert~~seeks an interest in the Work, and a written agreement shall thereafter be negotiated to reflect the interests of both parties (the Creator and the University), including provisions relating to the equities of the employee and/or the allocation of proceeds resulting from such Work shall be made in accordance with the University's policy on copyrights and patents. The agreement will also include provisions relating to the creation, use, and revision of such Works by the University and/or Creator(s), as well as provisions relating to the use or revision of such Works by persons other than the University or Creator(s). All such agreements shall comport with and satisfy any preexisting terms or commitments to outside sponsoring contractors or agencies.
- (d) In the event the University elects to formally protect the University's rights in the Work, the Creator(s) will promptly execute any and all necessary documents to affirm, publicly formalize, and record the transfer of all rights to the University or ~~to the University of Central Florida Research Foundation, Inc. ("UCFRF"), according to the sole discretion of the University. If the University requires an assignment to UCFRF and UCFRF asserts its interests in the Work, UCF or UCFRF, as applicable,~~ shall allocate and distribute funds in accordance with the same requirements applicable to the University.
- (e) The Creator(s) shall not commit any act that would tend to defeat the University's or employee's interest in the Work, such as making a public disclosure prior to the University obtaining intellectual property protection, and shall take any necessary steps to protect such interests. The Creator(s) shall assist the University in obtaining ~~executed documentation, including but not limited to assignments or releases;~~ from persons any contributor to or subject appearing in, ~~a Work,~~ or

~~otherwise~~ giving financial or creative support to, the development or use of thea Work in which the University asserts an interest. The Creator(s) shall certify that such development or use does not infringe upon any existing copyright or other legal right.

- (f) ~~If the University asserts its interests in a Work, the parties will prepare an agreement<sup>h</sup>, to include provisions relating to the creation, use, and revision of such Works by the University and/or Creator(s), the identification of the Creator(s) as the author(s) of the Work, as well as provisions relating to the use or revision of such Works by persons other than the University or Creator(s). All such agreements shall comport with and satisfy any preexisting and authorized commitments arising from University Support. This provision shall not apply to Works for Hire; pursuant to Federal Copyright Law, the University is the Creator of a Work for Hire.~~

(5) Commercialization of Works. In addition to clarifying ownership, this Regulation is also intended to strengthen and protect the reputation of the University. That is, when the University's name is associated with a work of scholarship or Instructional Materials, the interests<sup>s</sup> of the University and its community of scholars and researchers are affected, and the University must exercise quality control with respect to the use of its name. As such, for Works in which the University does not have an ownership interest or in which the University has waived its ownership interest, the University's name may be referenced relative to its relationship with the Creator, but written authorization must be sought from the President or designee for any further use of the University name.

- (a) The commercialization of Works will be undertaken under the auspices of the University.

- (b) All costs and expenses of registering, developing, and marketing of Works owned by the University, including those which may lead to active licensing of a Work, shall be paid by the University. ~~With the exception of Works for Hire, the University will not undertake any such commercialization without the agreement of the Creator(s), and the Creator(s) shall share in any proceeds in accordance with this Regulation and any applicable policies and procedures established by the Vice President of Research & Commercialization including the applicable UCFRF Guidelines and Procedures for Distribution of Funds.~~ The University's costs and

expenses shall be recovered before any division of revenue is made. ~~Proceeds allocated to the Creator(s) from a Work that results from research done in a thesis or dissertation or in connection with a thesis or dissertation related project, shall be divided between the faculty member who directed the research and the graduate student(s) who created the Work in a manner that reflects their relative contributions to the Work as determined by the Provost or designee.~~

~~(b) University Personnel, notwithstanding copyright ownership, may not commercialize Works defined under Sections 3(a)(iii)(1) and 3(a)(iii)(2), including but not limited to course content or courseware taught or created at the University, without approval of the President or designee.~~

~~(c) With the exception of Works for Hire, licensing or sale or publication of Works for external and commercial use shall be preceded by a written agreement between the University and the Creator(s) specifying the conditions of use, including provisions concerning the right of the Creator(s) to revise the Works or to withdraw them from use, and the distribution of net royalty income. Use by the University and other institutions in the Florida State University System shall be royalty free.~~

(6) University Withdrawal and Transfer of Rights to Creator(s).

~~At any stage of registration or commercialization, the University in its sole discretion may elect to transfer all of its rights in a Work to the originating Creator(s), upon suchthe Creator's request to the Vice President for Research., whereafter the Work shall become the property of the Creator and none of the costs incurred by the University or on its behalf shall be assessed against the Creator. Under these circumstances, and further subject to paragraph (7), Tthe Creator's request shallmay be granted if it does not -violate any legal obligations of or to the University; limit appropriate uses of the Work by the University; ~~or~~ create a -conflict of interest for the University Personnel Creator(s); or otherwise conflict with specific goals of the University.~~

~~(7) Release of University Interest.~~

~~In the event the University elects not to assert its interest in a Work Owned by the University, as defined in (3)(c), the Work shall be released to the Creator(s) upon the Creator's request. The University's release of the Work shall be contingent upon the execution of a written agreement with the Creator(s) (i) granting the University a right to a ten percent (10%) share of proceeds arising from or attributed to the Intellectual Property valuation of the Work and received by the Creator(s) from a third party for commercialization or publication of the Work, or transfer~~

of ownership of the Work, and (ii) granting the University a royalty free right to use the Work for educational and research purposes of the University

~~(8) Employment Status.~~

~~———— For all Works created by University Personnel, irrespective of ownership and with the exception of those arising from Independent Efforts or authorized Outside Activity, if the Creator(s) terminates employment with the University, the University retains the right to continued internal use of the Works in accordance with this Regulation, unless different conditions for subsequent internal use have been arrived at by joint written agreement of the Creator(s) and the University. Additionally, subject to any third party obligations, for those Works Owned by the University, the Creator(s) may make personal and professional use of the Works for non-commercial purposes, at no cost, irrespective of employment status with the University. For purposes of this regulation, non-commercial purposes means not for profit personal, research and educational purposes only.~~

*Authority: BOG Regulation 1.001, Florida Statutes s. 1004.23. History –New 1-24-12. Amended \_\_\_\_\_-20.*

**ARTICLE 18**  
***INVENTIONS AND WORKS***

**18.1 University Authority and Responsibilities.** The University is authorized to establish regulations and procedures regarding patents, copyrights, and trademarks consistent with federal and state law. Such regulations and procedures shall be consistent with the terms of this Article.

**18.2 Definitions.** The following definitions shall apply in this Article:

(a) A "Work" means, in accordance with Title 17 of the U.S. Code, any original work of authorship that is or may be subject to copyright. Work includes but is not limited to printed material (such as books, articles, memoranda, and texts), computer software or databases, audio and visual material, circuit diagrams, architectural and engineering drawings, lectures, compositions (e.g., written, musical, and/or dramatic), motion pictures, multimedia works, web pages, sound recordings, choreographic works, and pictorial or graphic illustrations or displays, and any creative expression of a Trademark used in connection with these items.

(b) An "Invention" means any discovery; process; composition of matter; article of manufacture; know-how; design; model; computer software or database; technological development; biological material, strain, variety, or culture of any organism; or portion, modification, translation, or extension of these items which is or may be patentable or otherwise protected under Title 35 of the United States Code; or any Trademark, and/or any directly related know-how used in connection with these items.

(c) "Online Course" means a course that requires student access to an University online learning environment, and includes but is not limited to, courses taught under World Wide Web ("W"), Mixed Mode/Reduced Seat Time ("M"), Video Streaming ("V") Video Streaming/Reduced Seat Time ("RV") and Active Learning/Reduced Seat Time ("RA") course modalities.

(d) "University Support" means (1) the appreciable use of University resources, such as funds, personnel, facilities, equipment, materials, technological information, or students, (2) course release, and/or (3) support provided by other public or private organizations when it is arranged, administered, or controlled by the University or a University direct support organization. For a use of University resources to be appreciable, it must go beyond the resources commonly or routinely provided or made available to similarly situated employees for the performance of their assignment. For example, the routine use of resources such as the libraries; one's office, office computer and other University computer facilities; and office supplies, is not considered appreciable University Support.

**18.3 Works.**

(a) Independent Creative Efforts. A Work made in the course of Independent Creative Efforts is the property of the creating employee(s), who each have the right to determine the disposition of such Work and the revenue derived from it, in accordance with U.S.

copyright law. If requested, the employee shall provide documentation to substantiate his or her Independent Creative Efforts. As used in this Section, the term "Independent Creative Efforts" means that:

- (1) the ideas came from the employee;
- (2) the Work was made without the use of University Support; and
- (3) the University is not responsible for any opinions expressed in the Work.

(b) University-Supported Efforts. A Work not made in the course of Independent Creative Efforts is the property of the University and is hereby assigned to the University by the employee(s), and the creating employee(s) shall share in any proceeds therefrom.

(1) Notwithstanding the above,

(a) the University shall not assert ownership rights to Works for which the intended purpose is to disseminate the results of academic research, scholarly study, and/or creative efforts.

(b) the University shall not assert ownership rights to Works developed without appreciable University support and used solely for the purpose of assisting or enhancing the employee's instructional assignment. Examples include case studies, textbooks, laboratory manuals and class notes produced in connection with regular scheduled courses of instruction, regardless of the modality. (c)

Instructional material developed or substantially revised for an Online Course without University Support and without the use of UCF online instructional design services shall be the property of the creating employee(s) and is hereby assigned to the creating employee(s) by the University, subject to the retained rights set forth in Section 18.3(b)(1)(d)(i) through (d)(iii).

(d) Instructional material developed or substantially revised for an Online Course with the use of UCF online instructional design services shall be the property of the creating employee(s) and is hereby assigned to the creating employee(s) by the University, subject to a retained right by the University to continued internal use of the Online Course, including the instructional material, for instructional purposes, and subject to the retained rights set forth in Section 18.3(b)(1)(d)(i) through (d)(iii). Unless employee agrees otherwise in writing as long as they are employed by the University, such employee shall have the exclusive right to revise the Online Course, provided that the University shall not be obligated to provide further resources for such revisions unless they are requested by the University or agreed upon jointly by the University and the employee.

(i) If an employee who develops or substantially revises an Online Course ceases to be employed by the University, the University shall possess and expressly retains the right to continued internal use of such Online Course, including the right to revise, reproduce, or make derivative works, of the instructional materials for instructional purposes for no more than the five (5) full academic years following the employee's separation from the University. The owner (creator) may continue to make personal and

professional use of the instructional material, at no cost to and with no obligation by the University after termination of their employment, subject to any third-party obligations.

(ii) If an employee who develops or substantially revises an Online Course is unexpectedly unable to complete the employee's instructional assignment as to such Online Course, the University shall possess and expressly retains the right to internal use of such Online Course, including the right to revise, reproduce, or make derivative works, of the instructional materials for instructional purposes and to the extent necessary to ensure successful completion of the instructional assignment.

(iii) In any Online Course where the University exercises its rights to internal use of instructional materials for instructional purposes, acknowledgement and attribution of the creator(s) will be included.

(c) Disclosure/University Review.

(1) Upon the creation of a Work and prior to any publication, the employee shall disclose to the University's representative any Work that was not made in the course of Independent Creative Effort, together with an outline of the project and the conditions under which it was done.

(2) The University's representative shall assess the relative equities of the employee and the University in the Work.

