

1 *Article 20*

2 ***GRIEVANCE PROCEDURE AND ARBITRATION DISPUTE RESOLUTION***  
3 ***DISPUTE RESOLUTION ARBITRATION ARBITRATION***

4 20.1 Policy/Informal Resolution. The purpose of this article is to promote a prompt and efficient  
5 procedure for the investigation and resolution of grievances. The procedures hereinafter set forth  
6 shall be the sole and exclusive method for resolving the grievances of faculty members as defined  
7 herein. The parties agree that all problems should be resolved, whenever possible, before the filing  
8 of a grievance but within the time limits for filing grievances stated elsewhere in this article, and  
9 encourage open communications between administrators and faculty members so that resorting to  
10 the formal grievance procedure will not normally be necessary. The parties further encourage the  
11 informal resolution of grievances whenever possible. At each step in the grievance process,  
12 participants are encouraged to pursue appropriate modes of conflict resolution including the use  
13 of mediation.

14 20.2 Resort to Other Procedures. It is the intent of the parties to first provide a reasonable  
15 opportunity for resolution of a dispute through the grievance procedure and arbitration ~~or~~  
16 mediation ~~arbitration~~ ~~dispute resolution~~ arbitration ~~dispute resolution~~ process. ~~Except as noted~~  
17 ~~below, if prior to seeking resolution of a dispute by filing a grievance hereunder, or while the~~  
18 ~~grievance proceeding is in progress, a faculty member requests, in writing, resolution of the matter~~  
19 ~~in any other forum, whether administrative or judicial, the Board or the University shall have no~~  
20 ~~obligation to entertain or proceed further with the matter pursuant to this grievance procedure.~~  
21 Except as noted below, if prior to seeking resolution of a dispute by filing a grievance hereunder,  
22 or while the grievance proceeding is in progress, a faculty member requests, in writing, resolution  
23 of the matter in any other forum, whether administrative or judicial, the Board or the University  
24 shall have no obligation to entertain or proceed further with the matter pursuant to this grievance  
25 procedure. As an exception to this provision, a grievant may file an EEOC charge while the  
26 grievance is in progress when such filing becomes necessary to meet federal filing deadlines  
27 pursuant to 42 U.S.C. § 2000e et seq. Further, since the parties do not intend that this grievance  
28 procedure be a device for appellate review, the President's response to a recommendation of a  
29 hearing officer or other individual or group having appropriate jurisdiction in any other procedure  
30 shall not be an act or omission giving rise to a grievance under this procedure.

31 20.3 Definitions and Forms. As used herein:

32 (a) The term "grievance" shall mean a dispute filed on a form referenced in Section 20.3(c)  
33 concerning the interpretation or application of a specific term or provision of this Agreement,  
34 subject to those exclusions appearing in other Articles of this Agreement.

35 (b) The term "grievant" shall mean:

36 (1) a faculty member or group of faculty members who has/have filed a grievance in a  
37 dispute over a provision of this Agreement which confers rights upon the faculty member(s);

38 (2) the UFF where it has filed a grievance without the aggrieved faculty member(s) in a

\_\_\_\_\_  
Renisha Gibbs  
Co-Chief Negotiator  
FSU - BOT

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Date

\_\_\_\_\_  
Michael Mattimore  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jennifer Proffitt  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Date

\_\_\_\_\_  
Scott Hannahs  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Date

39 dispute over a provision of this agreement which confers rights upon such faculty members(s); or  
40 (3) the UFF where it has filed a grievance in a dispute over a provision of this Agreement.  
41 A grievance filed by the FSU Chapter of the UFF which alleges a violation of its rights by the  
42 University may be initiated at Step 2. A grievance of a decision made by the President or the  
43 Provost is to be initiated at Step 2. The parties may agree to consolidate grievances of a similar  
44 nature to expedite the review process.