(3) Within ninety days after such disclosure, the University's representative will inform the employee whether the University seeks an interest in the Work, and a written agreement shall thereafter be negotiated to reflect the interests of both parties, including provisions relating to the equities of the employee and/or the allocation of proceeds resulting from such Work shall be made in accordance with the University's policy on copyrights and patents. The agreement will also include provisions relating to the creation, use, and revision of such Works by the University or the employee, as well as provisions relating to the use or revision of such Works by persons other than the University or employee. All such agreements shall comport with and satisfy any preexisting terms or commitments to outside sponsoring contractors or agencies.

(4) The employee shall assist the University in obtaining releases from persons appearing in, or giving financial or creative support to, the development or use of these Works in which the University asserts an interest. The employee shall certify that such development or use does not infringe upon any existing copyright or other legal right.

(5) The employee and the University shall not commit any act that would tend to defeat the University's or employee's interest in the Work, such as making a public disclosure prior to the University obtaining intellectual property protection, and shall take any necessary steps to protect such interests. Employees will execute any and all necessary documents to affirm, publicly formalize, and record the transfer of all rights to the University or to University of Central Florida Research Foundation ("UCFRF").

(d) Outside Activity. An employee may, in accordance with the Conflict of Interest or Commitment and Outside Activity Article, engage in outside activity, including

employment pursuant to a consulting agreement. An employee who proposes to engage in such outside activity shall furnish a copy of the instant Article and the University's Copyrights and Works Regulation to the outside employer/party prior to the time a consulting or other agreement is signed or, if there is no written agreement, before the employment/activity at the outside employer/party begins.

(e) Transfer of copyright to the employee. When copyright is owned by the University in accordance with the provisions of this Article, the originating employee of the Work may request of the Vice President of Research that ownership be transferred to the employee. Such request shall be granted if it does not:

- (1) violate any legal obligations of or to the University;
- (2) limit appropriate uses of the Work by the University;
- (3) create a conflict of interest for the employee; and
- (4) otherwise conflict with specific goals of the University.

#### **18.4 Inventions.**

(a) Independent Inventive Efforts. All Inventions made outside the field or discipline in which the employee is employed by the University, and for which no appreciable University Support has been used, are the property of the employee, subject to 35 U.S.C. 115, who has the right to determine the disposition of such property and revenue derived from such property. The employee and the University's representative may agree that the patent for such Invention be pursued by the University and the proceeds shared.

(b) University-Supported Efforts. Inventions made in the field or discipline in which the employee is employed by the University, or by using University Support, are the property of the University and the employee shall share in the proceeds therefrom. Such Inventions and related rights shall be the property of the University and are hereby assigned to the University by the employee. If the University decides to patent, develop and market the Invention, all costs of the patent application and related activities, including those which lead to active licensed production, shall be paid from University funds. These costs shall be recovered before any division of patent or license revenue is made between the University and the employee.

(c) Private or Industrially Sponsored Efforts. Except in unusual cases, Inventions developed in the course of privately or industrially sponsored research (also University-Supported Efforts) are the property of the University. The sponsor may be accorded the first option to negotiate an exclusive license, in which case the term of exclusivity and the compensation shall be negotiated at the time the Invention is made or under the provisions of the University's policy on copyrights and patents. If the sponsor exercises this option, the University generally retains royalty-free license rights to use the Invention or discovery for its own purposes.

(d) Outside Activity. An employee may, in accordance with the Conflict of Interest or Commitment and Outside Activity Article, engage in outside activity, including employment pursuant to a consulting agreement. All Inventions arising from authorized

Outside Activity and outside of the field or discipline of the employee are the property of the employee. However, any requirement that the employee waive the University's rights to any Inventions which arise during the course of such activity must be approved in writing by the University's representative. Employees who propose to engage in such Outside Activity shall furnish a copy of Article 18 and the University's Patent, Trademarks, and Trade Secrets Regulation to the outside employer/party prior to the time an agreement is signed or, if there is no written agreement, before the Outside Activity/employment begins. Employees are not authorized and do not possess necessary ownership to waive University rights, and any such waiver is deemed void unless specifically authorized by the Vice President of Research or designee.

(1) Undisclosed Outside Activity is considered unauthorized.

a. Any Invention arising from undisclosed Outside Activity must be disclosed to the Vice President of Research (see 18.4(e)). If the employee claims the Invention resulted from Independent Inventive Effort(s), then as part of the disclosure, the employee shall provide sufficient documentation to substantiate the claim.

b. Upon receipt of written notice from the Vice President of Research confirming the University's decision not to assert a University interest in an Invention resulting from unauthorized Outside Activity, the employee shall have the right to determine the disposition of such Invention, subject to third party rights, if any. However, the employee and the Vice President of Research may agree that a patent for such Invention will be pursued by the University; in that event, the employee and University shall share in the proceeds of any Invention as provided by this Article and any applicable University policies or procedures, including applicable UCFRF Guidelines and Procedures for Distribution of Funds or in such other manner as the employee and the Vice President of Research may agree.

(e) Disclosure/University Review. Employees are required to disclose all Inventions resulting from University-Supported Efforts and all Inventions resulting from any Outside Activity within the field or discipline of the inventing employee. It is the policy of the University that, in general, research results should be publishable; publication of such results in appropriate venues is encouraged. However, if the publication of research results may reveal an Invention in which the University has an interest, employees should seek advice on how and when to publish the results in order that potential patent rights for the Invention are not compromised. That is, upon the making of an Invention and prior to any publication or public disclosure, employees shall promptly and fully disclose to the Vice President of Research any Invention described in 18.4(b). Any delay in publication resulting from seeking such advice shall be minimized, but in any event shall not exceed ninety days from the date of presentation of the proposed publication.

(1) The disclosure shall be made on the forms and according to procedures prescribed by the Vice President of Research. At a minimum the disclosure shall: (1) identify each employee, (2) provide a brief description of the Invention, and (3) identify

and summarize the research project including the participants and applicable funding sources

(2) The Vice President for Research shall conduct an investigation to assess the patentability and marketability, as well as the respective equities of the employee and the University in the Invention, and to determine the extent to which the University should be involved in its protection, development, and promotion.

(3) The Vice President for Research shall inform the employee of the University's decision regarding the University's interest in the Invention within a reasonable time, not to exceed ninety days from the date of the disclosure.

(4) In the event the University elects to obtain a Patent, register a Trademark or a Copyright, or to formally define a Trade Secret to protect the University's rights in the Invention, employees will execute any and all necessary documents to affirm, publicly formalize, and record the transfer of all rights to the University or to UCFRF. UCFRF is required to comply with the same policies and procedures regarding allocation of proceeds/royalties as the University.

(5) In the event the University asserts its rights in the Invention, all costs and expense of patenting, developing, and marketing the Invention and related activities, including those which may lead to active licensing of the Invention, shall be paid by the University.

(6) The division, between the University and the employee, of proceeds generated by the licensing or assignment of an Invention shall be negotiated and reflected in a written contract between the University and the employee and/or as set forth in the University's policy on copyrights and patents, including the applicable UCFRF Guidelines. All such agreements shall comport with and satisfy any preexisting terms or commitments to outside sponsoring contractors.

(7) The employee shall not commit any act that would tend to defeat the University's interest in the matter, and the University shall take any necessary steps to protect such interest.

(f) Release of Rights.

(1) In the event a sponsored research contractor has been offered the option to apply for the patent to an Invention or other rights in an Invention, the University will obtain the contractor's decision regarding the exercise of such rights within ninety days, or within the time provided in the sponsored research agreement.

(2) Prior to making a patent application, at any stage of the patent process, or in the commercial application of an Invention, if the University has not otherwise assigned to a third party the right to pursue its interests, the University's representative may elect to waive the University's rights to the patent, or withdraw from further involvement in the protection or commercial application of the Invention. At the request of the employee in such case, the University shall transfer the Invention rights to the employee, subject to third party rights, if applicable. After ownership transfer to an employee, the Invention

shall be the employee's property and any costs already incurred by the University or on its behalf shall not be assessed against the employee.

(3) All assignments or releases of Inventions, including patent rights, by the University's representative to the employee shall contain the provision that such Invention, if patented by the employee, shall be available royalty-free for governmental purposes of the State of Florida and research or instructional purposes of the University, unless otherwise agreed in writing by the University.

(g) University Policy.

(1) The University shall have a policy addressing the division of proceeds between the employee and the University. See Business Manual, Ch. III(A), at [research.ucf.edu/ResearchFoundation/FoundationTools.html](http://research.ucf.edu/ResearchFoundation/FoundationTools.html)

(2) Such policy may be the subject of consultation meetings pursuant to the Consultation Article.

UCF BOARD OF TRUSTEES  
Agenda Item Summary  
Governance Committee  
November 19, 2020

**Title:** Amendments to University Regulation UCF-2.036 College Credit for Nontraditional Courses Prior to Initial Enrollment

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Information                       Information for upcoming action                       Action

**Meeting Date for Upcoming Action:** \_\_\_\_\_

**Purpose and Issues to be Considered:**

The University proposes to amend Regulation UCF-2.036 College Credit for Nontraditional Courses Prior to Initial Enrollment to clarify the authority, responsibility and roles, and standards for determining UCF credit equivalency for non-traditional courses completed prior to the initial term of enrollment. Amendments are also made to restrict the number and types of entities from which UCF will consider awarding credit for non-traditional courses. Credits completed at institutions with appropriate accreditation or other entities with whom the university enters into an articulation agreement will be accepted.

This regulation was posted online October 30, 2020 for public comment. No comments were received as of the date of submission of these materials.

**Background Information:**

Florida Board of Governors Regulation 1.001 provides that “Each Board of Trustees is authorized to promulgate university regulations in accordance with the Regulation Development Procedure adopted by the Board of Governors.”

**Recommended Action:**

Approve amendments to University of Central Florida Regulation UCF-2.036 College Credit for Nontraditional Courses Prior to Initial Enrollment.

**Alternatives to Decision:**

Do not amend UCF-2.036 as proposed and suggest alternative amendments.

**Fiscal Impact and Source of Funding:**

N/A

**Authority for Board of Trustees Action:**

Board of Governors Regulation 1.001

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**Contract Reviewed/Approved by General Counsel**    N/A  

**Committee Chair or Chair of the Board has approved adding this item to the agenda**

**Submitted by:**

Scott Cole, Vice President and General Counsel

**Supporting Documentation:**

Attachment A: Proposed Amended Regulation UCF-2.036 (redline)

**Facilitators/Presenters:**

Youndy Cook, Senior Deputy General Counsel

## Attachment A

### UCF-2.036 College Credit for Nontraditional Courses Prior to Initial Enrollment

(1) Undergraduate students who are admitted to the university and who have completed non-traditional courses delivered by eligible institutions of higher education or other entities with which the university has entered into an articulation agreement, including online and short college level courses, prior to initial enrollment in undergraduate education may request that the university evaluate that work to determine if credit might be awarded. Sufficient time must be allowed for the university to evaluate the course material for transferability or prior learning credit.

(2) For purposes of this process, eligible institutions of higher education shall include those accredited by one of the following accrediting bodies:

- (a) Accrediting Commission for Community and Junior Colleges (ACCJC)
- (b) New England Commission of Higher Education (NECHE)
- (c) Higher Learning Commission (HLC)
- (d) Middle States Commission on Higher Education (MSCHE)
- (e) Northwest Commission on Colleges and Universities (NWCCU)
- (f) Southern Association of Colleges and Schools Commission on Colleges (SACSCOC)
- (g) WASC Senior College and University Commission

(3) Award of credit for ~~that nontraditional~~ work prior to initial enrollment must meet the following conditions:

- (a) The request for credit review was made as soon as practicable but prior to the start of the initial term of enrollment and all required documentation was provided sufficiently in advance of the initial term of enrollment to allow review (see further information in paragraphs (4) and (5), below) ~~and as soon as practicable~~.
- (b) University faculty members with appropriate disciplinary expertise determine the nontraditional course content and ~~learning~~ outcomes to be comparable to a course offered at the institution or general elective credit;
- (c) The Nonnontraditional courses for which credit is requested meet ~~the~~ quality and accreditation standards intended for a transfer course or the equivalent thereof as determined by the College Dean of Undergraduate Studies in consultation with the institutional accreditation liaison or designee and other units, as appropriate; and

(d) If the course is intended to meet a specific requirement for the student's degree program, the department or college offering the program determines that the nontraditional course is relevant to the student's ~~intended~~ program of study; ~~and~~

~~(e) If the coursework was delivered by a foreign institution, the coursework and accreditation status of the institution must be evaluated by an appropriate service provider acceptable to the university.~~

~~(34) Students wishing to have such nontraditional coursework evaluated for the purpose of receiving credit should inform the UCF Office of Undergraduate Admissions as soon as practicable.~~ If credit for the nontraditional coursework was awarded by another accredited institution of higher education meeting university transfer eligibility requirements, the student must submit an official transcript reflecting the award of credit and the transferability of that work will be determined with the same processes and criteria for other transferred courses. The decision to award UCF credit for nontraditional coursework or not lies solely with UCF, regardless of whether or not another institution of higher education previously awarded credit. The university reserves the right to request additional information from the student, such as that covered in (5) below, to assist in rendering an informed decision that assures the integrity of UCF awarded credit.

~~(45)~~ If the nontraditional coursework did not result in credit awarded by a previous institution, the student may request a review for the awarding of credit by providing the following information to the College of Undergraduate Studies to facilitate review as noted in (3)(c) above and if determined appropriate, by directly to the academic department that is qualified to evaluate the subject matter:

- (a) A syllabus for the course;
- (b) Credentials of the faculty member(s) teaching the course;
- (c) Course objectives and learning outcomes for the course;
- (d) Confirmation that the course was satisfactorily completed; and
- (e) Other information requested by the subject area faculty member(s) in order to determine demonstrated mastery of course learning outcomes. This may include a proctored testing requirement.

To ensure there is sufficient time for review, all required documentation must be submitted ~~no later than three months~~ prior to the start of the initial term of enrollment. Assuming all requested information is provided, normally a decision regarding the awarding of credit shall be made within the first term of enrollment.

(56) To be eligible for credit, both short courses ~~for credit shall have the same number of contact hours as do~~ regularly scheduled courses must include an amount of student work equivalent to that expected in the institution's credit hour definition. ~~Other nontraditional courses must have an appropriate substitute(s) for the associated contact hours.~~ The review of nontraditional course(s) must document equivalency with traditional course(s) when such traditional courses exist, or if more appropriate, general elective credit.

(67) Courses may be evaluated on the basis of the recommendations of the American Council of Education (ACE) when official credentials have been properly presented. While credit may be granted when courses are equivalent to those offered by the University, recommendations by ACE are not binding upon the University. Even though records may have been evaluated by another accredited institution, it is important to have official credentials sent to UCF for evaluation.

(78) Credit for coursework taken prior to the initial term of enrollment will be noted on the student's transcript.

(89) An undergraduate student wishing to appeal the university's denial of credit for nontraditional courses may submit an appeal, in writing, to the College of Undergraduate Studies within 30 days of the date that the denial is sent to the student.

*Authority: BOG Regulations 1.001, and 6.020. History - New 12-21-15, Amended 4-23-20, Amended \_\_\_\_\_-20.*

**UCF BOARD OF TRUSTEES**  
**Agenda Item Summary**  
 Governance Committee  
 November 19, 2020

**Title:** Amendments to University Regulation UCF-3.044 Compensation

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**Information**                       **Information for upcoming action**                       **Action**

**Meeting Date for Upcoming Action:** \_\_\_\_\_

**Purpose and Issues to be Considered:**

The University proposes to amend Regulation UCF-3.044 Compensation to clarify compensation for the President and university administrators will conform to Board of Governors regulations. This language conforms to recent amendments to Florida Board of Governors Regulation 9.006.

This regulation was posted online October 30, 2020 for public comment. No comments were received as of the date of submission of these materials.

**Background Information:**

Florida Board of Governors Regulation 1.001 provides that “Each Board of Trustees is authorized to promulgate university regulations in accordance with the Regulation Development Procedure adopted by the Board of Governors.”

**Recommended Action:**

Approve amendments to University of Central Florida Regulation UCF-3.044 Compensation.

**Alternatives to Decision:**

Do not amend UCF-3.044 as proposed and suggest alternative amendments.

**Fiscal Impact and Source of Funding:**

N/A

**Authority for Board of Trustees Action:**

Board of Governors Regulation 1.001

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**Contract Reviewed/Approved by General Counsel**    N/A  

**Committee Chair or Chair of the Board has approved adding this item to the agenda**  

**Submitted by:**

Scott Cole, Vice President and General Counsel

**Supporting Documentation:**

Attachment A: Proposed Amended Regulation UCF-3.044 (redline)

**Facilitators/Presenters:**

Youndy Cook, Senior Deputy General Counsel

**UCF 3.044 Compensation**

- (1) Except as provided by any applicable collective bargaining agreement, pay actions shall be administered consistent with the following provisions.
- (2) The university may establish and maintain salary ranges for A&P and USPS classifications. Pay shall not exceed the maximum of the salary range without the approval of the chief human resources officer or designee.
- (3) Base rate of pay is the pay provided to a non-exempt employee exclusive of any additives as provided for in Section (6)(h), below, or any perquisites such as cell phone (or cell phone allowance). Regular rate of pay is a non-exempt employee's base rate of pay plus any other payment which qualifies as income. Regular rate of pay must be used in the calculation of overtime, per the Fair Labor Standards Act (FLSA). For an employee paid on a salary basis, the University calculates an hourly rate of pay by dividing the annual rate of pay by 2088 work hours. A factor of 26.1 is used for annualizing biweekly pay.
  - (a) An employee must be in active pay status to receive a pay increase of any kind.
  - (b) Employees paid from contracts, grants, sponsored research, auxiliaries, or local funds shall be eligible for pay increases provided such increases are permitted and funded by the funding entity. The university shall strive to have contracts, grants, sponsored research, auxiliaries, and local funds permit and fund such pay increases. It is the responsibility of the departmental or college administrator to notify Human Resources prior to implementation if approval and funding cannot be secured.
  - (c) Retroactive pay actions are not normally approved and require the approval of the chief human resources officer or designee for A&P and USPS, or the provost or designee for faculty. A retroactive effective date for a pay action shall normally be the lesser of twelve months or the date the completed documentation was submitted to Human Resources.
  - (d) A pay increase may be provided for a temporary change in assignment on an acting basis, or for additional duties assigned; upon return to original responsibilities, the pay may be adjusted.
  - (e) An employee returning from unpaid leave shall receive any increases in the

salary range for the classification or across-the-board pay increases granted during the period of unpaid leave, unless salary increase instructions provide otherwise. An employee may also be considered for other pay increases while on unpaid leave, to be implemented upon his or her return.

(f) When a non-exempt employee is called back and reports to work beyond the employee's scheduled hours of work for that day, the employee shall be credited with the greater of the actual time worked, including time to and from the employee's home to the assigned work location, or two hours.

(4) The salary or wage selected at the time of original appointment shall be at a rate within the applicable salary range for the classification, except that a trainee appointment for non-exempt employees shall be in accordance with the approved individual training schedule and may be below the minimum salary of the classification. Compensation for the university President and university administrators shall be in accordance with the applicable regulatory authority of the Board of Governors.

(5) Salary increases shall be in accordance with any applicable legislative authority and guidelines authorized by the president or designee. Salary increase calculations shall include base salary and stipends and/or other prevailing temporary compensation, unless the salary increase was already included in the stipend or other temporary compensation. The calculated amount shall remain after the removal of the stipend and/or temporary compensation.

- (a) Stipends and/or other prevailing temporary compensation are defined as:
1. For Faculty: Per the information in United Faculty of Florida's collective bargaining agreement, temporary compensation or temporary salary adjustments (stipend) for faculty can include:
    - a. UCF Trustee Chair Professorship
    - b. Administrative Salary Stipends (temporary salary increase which is provided to an employee as compensation for performing a specific, titled administrative function)
  2. For A&P and USPS: Per UCF Special Pay Increase Guidelines, temporary compensation is a special pay increase provided to an employee who temporarily assumes the full or partial duties of

another position

- (b) Shift Differential, On Call Pay, Field Training Officer Activities, and other Pay Additives are not stipends and/or other prevailing temporary compensation. For further information, see (6)(h) below
- (6) Salary adjustments and other wage payments may be provided under the following circumstances:
- (a) Increased responsibilities.
  - (b) Market conditions including counter-offers and retention adjustments.
  - (c) Salary inequity, compression or inversion.
  - (d) Increases to resolve a pay disparity, considering education, experience, or duties and responsibilities of other employees.
  - (e) Lump sum payments to recognize the successful completion of a special project or assignment which is in addition to the employee's regularly assigned duties, or a documented significant increase in productivity or productivity goal achievement, including a group incentive program. Such payments for employees must be approved by the president or designee, or the UCF Board of Trustees.
  - (f) Increases to recognize sustained superior performance.
  - (g) Approved career development or apprenticeship programs.
  - (h) Pay additives for non-exempt employees including those for lead worker pay, shift differential, on call-pay, field training officer activities, and other approved activities.
- (7) Other pay adjustment conditions.
- (a) An employee who is demoted shall receive pay commensurate with the responsibilities assigned.
  - (b) The following do not constitute disciplinary action: the removal of pay additives, stipends, or perquisites; the correction of overpayments; or reduction to the maximum of a salary range.
- (8) Each department shall be responsible for arranging the work schedule to minimize overtime, and the university shall establish procedures for overtime pay consistent with the FLSA.

- (9) Exempt Employee Dual Compensation.
- (a) The primary purpose of Dual Compensation is to pay a full-time employee for services that are performed outside of their primary job and for a different department. Services that are performed above and beyond the employee's normal primary job functions within the same department cannot be paid as Dual Compensation. Exception: Faculty overload is governed by Academic Administration and University Regulation UCF-3.0032, Additional Compensation for UCF Employees.
  - (b) Additional services or duties performed by exempt personnel during special events may not be compensated using Dual Compensation. Also refer to UCF Policy 3-112, entitled "Additions to Salary of Exempt Employees for Special Events."
- (10) Perquisites or Sale of Goods and Services. The president or appropriate vice president shall approve providing perquisites to employees, the sale of goods and services to employees, and the payment of moving expenses associated with a current or prospective employee. The provision of such items shall be position or classification related and documented to demonstrate that the approval is in the best interest of the university. Approval is not required when sales to employees are similar to that ordinarily sold to the public or the benefit is considered de minimis. If specified subsectors of the public are offered discounts, such as but not limited to alumni, employees may be offered the same or similar provisions, without approval.