45 (c) Grievance Forms. Each grievance, request for review, and notice of ~~peer panel request~~  
46 ~~or post-grievance review arbitration (arbitration or Neutral Internal Resolution of Disputes [NIRD]~~  
47 ~~procedure) arbitration or mediation or Neutral Internal Resolution of Disputes [NIRD] procedure,~~  
48 must be submitted in writing on the appropriate form attached to this Agreement as Appendix “C<sub>1</sub>”;  
49 “D<sub>1</sub>” or “E<sub>1</sub>”, respectively, and shall be signed by the grievant. All grievance forms shall be dated  
50 when the grievance is received. If there is difficulty in meeting any time limit, the UFF  
51 representative may sign such documents for the grievant; however, the grievant’s signature shall  
52 be provided prior to the Step 1 meeting<sub>1</sub> or Step 2 meeting if filed directly at Step 2. The  
53 aforementioned grievance forms, as well as Appendix “H<sub>1</sub>”, may be filed by means of fax, United  
54 States mail, or any other recognized means of delivery.

55 20.4 Burden of Proof. In all grievances except disciplinary grievances in accordance with Article  
56 16, Disciplinary Action and Job Abandonment and any other exceptions stated elsewhere in this  
57 Agreement, the burden of proof shall be on the faculty member. In disciplinary grievances, the  
58 burden of proof shall be on the Board.

59 20.5 Representation. The UFF shall have the exclusive right to represent any faculty member in  
60 a grievance filed hereunder, unless a faculty member elects self-representation or to be represented  
61 by legal counsel. If a faculty member elects not to be represented by the UFF, the University shall  
62 promptly inform the UFF in writing of the grievance. No resolution of any individually processed  
63 grievance shall be inconsistent with the terms of this Agreement and for this purpose the UFF shall  
64 have the right to have an observer present at all meetings called for the purpose of discussing such  
65 grievance. The UFF Grievance Chair or representative shall be informed of the dates and times of  
66 any such meetings at the same time as the other parties. The UFF Grievance Chair shall be sent  
67 copies of all correspondence related to such, including grievance decisions at the same time as  
68 they are sent to the other parties.

69 20.6 Grievance Representatives. The UFF shall annually furnish to the Board a list of all persons  
70 authorized to act as grievance representatives and shall update the list as needed. The UFF  
71 grievance representative shall have the responsibility to meet all classes, office hours, and other  
72 duties and responsibilities incidental to the assigned workload. Some of these activities are  
73 scheduled to be performed at particular times. Such representative shall have the right during times  
74 outside of those hours scheduled for these activities to investigate, consult, and prepare grievance  
75 presentations and attend grievance hearings and meetings. Should any hearings or meetings with  
76 the dean or unit head, the provost, or their representatives necessitate rescheduling of assigned  
77 duties, the representative may, with the approval of the appropriate administrator, arrange for the

\_\_\_\_\_  
Renisha Gibbs  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
Michael Mattimore  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
Jennifer Proffitt  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Scott Hannahs  
Co-Chief Negotiator  
UFF – FSU Chapter

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Date

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78 rescheduling of such duties or their coverage by colleagues. Such approval shall not be  
79 unreasonably withheld.

80 20.7 Appearances.

81 (a) When a faculty member participates in ~~an arbitration, mediation, or in a an arbitration~~  
82 ~~hearing or in a an arbitration hearing or in a~~ grievance ~~or post-grievance or post-grievance~~ meeting  
83 between the grievant or representative and the Board or representative, that faculty member's  
84 compensation shall neither be reduced nor increased for time spent in those activities.

85 (b) Prior to participation in any such proceedings, conferences, or meetings, the faculty  
86 member shall make arrangements acceptable to the appropriate supervisor for the performance of  
87 the faculty member's scheduled duties as defined in Article 9.1. Approval of such arrangements  
88 shall not be unreasonably withheld. Time spent in such activities outside regular working hours  
89 shall not be counted as time worked.

90 20.8 Formal Grievance Procedure.