*Authority: BOG Regulation 1.001. History-New 9-4-12. Amended 12-5-14, 12-19-16, \_\_\_\_\_-20.*

## UCF BOARD OF TRUSTEES

## Agenda Item Summary

Governance Committee

November 19, 2020

**Title:** Amendments to University Regulations UCF-5.008 Rules of Conduct and UCF-5.012 Organizational Rules of Conduct

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Information                       Information for upcoming action                       Action

**Meeting Date for Upcoming Action:** \_\_\_\_\_

**Purpose and Issues to be Considered:**

The University proposes to amend Regulations UCF-5.008 Rules of Conduct and UCF-5.012 Organizational Rules of Conduct add a phrase when describing the purposes that support the hazing definition. This language change confirms our regulation to the exact language of the statute and BOG regulation 6.021. Quoting the language of the statute and the BOG regulation should help students and student organizations have a full and accurate understanding of the meaning of hazing.

These regulations were posted online October 30, 2020 for public comment. No comments were received as of the date of submission of these materials.

**Background Information:**

Florida Board of Governors Regulation 1.001 provides that “Each Board of Trustees is authorized to promulgate university regulations in accordance with the Regulation Development Procedure adopted by the Board of Governors.”

**Recommended Action:**

Approve amendments to University of Central Florida Regulations UCF-5.008 Rules of Conduct and UCF-5.012 Organizational Rules of Conduct

**Alternatives to Decision:**

Do not amend UCF-5.008 and UCF-5.012 as proposed and suggest alternative amendments.

**Fiscal Impact and Source of Funding:**

N/A

**Authority for Board of Trustees Action:**

Board of Governors Regulation 1.001

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**Contract Reviewed/Approved by General Counsel**    N/A  

**Committee Chair or Chair of the Board has approved adding this item to the agenda**  

**Submitted by:**

Scott Cole, Vice President and General Counsel

**Supporting Documentation:**

Attachment A: Proposed Amended Regulation UCF-5.008 (redline)

Attachment B: Proposed Amended Regulation UCF-5.012 (redline)

**Facilitators/Presenters:**

Youndy Cook, Senior Deputy General Counsel

### **UCF-5.008 Rules of Conduct**

The following defined and described actions include, but are not limited to, conduct for which disciplinary action may be taken at the University of Central Florida. Students are responsible for the observation of all University policies and regulations. Each student is expected to abide by these rules of conduct, and administrators are expected to enforce them. These Rules of Conduct should be read broadly and are not designed to define prohibited conduct in exhaustive terms. Additional rules and regulations may be revised during the year; announcements will be made on adoption of the changes or additions. The right of all students to seek knowledge, debate ideas, form opinions, and freely express their ideas is fully recognized by the University of Central Florida. The Rules of Conduct apply to student conduct and will not be used to impose discipline for the lawful expression of ideas. Students are prohibited from engaging in:

#### **(1) Academic Misconduct**

- (a) **Unauthorized assistance:** Using or attempting to use unauthorized materials, information or study aids in any academic exercise unless specifically authorized by the instructor of record. The unauthorized possession of examination or course related material also constitutes cheating.
- (b) **Communication to another through written, visual, electronic, or oral means.** The presentation of material which has not been studied or learned, but rather was obtained through someone else's efforts and used as part of an examination, course assignment or project.
- (c) **Commercial Use of Academic Material:** Selling of course material to another person, student, and/or uploading course material to a third party vendor without authorization or without the express written permission of the University and the Instructor. Course materials include but not limited to class notes, Instructor's power points, tests, quizzes, labs, instruction sheets, homework, study guides, and handouts.
- (d) **Falsifying or misrepresenting the student's own academic work.**
- (e) **Plagiarism:** Whereby another's work is used or appropriated without any indication of the source, thereby attempting to convey the impression that such work is the student's own.
- (f) **Multiple Submissions:** Submitting the same academic work for credit more than once without the express written permission of the instructor.

- (g) Any student who knowingly helps another violate academic behavior standards is also in violation of the standards.
- (h) Soliciting assistance with academic coursework and/or degree requirements. The solicitation of assistance with an assignment, lab, quiz, test, paper, etc., without authorization of the instructor of record or designee is prohibited. This includes but is not limited to asking for answers to a quiz, trading answers, or offering to pay another to complete an assignment. It is considered Academic Misconduct to solicit assistance with academic coursework and/or degree requirements, even if the solicitation did not yield actual assistance (for example, if there was no response to the solicitation).

(2) Possessing and/or Providing False and Misleading Information and/or Falsification of University Records

- (a) Withholding related information, or furnishing false or misleading information (oral or written) to University officials, university and non-university law enforcement officers, faculty or staff.
- (b) Possession, use or attempted use of any form of fraudulent identification.
- (c) Forgery, alteration or misuse of any University document, material, file, record or instrument of identification.
- (d) Deliberately and purposefully providing false or misleading verbal or written information about another person.
- (e) Falsification, distortion, or misrepresentation of information during an investigation, the Student Conduct Review Process, including knowingly initiating a false complaint.

(3) Disruptive Conduct

- (a) Any act that impairs, interferes with, or obstructs the orderly conduct, processes, and functions of the University or any part thereof or the rights of one or more individuals.
- (b) Any act which deliberately impedes or interferes with the normal flow of pedestrian and vehicular traffic.
- (c) Any act which intentionally interferes with the election processes of any University registered student organization or sponsored student group.
- (d) Misuse of any University safety equipment, firefighting equipment, or fire alarms.
- (e) A false report of an explosive or incendiary device, which constitutes a threat or bomb scare.

- (f) Breach of peace: an act, which aids, abets, or procures another person to breach the peace on the University premises or at University sponsored/related functions.
- (g) Failure to comply with oral or written instruction from duly authorized University officials (i.e. faculty, staff, administration, residence hall staff) acting within the scope of their job duties or law enforcement officers acting in the performance of their duties, including failure to identify oneself to these persons when requested to do so.
- (h) Failure to produce identification upon request by a University official (i.e. faculty, staff, administration, residence hall staff), acting within the scope of their job duties or law enforcement officers acting in the performance of their duties.
- (i) Hindering or interfering with the student conduct review process by failing to obey the notice from a university official to appear for a student conduct meeting or hearing; and/or attempting to discourage an individual's proper participating in, or use of, the student conduct review process.
- (j) Violation of any other University regulation or policy as described in the UCF Regulations, UCF Policies and Procedures, or University department publicized policy.
- (k) Failure to comply with applicable law and University regulations and procedures for solicitation and fundraising activities on campus.

#### (4) Harmful Behavior

- (a) Physical harm or threat of physical harm to any person. This harmful behavior policy may not apply in those instances where it is found that a student is acting in self-defense.
- (b) Verbal, digital, or written abuse, threats, intimidation, coercion and/or other conduct that endangers the health, safety, or wellbeing of others, or which would place a reasonable person in fear of bodily injury or death. This definition, however, shall not be interpreted to abridge the rights of the University community to freedom of expression protected by the First Amendment of the United States Constitution and any other applicable law.
- (c) Discriminatory Harassment: Discriminatory harassment consists of verbal, physical, electronic or other conduct based upon a protected class as defined in University Policy 2-004, or membership in other protected classes set forth in state or federal law that interferes with that individual's educational or employment opportunities, participation in a university program or activity, or receipt of legitimately-requested services meeting

the description of either Hostile Environment Harassment or Quid Pro Quo Harassment, as defined in University Policy 2-004 Prohibition of Discrimination, Harassment, and Related Interpersonal Violence.

- (d) Bullying: Defined as behavior of any sort (including communicative behavior) directed at another, that is severe, pervasive, or persistent, and is of a nature that would cause a reasonable person or group in the target's position substantial emotional distress and undermine his or her ability to work, study, or participate in University life or regular activities, or which would place a reasonable person in fear of injury or death.
- (e) Stalking: defined as conduct not of a sexual nature that is repeated, unwanted conduct toward or contact with another person that would cause a reasonable person to fear for the person's safety or the safety of others, or to experience substantial emotional distress. Such conduct is direct, indirect, or through a third party using any type of action, method, or means. Cyber stalking is also included in this definition.
- (f) Invasion of Privacy and Unauthorized Recording.
  1. Making, using, disclosing or distributing a recording of a person in a location or situation in which that person has a reasonable expectation of privacy and is unaware of the recording or does not consent to it; and any other conduct that constitutes an invasion of the privacy of another person under applicable laws and regulations. Such conduct includes, without limitation, unauthorized recording of personal conversations, images, meetings or activities.
  2. Unauthorized recording of a class or of organizational or University meetings, where there exists a legal expectation of privacy, and any use, disclosure, or distribution of any such recording.
  3. Engaging in acts of voyeurism, including but not limited to peeping or surreptitiously recording another when there is a reasonable expectation of privacy.
  4. Any notice, consent or other requirement under applicable laws and regulations must be fulfilled in connection with authorizing, making, using, disclosing or distributing any recording, where there is a legal expectation of privacy.
- (g) Retaliation against or harassment of complainant(s), other person(s) alleging misconduct, or anyone who participates in an investigation.

- (h) Condoning or encouraging acts of harmful behavior as defined above or failing to intervene during an act of harmful behavior while it is occurring.

(5) Sex-Based Misconduct (Non-Title IX Sexual Harassment)

- (a) Sexual Assault: Sexual assault means sexual contact without consent.
- (b) Sexual Harassment. Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when the conditions for Discriminatory Harassment as defined in UCF Policy 2-004 are present. Sexual Harassment may include inappropriate touching, acts of sexual violence, suggestive comments and public display of pornographic or suggestive calendars, posters, or signs where such images are not connected to any academic purpose. A single incident of sexual contact without consent may be sufficiently severe to constitute sexual harassment.
- (c) Gender-Based Harassment: Gender-based harassment is discriminatory harassment that is based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions for Discriminatory Harassment as defined in UCF Policy 2-004 are present.
- (d) Obscene or Indecent Behavior: Exposure of one's body in such a manner that another party reasonably could be offended or to display sexual behavior which another person reasonably finds offensive.
- (e) Voyeurism: Trespass, spying, or eavesdropping for the purpose of sexual gratification.
- (f) Solicitation of a Minor: soliciting sexual acts from a minor by oral, written, or electronic means.
- (g) Child Pornography: possessing, producing or the dissemination of child pornography.
- (h) Relationship Violence: Relationship Violence includes any act of violence or threatened act of violence that occurs between individuals who are involved or have been involved in a sexual, dating, spousal, domestic, or other intimate relationship. Relationship Violence may include sexual assault, stalking, and physical assault. Relationship Violence may involve a pattern of behavior used to establish power and control over another person through fear and intimidation or may involve one-time conduct. A

pattern of behavior is typically determined based on the repeated use of words and/or actions and inactions in order to demean, intimidate, and/or control another person. This behavior can be verbal, emotional, and/or physical and may be directed towards the former partner, their property, or other individuals. Examples of Relationship Violence may include, but are not limited to: slapping; pulling hair; punching; damaging another person's property; driving recklessly to scare someone; name calling; humiliating another person in public; harassment directed toward a current or former partner or spouse; and/or threats of abuse, such as threatening to hit, harm, or use a weapon on another (whether Complainant or acquaintance, friend, or family member of the Complainant), or other forms of verbal threats.

- (i) Stalking: Stalking under this provision occurs where a person engages in a course of conduct of a sexual nature that is directed at a specific person under circumstances that would cause a reasonable person to fear for the person's safety or the safety of others, or to experience substantial emotional distress. A "course of conduct" is two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's property. Stalking includes "cyber-stalking," a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, phones, texts, or other similar devices or forms of contact. Stalking may include, but is not limited to: non-consensual communications (face to face, telephone, e-mail); threatening or obscene gestures; surveillance/following/pursuit; showing up outside the targeted individual's classroom or workplace; sending gifts and/or notes (romantic, bizarre, sinister, or perverted); and/or making threats.
- (j) Sexual Exploitation: Sexual Exploitation is purposely or knowingly doing or attempting to do any of the following:
  - 1. Recording or photographing private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;
  - 2. Disseminating or posting images of private sexual activity and/or a person's intimate parts (including genitalia, groin, breasts or buttocks) without consent;

3. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images);
  4. Subjecting another person to human trafficking; or
  5. Exposing another person to a sexually transmitted infection or virus without the other's knowledge.
- (k) Any attempted acts of sex-based misconduct are also violations of this policy.

(6) Title IX Sexual Harassment

- (a) Title IX Sexual Harassment is defined as any conduct on the basis of sex which occurs (i) on or after August 14, 2020; (ii) against a person located in the United States; and (iii) in or as part of the University's education program or activity, which satisfies one or more of the following:
1. Unwelcome conduct that a reasonable person would determine is so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the University's education program or activity;
  2. Sexual assault (as defined in the Clery Act), which includes any sexual contact that occurs without consent (consent and sexual contact are defined in UCF-5.006(3));
  3. Dating violence (as defined in the Violence Against Women Act (VAWA) amendments to the Clery Act), which includes any act of violence or threatened act of violence committed by a person: (A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the length of the relationship; the type of relationship; and the frequency of interaction between the persons involved in the relationship.
  4. Domestic violence (as defined in the VAWA amendments to the Clery Act), which includes any felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under Florida statute or by any other

person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of Florida.

5. Stalking (as defined in the VAWA amendments to the Clery Act), meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to (a) fear for their safety or the safety of others; or (b) suffer substantial emotional distress.

(b) Retaliation, including but not limited to conduct meant to intimidate, threaten, coerce, or discriminate against any individual for the purpose of interfering with any right or privilege secured by Title IX of the Education Amendments of 1972 or its implementing regulations or UCF Policy 2-012.

(7) Larceny/Property Damage

(a) Unauthorized use, possession, or theft of property or service. Such property may be personal or public.

(b) Damaging or defacing of University property or the property of another person whether or not it is on University premises.

(c) Tampering with or damaging fire safety equipment.

(8) Hazing

(a) Hazing is any action or situation that recklessly or intentionally endangers the mental or physical health and/or safety of a student for purposes including but not limited to: initiation, ~~or~~ admission into, association, ~~or~~ affiliation with, or the perpetuation or furtherance of a tradition or ritual of any registered student organization or other group whether or not officially recognized by the University operating under registration with the University or any student group operating with official sanction of the University. Hazing in violation of Florida Statutes may result in felony charges. A student can be found to have committed an act of hazing whether the student is a prospective, current, or former member of the organization or group. The actions of active, associate, new and/or prospective members, former members, or alumni of a student organization or group may be considered hazing under this rule.

(b) Hazing includes brutality of a physical nature such as whipping, beating, branding, forced calisthenics, exposure to the elements; forced consumption of any food, liquid,

liquor, drug, or other substances; or other forced elements; or other forced activity which could adversely affect the mental or physical health or safety of the individual.

- (c) Hazing includes any activity which could subject the individual to extreme mental stress such as sleep deprivation, forced exclusion from social contact, forced conduct that could result in extreme embarrassment, or any other activity that could adversely affect the mental health or dignity of the individual.
- (d) Hazing includes forcing, pressuring, or coercing, the student into violation of University policies or federal, state, or local law.
- (e) Hazing includes soliciting a person to commit or being actively involved in the planning of any act of hazing as defined above where the act of hazing creates a substantial risk of physical injury or death to the person(s) hazed.
- (f) It is not defense to an allegation of hazing that:
  - 1. the consent of the victim had been obtained;
  - 2. the conduct or activity that resulted in the death or injury of a person was not part of any official organizational event or otherwise sanctioned or approved by the student organization; or
  - 3. the conduct or activity that resulted in the death or injury of a person was not done as a condition of membership into a student organization.
- (g) Hazing does not include customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective.

(9) Misuse or Unauthorized Use of Facilities and Grounds

- (a) Misuse or unauthorized use of classroom or laboratory facilities, or University property (as defined by University Regulation UCF-4.036).
- (b) Abusing grounds or building structures including, but not limited to ramps, rails, stair sets and entryways by means of recreational cycling, skating, scootering, or other recreational activities or devices as outlined in University Regulation UCF-4.036.
- (c) Unauthorized entry or attempted entry to any University property (as defined by University Regulation UCF-4.036).
- (d) Unauthorized possession, duplication or use of keys to any University property (as defined by University Regulation UCF-4.036).

(10) Misconduct at University Sponsored/Related Activities

- (a) Violation of UCF rules of conduct at UCF sponsored related activities shall also be a violation of the golden rule.
- (b) Violations of a regulation(s) of a host institution sponsored/related activity shall be a violation of the golden rule.

(11) Controlled Substance and Drug Violations

- (a) Possessing, consuming, or attempting to possess cannabis in any amount.
- (b) Cultivating, manufacturing, or attempting to obtain cannabis in any amount.
- (c) Possessing, consuming, cultivating, manufacturing, or attempting to possess any controlled substances other than cannabis, except as expressly permitted by law.
- (d) Selling or distributing cannabis or any other controlled substances other than alcohol.
- (e) Possessing or attempting to possess any drug related paraphernalia.
- (f) Misconduct under the influence of controlled substance(s) and/or drugs other than alcohol.

NOTE: Students who receive medical attention due to drug related emergencies and/or students who call for help on behalf of another student who may be experiencing a drug related emergency may be exempt from disciplinary action. Information regarding exemptions under this rule for drug related emergencies can be found in University Regulation UCF-5.007 and the Student Conduct and Academic Integrity website:

<http://osc.sdes.ucf.edu/medicalemergencies>.

(12) Alcoholic Beverages Violation

- (a) Possessing or consuming alcoholic beverages, or possessing or using alcohol-related paraphernalia, except as expressly permitted by the law and University Regulations and/or Policies.
- (b) Selling or distributing alcoholic beverages or alcohol-related paraphernalia, except as expressly permitted by law and University Regulations and/or Policies.
- (c) Misconduct under the influence of alcohol.

NOTE: Students who receive medical attention due to alcohol related emergencies and/or students who call for help on behalf of another student who may be experiencing a drug related emergency may be exempt from disciplinary action. Information regarding exemptions under this rule for drug related emergencies can be found in University Regulation UCF-

5.007 and the Student Conduct and Academic Integrity website:

<http://osc.sdes.ucf.edu/medicalemergencies>.

(13) Possession of Weapons and/or Dangerous Material

- (a) The possession, use, or storage of weapons on property owned or controlled by the University or at events sponsored and/or supported by the University is prohibited, except as specifically outlined in University Policy 3-119.1 (Weapons on University Property and at University Events).
- (b) Possession or use of fireworks of any description, explosives, or chemicals which are disruptive, explosive, or corrosive are prohibited on University premises or at University sponsored/related activities.

(14) Instigation or Participation in Group Disturbances during Demonstrations, Parades, or Picketing

- (a) Participation in a demonstration(s), parade(s), or picketing which invades the rights of others, which interferes with the educational function of the University, or which jeopardizes public order and safety.
- (b) Leading or inciting others to disrupt scheduled and/or normal activities within any campus building or area.

(15) Misuse of Computing and Telecommunications Resources

- (a) Theft or other abuse of computer facilities and resources
- (b) Unauthorized entry into a file, to use, read, or change the contents, or for any other purpose.
- (c) Unauthorized transfer of a file.
- (d) Use of another individual's identification and/or password.
- (e) Use of computing facilities and telecommunications resources to interfere with the work of another student, faculty member or University Official.
- (f) Use of computing facilities and telecommunications resources to send obscene or abusive messages.
- (g) Use of computing facilities and telecommunications resources to interfere with normal operation of the University computing system.
- (h) Use of computing facilities and telecommunications resources in violation of copyright laws.

- (i) Any violation of the University of Central Florida Use of Information Technology and Resources Policy.
- (j) Any violation of the University of Central Florida ResNet Acceptable Use Policy.

(16) Gambling

- (a) Play in an unlawful game of chance for money or for anything of value on University premises or at any affair sponsored by a student or student organization.
- (b) Unlawfully sell, barter or dispose of a voucher or any item for participation in a scheme of chance by whatever name on University premises or at any affair sponsored by a student or registered student organization.
- (c) Wager on a University team or organization in a competition, with a direct influence in the success of the competition.

(17) University Student Residence Violations. Violation(s) of any Department of Housing and Residence Life policy, rule or regulation published in hard copy or available electronically via Department of Housing and Residence Life website. A charge under this provision must include a specific citation of which Housing policy or policies the charged student has violated.

(18) University Wordmark Violations. Unauthorized use of the official University wordmark, Pegasus, monogram, seal, or other graphic identity symbol.

(19) Violation of Local, State, and/or Federal Laws. Violation of any local, state and/or federal law that may result in a felony or misdemeanor.

(20) Complicity: Complicity is any act taken with the purpose of aiding, facilitating, promoting or encouraging the commission of an act prohibited by the Rules of Conduct.

*Authority: BOG Regulations 1.001 and 6.0105. History – Formerly 6C7-5.0042, New 6-18-09, Amended 7-19-12, 9-5-13, 11-20-14, 10-29-15, 7-28-16, 7-20-17, 1-18-18, 7-19-18, 7-18-19, 6-18-20, 10-22-20, \_\_\_\_\_-20.*

**UCF-5.012 Organizational Rules of Conduct**

Registered student organizations are expected to abide by these Organizational Rules of Conduct, and administrators and faculty are expected to enforce them. The prohibition on hazing found in Section (10), below, shall apply equally to registered student organizations and other student groups, whether or not officially recognized by the University. These rules should be read broadly and are not intended to define prohibited conduct in exhaustive terms. These rules may be revised during the year; announcements will be made on adoption of changes or additions. The right of all students to seek knowledge, debate ideas, form opinions, and freely express their ideas is fully recognized by the University of Central Florida, including when students come together as a student group; accordingly, the rules below will not be used to impose discipline for a student group's lawful expression of ideas. Specific restrictions on time and place of meetings and assemblies are found in other University regulations or policies and student groups are expected to follow those restrictions. The following is a non-exhaustive list of prohibited conduct for which disciplinary action may be taken at the University of Central Florida.

(1) Theft, Disregard for Property

- (a) Malicious or unwarranted damage or destruction of another's property;
- (b) Taking, attempting to take, or keeping in its possession property or services not belonging to the registered student organization.
- (c) Misuse or mishandling of organizational funds by any officer, member, or other individual.

(2) Possessing and/or Providing False and Misleading Information and/or Falsification of University Records

- (a) Withholding related information, or furnishing false, misleading, incomplete, or incorrect information (oral or written).
- (b) Possession, use or attempted use of any form of fraudulent identification.
- (c) Forgery, alteration or misuse of any University document, material, file, record or instrument of identification.
- (d) Deliberately and purposefully providing false or misleading verbal or written information about another person.