91 (a) Facilitation. Consistent with the policy of informal resolution set forth in Section 20.1 of  
92 this Article, no grievance shall be considered ripe for filing at Step 1 absent submission of a request  
93 for facilitation. A request for facilitation shall be filed within forty-five (45) days of the date the  
94 faculty member learned of the alleged act or omission giving rise to the dispute (or the most recent  
95 in a series of alleged acts or omissions giving rise to the dispute). All requests for facilitation shall  
96 be in writing by the affected faculty member(s) or the UFF, as appropriate, and submitted to the  
97 Vice President for Faculty Development and Advancement or his/her designee. Such requests shall  
98 contain a general description of the potential dispute, including dates, times, and locations, along  
99 with copies of relevant documentation. Upon receipt of a request for facilitation, the Vice President  
100 for Faculty Development and Advancement and the UFF shall engage in a process of facilitation  
101 for a period of thirty (30) days, which may be modified by the parties' mutual agreement, in an  
102 effort to produce an informal resolution of the potential dispute. In matters designated in the  
103 request for facilitation as time-sensitive, the facilitation period shall be fifteen (15) days. Such  
104 fifteen (15) day facilitation period may be modified by the parties' mutual agreement in writing.  
105 All resolutions shall be reduced to writing, but shall be without precedent or prejudice to the  
106 parties.

107 (b) Filing.

108 (1) Within fifteen (15) days from the conclusion of a facilitation period that failed to  
109 produce an informal resolution, the grievant shall be entitled to file a Step 1 grievance with the  
110 unit head, defined for the purpose of this Article as dean or comparable-level administrator, as  
111 appropriate. The grievant may amend the Appendix "C" form up to and including Step 2 of the  
112 grievance procedure so long as the factual basis of the complaint is not materially altered.

113 (2) A faculty member may seek redress of alleged salary discrimination by filing a  
114 grievance under the provisions of Article 20. An act or omission giving rise to such a grievance  
115 may be the faculty member's receipt of the salary warrant for the first full-pay period in which the  
116 annual salary increases referenced in Article 23 are reflected

117 (3) ~~The Where arbitration is allowed, TheWhere arbitration is allowed,~~ filing of a

\_\_\_\_\_  
Renisha Gibbs  
Co-Chief Negotiator  
FSU - BOT

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Date

\_\_\_\_\_  
Michael Mattimore  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jennifer Proffitt  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Date

\_\_\_\_\_  
Scott Hannahs  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Date

118 grievance constitutes a waiver of any rights to judicial review of final agency action or to the  
119 review of such actions under University procedures that may otherwise be available to address  
120 such matters. ~~These~~ ~~is~~ grievance, ~~mediation, and arbitration~~ procedures shall be the sole review  
121 mechanism for resolving disputes regarding rights or benefits that are provided exclusively by this  
122 Agreement. Except as otherwise provided herein, only those acts or omissions and sections of the  
123 Agreement identified at the initial filing may be considered at ~~a~~ subsequent steps.

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125 (c) Time Limits. All time limits contained in this Article may be extended by mutual  
126 agreement of the parties, except that the time limits for the initial filing of a grievance may be  
127 extended only by agreement between the University and the UFF. Upon failure of the Board to  
128 provide a decision within the time limits provided in this Article, the grievant or the UFF, where  
129 appropriate, may appeal to the next step. Upon the failure of the grievant or the UFF, where  
130 appropriate, to file an appeal within the time limits provided in this Article, the grievance shall be  
131 deemed to have been resolved by the decision at the prior step.

132 (d) Step 1.

133 (1) Meeting. The ~~Chair/Dean~~/Unit Head or ~~his/her/their~~ representative and the grievant  
134 and the grievant's representative shall meet at a mutually convenient time within fifteen (15) days  
135 following receipt of the grievance. At the Step 1 meeting, the grievant shall have the right to  
136 present any evidence in support of the grievance, and the grievant and/or the UFF representative  
137 or the grievant's legal counsel (if selected pursuant to Section 20.5), and the Unit Head or  
138 representative, shall discuss the grievance.

139 (2) Decision. The ~~Chair/Dean~~/Unit Head or representative shall issue a written decision,  
140 stating the reasons therefore, to ~~the~~ grievant's Step 1 representative within fifteen (15) days  
141 following the conclusion of the meeting. Fifteen (15) days shall be determined by a receipt  
142 executed by the office receiving the grievance, or by the date of mailing as determined by the  
143 postmark. In the absence of an agreement to extend the period for issuing the Step 1 decision, the  
144 grievant may proceed to Step 2 if the grievant's Step 1 representative has not received the written  
145 decision by the end of the twentieth (20th) day following the conclusion of the Step 1 meeting. A  
146 copy of the decision shall be sent to the grievant and to the local UFF grievance representative if  
147 the grievant elected self-representation or representation by legal counsel.