- (e) Falsification, distortion, or misrepresentation of information during an investigation, the student conduct review process, including knowingly initiating a false complaint

### (3) Disruptive Conduct

- (a) Any act that impairs, interferes with, or obstructs the orderly conduct, processes, and functions of the University or any part thereof or the rights of one or more individuals.
- (b) Obstructing the free movement of other students around the campus, interfering with the use of University facilities, preventing the normal operation of the University; or conducting any event that interferes with the normal progress of academic events on campus.
- (c) Engaging in obscene or indecent conduct.
- (d) Failure to comply with the administrative policies as enacted by the University.
- (e) Failure to comply with the directions of University officials or authorized agents acting in the performance of their duties. Registered student organization officers and members shall comply with all directions or requests of University officials, University police officers or authorized agents in a timely manner.
- (f) Hindering or interfering with the Organizational Conduct Review Process by failing to obey the notice from a university official to appear for a student conduct meeting or hearing and/or attempting to discourage an individual's proper participating in, or use of, the Organizational Conduct Review Process.
- (g) Participating in any event with a registered student organization that is currently on Organizational Disciplinary Probation (with restrictive conditions) or Organizational Deferred Suspension (with restrictive conditions), is currently suspended, or that has had their UCF registration revoked.
- (i) Failure to comply with any other University regulation or policy as described in the UCF Regulations, UCF Policies and Procedures, or University department publicized policy.

### (4) Harmful Behavior

- (a) Physical violence towards another person or group.

- (b) Discriminatory Harassment: Discriminatory harassment consists of verbal, physical, electronic or other conduct based upon a protected class as defined in University Policy 2-004, or membership in other protected classes set forth in state or federal law that interferes with that individual's educational or employment opportunities, participation in a university program or activity, or receipt of legitimately-requested services meeting the description of either Hostile Environment Harassment or Quid Pro Quo Harassment, as defined in University Policy 2-004 Prohibition of Discrimination, Harassment, and Related Interpersonal Violence.
  - (c) Bullying: Defined as behavior of any sort (including communicative behavior) directed at another, that is severe, pervasive, or persistent, and is of a nature that would cause a reasonable person or group in the target's position substantial emotional distress and undermine his or her ability to work, study, or participate in University life or regular activities, or which would place a reasonable person in fear of injury or death.
  - (d) Verbal, digital, or written abuse, threats, intimidation, coercion and/or other conduct that endangers the health, safety or well-being of another person or group, or which would place a reasonable person in fear of bodily injury or death. This definition, however, shall not be interpreted to abridge the rights of the University community to freedom of expression protected by the First Amendment of the United States Constitution and any other applicable law.
  - (e) Failure to respect the privacy of other individuals.
  - (f) Retaliation against or harassment of Complainant(s), other person(s) alleging misconduct, or anyone who participates in an investigation of harassment.
  - (g) Condoning or encouraging acts of harmful behavior as defined above or failing to intervene on an act of harmful behavior while it is occurring.
- (5) Sex-Based Misconduct
- (a) Sexual Assault. Sexual assault means sexual contact without consent. Consent and sexual contact are defined in UCF-5.006(3).

- (b) **Sexual Harassment:** Sexual harassment means any unwelcome sexual advance, request for sexual favors, or other unwanted conduct of a sexual nature, whether verbal, non-verbal, graphic, physical, or otherwise, when the conditions for Discriminatory Harassment as defined in UCF Policy 2-004 are present. Sexual Harassment may include inappropriate touching, acts of sexual violence, suggestive comments and public display of pornographic or suggestive calendars, posters, or signs where such images are not connected to any academic purpose. A single incident of nonconsensual sexual contact (as defined above) may be sufficiently severe to constitute sexual harassment.
- (c) **Gender-Based Harassment:** Gender-based harassment is discriminatory harassment that is based on gender, sexual orientation, gender identity, or gender expression, which may include acts of aggression, intimidation, or hostility, whether verbal or non-verbal, graphic, physical, or otherwise, even if the acts do not involve conduct of a sexual nature, when the conditions for Discriminatory Harassment as defined in UCF Policy 2-004 are present.
- (d) **Obscene or Indecent Behavior:** Exposure of one's body in such a manner that another party reasonably could be offended or to display sexual behavior which another person reasonably finds offensive.
- (e) **Voyeurism:** Trespass, spying, or eavesdropping for the purpose of sexual gratification.
- (f) **Solicitation of a Minor:** soliciting sexual acts from a minor by oral, written, or electronic means.
- (g) **Child Pornography:** possessing, producing or the dissemination of child pornography
- (h) **Stalking:** Stalking occurs when there is a coordinated course of conduct directed at a specific person under circumstances that would cause a reasonable person to fear for the person's safety or the safety of others, or to experience substantial emotional distress. A "course of conduct" is two or more acts, including but not limited to acts in which a person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveils, threatens, or communicates to or about another person, or interferes with another person's

property. Stalking includes “cyber-stalking,” a particular form of stalking in which a person uses electronic media, such as the internet, social networks, blogs, phones, texts, or other similar devices or forms of contact. Stalking may include, but is not limited to: non-consensual communications (face to face, telephone, e-mail); threatening or obscene gestures; surveillance/following/pursuit; showing up outside the targeted individual’s classroom or workplace; sending gifts and/or notes (romantic, bizarre, sinister, or perverted); and/or making threats.

- (i) Sexual Exploitation: Sexual Exploitation is purposely or knowingly doing or attempting to do any of the following:
  1. Recording or photographing private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts or buttocks) without consent;
  2. Disseminating or posting images of private sexual activity and/or a person’s intimate parts (including genitalia, groin, breasts or buttocks) without consent;
  3. Allowing third parties to observe private sexual activity from a hidden location (e.g., closet) or through electronic means (e.g., Skype or livestreaming of images);
  4. Subjecting another person to human trafficking.
- (j) Any attempted acts of Sex-Based Misconduct are also violations of this policy.

(6) Alcohol Related Misconduct

- (a) Use and/or possession of alcoholic beverages, except as expressly permitted by law and University regulations/policies.
- (b) Sale and/or distribution of alcoholic beverages, except as expressly permitted by the law and University regulations/policies.
- (c) Furnishing or causing to be furnished any alcoholic beverage to any person under the legal drinking age.
- (d) Behavior under the influence of alcohol.
- (e) Furnishing or causing to be furnished any alcoholic beverage to any person in a state of noticeable intoxication.
- (f) Failure of a registered student organization to take all necessary steps to see that no person under the legal drinking age possesses alcoholic beverages at functions it sponsors or within any property or transportation it owns, operates, and/or rents.

NOTE: Registered student organizations may be eligible for exemptions from disciplinary action when a representative of an organization at a registered student organizational event calls for emergency assistance on behalf of a person experiencing an alcohol related emergency. Information regarding exemptions under this rule for alcohol related emergencies can be found in University Regulation UCF–5.011 and the Student Conduct & Academic Integrity website: <http://osc.sdes.ucf.edu/medicalemergencies>.

(7) Drug Related Misconduct

- (a) Unlawful use and/or possession of any narcotic or other controlled substances, and possession and/or use of drug paraphernalia.
- (b) Sale and/or distribution of any narcotic or other controlled substances.
- (c) Cultivation and/or manufacture of any narcotic or other controlled substances.
- (d) Attempt to obtain any narcotic or other controlled substances, except as expressly permitted by law.

NOTE: Registered student organizations may be eligible for exemptions from disciplinary action when a representative of an organization at a registered student organizational event calls for emergency assistance on behalf of a person experiencing a drug related emergency. Information regarding exemptions under this rule for drug related emergencies can be found in University Regulation UCF – 5.011 and the Student Conduct and Academic Integrity website: <http://osc.sdes.ucf.edu/medicalemergencies>.

(8) Unauthorized Entry. Unauthorized entry, attempted entry, or loitering in private or restricted areas that are owned and/or operated by the University.

(9) Gambling

- (a) Play or sponsor of an unlawful game of chance for money or for anything of value on University premises or at any affair sponsored by a registered student organization.
- (b) Unlawful sale, barter, or disposition of a voucher or any item for participation in a scheme of chance by whatever name on University premises or at any activity sponsored by a registered student organization
- (c) Wagering on a University team or organization in a competition, with or without intent to have a direct influence in the success of the competition

(10) Hazing-

- (a) Hazing is any action or situation that recklessly or intentionally endangers the mental or physical health and/or safety of a student for purposes including but not limited to initiation, ~~or~~ admission into, ~~or~~ association or affiliation with, or the perpetuation or furtherance of a tradition or ritual of any registered student organization or other group whether or not officially recognized by the University. Hazing which violates Florida Statutes may result in felony charges. A student may commit an act of hazing whether the student is a prospective, current, or former member of the organization or group. The actions of active, associate, new and/or prospective members, former members, or alumni of a registered student organization or other student group may be considered hazing under this rule.
- (b) Hazing includes brutality of a physical nature such as whipping, beating, branding, forced calisthenics, exposure to the elements; forced consumption of any food, liquor, liquid, drug, or other substances; or other forced elements; or other forced activity which could adversely affect the mental or physical health or safety of the individual.
- (c) Hazing includes any activity that could subject the individual to extreme mental or physical stress such as sleep deprivation, forced exclusion from social contact, forced conduct that could result in extreme embarrassment, or any other activity that could adversely affect the mental or physical health or dignity of the individual.
- (d) Hazing includes forcing, pressuring, coercing, or requiring the violation of University policies, federal, state, or local law.
- (e) Hazing includes soliciting a person to commit or being actively involved in the planning of any act of hazing as defined above where the act of hazing creates a substantial risk of physical injury or death to the person(s) hazed.
- (f) It is not a defense to an allegation of hazing that:
1. the consent of the victim had been obtained;
  2. the conduct or activity that resulted in the death or injury of a person was not part of any official organizational event or otherwise sanctioned or approved by the student organization or group; or
  3. the conduct or activity that resulted in the death or injury of a person was not done as a condition of membership into a student organization.

- (g) Hazing does not include customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal and legitimate objective.
- (h) All student groups, whether or not registered with the University and whether or not officially recognized by the University are subject to the same hazing prohibitions set out in this section (10). With regard to student groups that are not registered students organizations, and against which there is an allegation of hazing, the principles of group responsibility and scope provisions of University Regulation UCF-5.011(1)(b), (1)(c), and (4) shall apply, as well as the conduct proceeding procedures of University Regulation UCF-5.013.

(11) Outstanding Debt. Failure to pay on and off campus vendors in a timely manner. Groups shall not knowingly enter into purchase or rental agreements that are beyond the resources of the organization's ability to pay. The University will not cover outstanding debts of registered student organizations.

(12) Use of Facilities. Failure to comply with University regulations and procedures for campus events and/or use of campus facilities or grounds. Those individuals acting on behalf of an organization that reserve facilities should check with the University department or office responsible for the facility to guarantee that all procedures have been followed.

(13) Fire Safety and Sanitation

- (a) Tampering with or damage to fire safety equipment.
- (b) Causing, condoning, or encouraging the creation of any situation involving incendiary or other chemicals or substances, explosives, or fire that reasonably may result in danger to another's person or property.
- (c) Possession or use of illegal fireworks, incendiary devices, or dangerous explosives.
- (d) Failure to properly maintain a registered student organization's facilities or property (or surrounding property) such that a potential danger to the health and safety of the occupants or members of the University and surrounding community is created.

(14) Advertising

- (a) Origination or circulation of any advertising media that contains matter that violates federal, state and/or local laws.

- (b) Origination or circulation of any advertising media containing false or misleading information.
- (15) Solicitation and Fundraising. Failure to comply with applicable law and University regulations and procedures for solicitation and fundraising activities on campus.
- (16) University Wordmark Violations. Unauthorized use of the University's name, abbreviation, trademarks or wordmarks, including the Pegasus, monograms, seal, or other graphic identity symbols. The phrases "UCF" or "University of Central Florida" (or some form thereof) cannot precede the title of the organization. This section refers to but is not limited to, the registered student organization's: domain name, web address, promotional materials, and uniforms/shirts.
- (17) Academic Misconduct
- (a) Unauthorized academic assistance: Using or attempting to use unauthorized materials, information or study aids in any academic exercise unless specifically authorized by the instructor of record.
  - (b) The unauthorized possession of examination or course related material.
  - (c) Commercial Use of Academic Material: Selling of course material to another person, student, and/or uploading course material to a third party vendor without authorization or without the express written permission of the University and the Instructor. Course materials include but are not limited to class notes, Instructor's power points, tests, quizzes, labs, instruction sheets, homework, study guides, handouts, etc.
  - (d) Knowingly helping any student violate academic behavior standards.
- (18) Violation of Local, State, and/or Federal Laws. Violation of any local, state and/or federal law that may result in a felony or misdemeanor.
- (19) Complicity. The following offenses, or the aiding, assisting, condoning, or attempting to commit these offenses, constitute violations of the Organizational Rules of Conduct.

*Authority: BOG Regulations 1.001 and 6.0105. History – New 10-16-09, Amended 7-19-12, 9-3-13, 10-29-15, 7-28-16, 7-20-17, 7-19-18, 7-18-19, 6-18-20, 10-22-20, \_\_\_\_\_-20.*

**UCF BOARD OF TRUSTEES**  
**Agenda Item Summary**  
 Governance Committee  
 November 19, 2020

**Title:** Amendments to University Regulation UCF-7.130 Administration and Finance; Procurement Services

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Information                       Information for upcoming action                       Action

**Meeting Date for Upcoming Action:** \_\_\_\_\_

**Purpose and Issues to be Considered:**

The University proposes to amend Regulation UCF-7.130 Administration and Finance; Procurement Services to add new language to section (1)(e) concerning the use of existing Shared Initiatives contracts where practical, unless not in the best interest of the university and section (1)(g) has been amended to add language providing justification documentation for the use of contract adoption.. Additional language has also been added to (3)(i)4 to clarify the use of auditor services that are not subject to the competitive solicitation process. These language changes conform to recent amendments to Florida Board of Governors' Regulation 18.001.

This regulation was posted online October 30, 2020 for public comment. No comments were received as of the date of submission of these materials.

**Background Information:**

Florida Board of Governors Regulation 1.001 provides that "Each Board of Trustees is authorized to promulgate university regulations in accordance with the Regulation Development Procedure adopted by the Board of Governors."

**Recommended Action:**

Approve amendments to University of Central Florida Regulation UCF-7.130 Administration and Finance; Procurement Services.

**Alternatives to Decision:**

Do not amend UCF-7.130 as proposed and suggest alternative amendments.

**Fiscal Impact and Source of Funding:**

N/A

**Authority for Board of Trustees Action:**

Board of Governors Regulation 1.001

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**Contract Reviewed/Approved by General Counsel**    N/A  

**Committee Chair or Chair of the Board has approved adding this item to the agenda**  

**Submitted by:**

Scott Cole, Vice President and General Counsel

**Supporting Documentation:**

Attachment A: Proposed Amended Regulation UCF-7.130 (redline)

**Facilitators/Presenters:**

Youndy Cook, Senior Deputy General Counsel

**UCF-7.130 Administration and Finance; Procurement Services.**

(1) The University Board of Trustees (BOT) has authority to establish a system of coordinated procurement policies, procedures, and practices to be used in acquiring commodities and contractual services required by the University. The University Procurement Services Department has the duty to:

- (a) Develop procurement procedures.
- (b) Canvass sources of supply and contracting for the procurement or lease of all commodities and contractual services for the University, in any manner, including procurement by installment- or lease-purchase contracts. Installment- or lease-purchase contracts may provide for the payment of interest on unpaid portions of the purchase price.
- (c) Recommend or advise the suspension or debarment of a contractor, in accordance with University Regulation UCF-7.124, from doing business with the University for demonstrated cause, including previous unsatisfactory performance.
- (d) Plan and coordinate procurements in volume and negotiate and execute agreements and contracts for commodities and contractual services under which the University may make procurements.
- (e) Where practical and available, implementing the use of existing State University System (SUS) Shared Initiatives contracts; unless the Director of Procurement/Chief Procurement Officer or designee documents that such use is not in the best interest of the university.
- (fe) Develop an Annual Certification List to serve as a waiver of the competitive solicitation requirement for commodities/services that are frequently procured and are available from a single source.
- (gf) Evaluate, approve, and utilize contracts that are entered into after a public and open competitive solicitation by any State of Florida agency, ~~or~~ department, Florida state college or university, the Federal Government, other states, political subdivisions, cooperatives or consortia, or any independent college or university for the procurement of commodities and contractual services, when it is determined to be cost-effective and in the best interest of the University, to make purchases under contracts let by such other entities. The Universityies must maintain appropriate

justification for use of services contract adoption. The University shall review existing consortia and cooperative contracts to identify potential savings and, if there is the potential for savings, enter into new consortia and cooperative contracts to achieve the savings, with the goal of achieving a five-percent savings on existing contract prices.

- (hg) Elect as an alternative to any provision in Board of Governor's (BOG) Regulation 18.002 to proceed with a bid solicitation or contract award process when it is set forth, in writing, that the particular facts and circumstances which demonstrate that the delay due to staying the solicitation or contract award process would be detrimental to the interests of the University. After the award of a contract resulting from a competitive solicitation in which a timely protest was received and in which the University did not prevail, the contract may be canceled and re-awarded to the prevailing party.
- (ih) Award contracts for commodities and contractual services to multiple suppliers, if it is determined to be in the best interest of the University. Such awards may be on a university, regional or multiple state university-wide basis and the contracts may be for multiple years.
- (ji) Reject or cancel any or all competitive solicitations when determined to be in the best interest of the Institution.
- (kj) Inspect the part of the plant or place of business to determine the capability of contract performance of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the University, when specified in the agreement.

(2) Competitive Solicitations Required.

- (a) All contracts for the procurement of commodities or contractual services exceeding \$75,000 shall be awarded pursuant to a competitive solicitation, unless otherwise authorized herein.
- (b) When only one response is received to a competitive solicitation for commodities or contractual services exceeding \$75,000 the University shall review the solicitation to determine if a second call for a competitive solicitation is in the best interest of the University. If it is determined that a second call would not serve a

useful purpose, the University shall proceed with the acquisition or cancel the acquisition.

- (c) When multiple responses that are equal in all respects are received to a competitive solicitation, the University will give preference to responses that include commodities manufactured in the state, Florida businesses, or foreign manufacturers located in the state to determine the contract award, or, if these conditions do not exist, will use coin toss to determine the award.~~toss of the coin.~~
- (d) The procurement of commodities and contractual services shall not be divided to avoid the requirement of competitive solicitation.
- (e) The Procurement Services Department, in issuing an Invitation to Bid, Request for Proposal or Invitation to Negotiate, shall provide notice of a decision or intended decision concerning a solicitation, or contract award by electronic posting for 72 hours, which is interpreted as three business days. (Business days do not include Saturdays, Sundays, State or University holidays, or any other days when the University is otherwise closed for business.) This notice shall contain the following statement: “Failure to file a protest in accordance with BOG regulation 18.002, or failure to post the bond or other security as required in BOG regulation 18.003, shall constitute a waiver of protest proceedings.”
- (f) Advertisement. Invitations to Bid, Requests for Proposals, and Invitations to Negotiate for commodities expected to be in excess of \$150,000 and for contractual services expected to be in excess of \$75,000 shall be advertised in the Florida Administrative Weekly or the State of Florida’s VBS System. The head of The Procurement Services Department or designee shall have the authority to waive this advertisement requirement when the number of potential bidders or proposers is limited and can otherwise be solicited, when the availability of funding so requires, or where delivery is urgent.
- (g) Bids and proposals shall remain sealed (with the exception of typical information revealed at the Bid/Proposal opening for the tabulation sheet) until notice of final contract award is given or in accordance with Florida Statute as appropriate.
- (h) In the case of extension errors, the unit price will prevail.

- (i) Withdrawal. A vendor may withdraw his or her bid or proposal in writing if done within seventy-two (72) hours of the bid or proposal opening, if the bid or proposal is clearly erroneous and it is withdrawn prior to final award or the purchase order being issued.
- (j) Bid/Proposal Evaluations – Bids/Proposals shall be evaluated based on the requirements set forth in the Invitation to Bid/ Request for Proposal/Invitation to Negotiate, which may include criteria to determine acceptability such as inspection, testing quality, workmanship, delivery and suitability for a particular purpose. Those criteria that will affect the bid/proposal price and be considered in evaluation for award shall be objectively measured, such as all or none, discounts, transportation costs and total or life cycle costs. The Invitation to Bid, Request for Proposal or Invitation to Negotiate shall set forth the criteria to be used. No criteria may be used in bid/proposal evaluation that is not set forth in the Invitation to Bid, Request for Proposal or Invitation to Negotiate.

(3) Procurement of Commodities or Contractual Services.

- (a) Procurement of Products with Recycled Content. The University encourages the procurement and use of products and materials with recycled content and post consumer recovered material.
- (b) Procurement of Private Attorney Services. Written approval from the Attorney General is not required for private attorney services acquired by the University.
- (c) Procurement of Insurance. The University has the authority to procure insurance as deemed necessary and appropriate for the operation and educational mission of the University. Examples of insurance coverage that may be acquired by the University include (but are not limited to) insurance coverage for:
  - 1. Physical damage on vehicles and boats;
  - 2. Inland marine on property owned, leased, or loaned to or by the University;
  - 3. Building and property damage;
  - 4. Equipment losses due to theft;
  - 5. Loss of rental income;
  - 6. Excess general liability coverage;
  - 7. Professional liability;

- (d) Procurement of Printing. Printing shall be procured in accordance with the requirements of these rules. The University may refer to the requirements of Chapter 283, F.S., and rules promulgated thereto for guidance with respect to the procurement of printing services.
- (e) Procurements from Small, Minority ~~and~~ Woman, and Veteran-Owned Business Enterprises (SMWBE). The University is an equal opportunity institution and encourages procurement contracting with SWMVBE.
- (f) Procurements from Contractors Convicted of Public Entity Crimes. The University shall not accept a competitive solicitation from, or procure commodities or contractual services from, a person or affiliate who has been convicted of a public entity crime and has been placed on the State of Florida's convicted vendor list for a period of 36 months from the date of being added to the convicted vendor list.
- (g) Preferences for Florida-Based Vendors when Procuring Personal Property: For procurements of tangible personal property, the Florida Legislature enacted economic development laws establishing certain conditions and circumstances which, when applicable, require the granting of price preferences to businesses whose principal place of business is the State of Florida. Pursuant to §287.084 Florida Statute, award recommendations shall make appropriate adjustments to Resident Vendor pricing when considering solicitations from Bidders having a principal place of business outside the State of Florida. Refer to Florida Statute 287.084 and BOG Regulation 18.001 for additional information regarding applicability and implementation of this section.
- (h) Procurement actions that are not subject to the competitive solicitation process include but are not limited to:
  - 1. Emergency Procurements. When the President or his or her designee determines, in writing, that a condition exists that threatens the health or safety of person(s) or animal(s) or the preservation or protection of property or the continuance of a vital University function, the University may proceed with an emergency procurement without a competitive solicitation. The emergency procurement shall be limited to the procurement of only the type

of items and quantities or for a time period sufficient to meet the immediate threat and shall not be used to meet long-term requirements.

2. Sole Source Procurements. Commodities or contractual services available from a single source shall be exempted from the competitive solicitation process. Sole Source document shall be publicly posted by the Procurement Services Department for three working days. Working days do not include Saturdays, Sundays, or State or University Holidays.
  3. Procurements from competitively bid Contracts and Negotiated Annual Price Agreements established by the State, other governmental entities, other public or private educational institutions, and any procurement cooperative or consortium are not subject to competitive solicitation.
  4. Construction Direct Procurement Program. Commodities to be incorporated into any public work (as that term is defined in Rule 12A-1.094, F.A.C.) which are procured by the University in accordance with the requirements of the University's direct procurement program are not subject to any further competitive solicitation.
- (i) Commodities and contractual services that are not subject to the competitive solicitation process include:
1. Artistic services;
  2. Academic reviews;
  3. Lectures;
  4. Accountant services,
  5. ~~including a~~ Auditor services, including those services needed to address audit, financial and fraud-related compliance, controls, and investigative matters, or such other related services;
  65. Legal services, including attorney, paralegal, expert witness, appraisal, lobbyist, arbitrator or mediator services;
  76. Health services, including related equipment and supplies, involving examination, diagnosis, treatment, prevention, consultation or administration of physical or mental conditions or the provision of developmental or vocational rehabilitation;

- 87. Medicaid services delivered to an eligible Medicaid recipient by a health care provider who has not previously applied for and received a Medicaid provider number from the Department of Children and Family Services. This exception will be valid for a period not to exceed 90 days after the date of delivery to the Medicaid recipient and shall not be renewed;
- 98. Training and education services;
- 109. Advertising; except for media placement services;
- 1140. Services or commodities provided by governmental agencies, another university in the State of Florida or other independent colleges and universities;
- 1244. Programs or continuing education events that are offered to the general public for which fees have been collected to pay all expenses associated with the program or event;
- 1342. Procurements from firms or individuals that are prescribed by state or federal law or specified by a granting agency;
- 1443. Regulated utilities and government franchised services;
- 1544. Regulated public communications, except long distance telecommunication services or facilities;
- 1645. Extension of an existing contract; (see section (6)(c));
- 1746. Renewal of an existing contract if the terms of the contract specify renewal option(s); see section (6)(d));
- 1847. Procurements from the Annual Certification List developed by the University;
- 1948. Procurements for resale;
- 2049. Contracts or services provided by not-for-profit support and affiliate organizations of the University, direct support organizations, health support organizations and faculty practice plans;
- 2120. Implementation/programming/training services available from the owner of copyrighted software or its contracted vendor;
- 2224. Procurements of materials, supplies, equipment, or services for instructional or sponsored research purposes when a director of sponsored research or

designee certifies that, in a particular instance, it is necessary for the efficient or expeditious prosecution of a research project in accordance with sponsored research procedures or to attain the instructional objective. Sponsored research documents shall be publicly posted by the Procurement Services Department for three business days.

2322. Procurements for the Florida High Tech Corridor initiative.

- (j) Participants in Contract Awards Not Subject to Competitive Solicitations.
  - 1. No person or firm who receives a contract to perform a feasibility study for potential implementation of a subsequent contract, participates in the drafting of a competitive solicitation or specifications, or designs or develops a program for future implementation shall be eligible to contract with the University dealing with the specific subject matter.
  - 2. The individuals taking part in the development or selection of criteria for evaluation, the evaluation process and the contract award in any procurement shall be independent of, and have no conflict of interest in, the entities evaluated and selected and may be required to so attest in writing.

(4) Bonds.

- (a) Solicitation Security. A certified, cashier's or treasurer's check, bank draft or bid bond may be required as a condition for participating in a competitive solicitation where the University is reasonably uncertain about the contractor's ability to perform, and the expected value of the contract is in excess of \$100,000.
- (b) Payment and Performance Bonds for Commodities and Services Contracts. The head of the Procurement Services Department or designee is authorized to require any contractor contracting with the University to provide services or commodities (including installation) to furnish a payment and performance bond, with good and sufficient securities, to the University prior to the issuance of the contract when the total contract amount is greater than \$100,000 and the University is uncertain about the contractor's ability to perform.
- (c) A bond or security required pursuant to paragraphs (a) or (b) above must be in an amount equal to 100% of the response submitted to the competitive solicitation.

- (d) Solicitation Protest Bond. Any contractor that files a formal protest pursuant to the protest procedures of BOG Regulation 18.002 and this regulation protesting a decision or intended decision pertaining to a solicitation, shall at the time of filing of the formal protest, post with the University a bond payable to the University in an amount equal to: 10% of the estimated value of the protestor's bid or proposal; 10% of the estimated expenditure during the contract term; \$10,000; or whichever is less. The bond shall be conditioned upon the payment of all costs which may be adjudged against the contractor filing the protest action. In lieu of a bond, the University may accept a cashier's check or money order in the amount of the bond.

(5) Notice and Protest Procedures for Protests Related to a University's Contract Procurement Process

- (a) The procedures set forth in BOG Regulation 18.002 shall apply exclusively to any protest that arises from any university contract procurement processes for the procurement of goods, services, leases and for construction-related competitive solicitations.
- (b) Any qualified offeror who is adversely affected by the university's decision may file a written notice of intent to protest within 72 hours after university posting of award or intent to award notice. The protesting firm must reduce its complaint to a written petition and file it with the department that issued the solicitation within ten (10) calendar days from registration of the original complaint. Failure to timely file a protest or failure to timely deliver the required bond or other security in accordance with the Board of Governors' (BOG) Regulations 18.002 and 18.003 shall constitute a waiver of protest proceedings. Additional information on protest procedures can be viewed in the above referenced BOG Regulations.

(6) Contracts.

- (a) Acquisitions of commodities, contractual services, or licenses shall be executed with a purchase order or a bilateral agreement/contract, prior to the goods or services being ordered, contracted for, or rendered by the vendor. Procurement using a pCard, where compliant with applicable policies and procedures, or prior verbal approval from the Procurement Services Department, are also acceptable means to obligate the university for a procurement. All necessary procurement

actions (i.e. competition, competition exemptions, approvals) must take place prior to signing a contract/agreement or engaging in any actions that will obligate the university. For procurement under a bilateral agreement/contract or prior verbal approval from the Procurement Services Department, the requisition to process the associated purchase order must be submitted within thirty (30) days of (i) delivery of the commodities or (ii) the obligation for contractual services or licenses being incurred.

- (b) Any contract for the procurement of services or tangible personal property for a period in excess of one fiscal year shall include the following or an equivalent statement: “The State of Florida’s and University’s performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.”
- (c) ~~Permitting the extension(s) of a~~ contract, entered into as a result of a competitive solicitation may be extended, for up to twelve (12) months or until completion of the competitive solicitation and award or protest, whichever is longer. The extension shall be in writing, signed by both parties, and shall be subject to the same terms and conditions set forth in the initial contract.
- (d) A contract may contain provisions for renewal. If the commodity or contractual service is procured as a result of a competitive solicitation, the cost of any contemplated renewal must be included in the competitive solicitation. All contract renewals are subject to sufficient annual appropriations. Renewals of a contract, whether the contract resulted from a competitive process or other procurement method, shall be for a period that may not exceed 5 years or twice the term of the original contract, whichever is longer. This provision is not intended to apply retroactively; existing contracts entered into prior to January 1, 2017, including any specified renewal period(s) may continue in accordance with the existing contract terms.
- (e) When any commodity contract requires deferred payments and the payment of interest, such contract may be submitted to the State of Florida Comptroller for the purpose of pre-audit review and approval prior to acceptance by the University. The President shall have the authority to enter into deferred payment agreements

utilizing the State of Florida Comptroller's Consolidated Equipment Financing Program. No agreement shall establish a debt of the state or shall be a pledge of the faith and credit of the state; nor shall any agreement be a liability or obligation of the state except from appropriated funds.

- (f) In order to promote cost-effective procurement of commodities and contractual services, the University may enter into contracts that limit the liability of a vendor consistent with Section 672.719, F.S.
- (g) The total value of the contract is, for purposes of this regulation and university procedures, the procurement price for the initial term plus all renewal costs.
- (h) If a contractor does not furnish proof of payment to subcontractors, suppliers, or laborers within 60 days after the project is certified to be finally complete by the University, the University will pay any retainage, on a pro-rata basis, directly to the subcontractors, suppliers or laborers. In order to obtain payment, subcontractors, suppliers, or laborers who have not been paid after the 60 days have passed have an additional 30 days to submit documentation satisfactory to the University showing that they have performed work on the project, the amount due, and certifying that they have not been paid. If a contractor does not complete a project, the University will use any retainage to complete the work and then pay any balance of the retainage, on a pro-rata basis, to subcontractors, suppliers, or laborers who provide the above required documentation within 30 days after the completion of the project.

(7) Standard of Conduct. It shall be a breach of ethical standards: (a) for any employee of the University to accept, solicit, or agree to accept a gratuity of any kind, form or type in connection with any contract for commodities or services; (b) for any potential contractor to offer an employee of the University a gratuity of any kind, form or type to influence the development of a contract or potential contract for commodities or services; or (c) for any University or University direct support organization employee participating on a procurement selection committee to solicit donations from responding vendors during the selection process, except for donations or benefits expressly stated in the procurement document.

(8) Procurement of Motor Vehicles.

- (a) The term “motor vehicle” includes any automobile, truck, watercraft or other vehicle designed primarily for transporting persons, and construction vehicles or farm equipment.
- (b) The University has authority to:
  - 1. Establish standard classes of motor vehicles to be leased, procured or used by University personnel;
  - 2. Obtain the most cost effective and efficient motor vehicles for state purposes;
  - 3. Establish and operate facilities for the acquisition, disposal, operation, maintenance, repair, storage, control and regulation of University-owned motor vehicles. Acquisition may be by procurement, lease, installment-purchase, loan or by any other legal means and may include a trade-in. All motor vehicles procured or leased shall be of a class that will safely transport University personnel and adequately meet the minimum requirements of the University.
  - 4. Contract for specialized maintenance services.
- (c) Motor vehicles owned, leased or operated by the University shall be available for official University business only.

(9) Public Records.

- (a) Agreements may be canceled unilaterally by the University for refusal by the vendor/contractor to allow public access to all papers, documents, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by the vendor/contractor in conjunction with the Agreement.
- (b) The University is subject to the Florida Public Records laws.
- (c) Contract for Services. To the extent that Payee meets the definition of “contractor” under Section 119.0701, Florida Statutes, in addition to other contract requirements provided by law, Payee must comply with public records laws, including the requirements of Section 119.0701, Florida Statutes.

(10) Vendors Excluded from Competition. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications,

requirements, statements of work, Invitations to Bid, Request for Proposals and/or Invitations to Negotiate shall be excluded from competing for such procurements.

*Authority: BOG Regulations 1.001, 18.001, 18.002 and 18.003. History—New 4-23-03, Amended 4-17-06, 8-6-07, 10-19-07, Formerly 6C7-7.130, Amended 7-6-09, 8-8-14, 10-29-15, 7-5-16, 4-17-17, 1-24-19, \_\_\_\_\_-20.*