148 (3) Documents. ~~Where practicable, Where practicable, tTt~~The Step 1 reviewer shall  
149 make available to the grievant, or grievance representative, documentation referenced in the Step  
150 1 decision prior to its issuance. All documents referred to in the decision and any additional  
151 documents presented by the grievant shall be attached to the decision, together with a list of these  
152 documents. In advance of the Step 1 meeting, the grievant shall have the right, upon written  
153 request, to a copy of any identifiable documents relevant to the grievance.

154 (4) Step 1 Meeting Waiver. The Step 1 meeting may be waived by mutual written  
155 agreement between the Board and the UFF.

156 (e) Step 2.

157 (1) Review. If the grievance is not satisfactorily resolved at Step 1, the grievant may file

\_\_\_\_\_  
Renisha Gibbs  
Co-Chief Negotiator  
FSU - BOT

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Date

\_\_\_\_\_  
Michael Mattimore  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jennifer Proffitt  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Date

\_\_\_\_\_  
Scott Hannahs  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Date

158 a written request for review with the Provost or ~~his/her~~their representative within fifteen (15) days  
159 following receipt of the Step 1 decision by the grievant's Step 1 representative. Fifteen (15) days  
160 shall be determined by a receipt executed by the office receiving the grievance, or by the date of  
161 mailing as determined by the postmark.

162 (2) Meeting. The Provost or the Vice President for Faculty Development and  
163 Advancement ~~representative~~ and the grievant and the grievant's representative shall meet at a  
164 mutually convenient date and time not later than fifteen (15) days following receipt of written  
165 notice of request for a Step 2 review. At the Step 2 meeting, the grievant shall have the right to  
166 present any evidence in support of the grievance, and the grievant and/or the UFF representative  
167 or the grievant's legal counsel (if selected pursuant to Section 20.5), and the Provost or  
168 representative, shall discuss the grievance.

169 (3) Personnel Actions or Decisions. In accordance with Section 1001.741, Florida Statutes,  
170 personnel actions or decisions regarding faculty, including in the areas of evaluations, promotions,  
171 tenure, discipline, or termination, may not be appealed beyond the level of a university president  
172 or designee. Where arbitration of a personnel decision or action is statutorily prohibited, such  
173 actions or decisions will have as their terminal step a written final agency disposition, which will  
174 provide a statement of the right to judicial review. If section 1001.741 limiting the use of arbitration  
175 is struck or enjoined by a court of competent jurisdiction or amended by the legislature to permit  
176 arbitrations of these decisions, such decisions may proceed as outlined below in Section 280.8  
177 (e)(4) and Section 280.8-(f).

178 (43) Decision. The Provost or ~~his/her~~Vice President for Faculty Development ~~or~~and  
179 Advancement~~their representative~~ shall issue a written decision, stating the reasons therefore, to the  
180 grievant's Step 2 representative within fifteen (15) days following the conclusion of the review  
181 meeting. Fifteen (15) days shall be determined by a receipt executed by the office receiving the  
182 grievance, or by the date of mailing as determined by the postmark. In the absence of an agreement  
183 to extend the period for issuing the Step 2 decision, the UFF may proceed to Step 3 (arbitration ~~or~~  
184 mediation or Peer Panel review, as appropriate or to NIRD) ~~or to NIRD~~ if the grievant's Step 2  
185 representative has not received the written decision by the end of the twentieth (20th) day  
186 following the conclusion of the Step 2 meeting. A copy of the decision shall be sent to the grievant  
187 and to the UFF if the grievant elected self-representation or representation by legal counsel.

188 Arbitration but may escalate to Step 3 NIRD Arbitration

189 (54) Documents. The decision shall not refer to any documents other than those presented  
190 by the grievant and the Provost or representative at or prior to the Step 2 meeting, except by mutual  
191 written agreement of the grievant and the Provost or representative. Documents referred to in the  
192 decision and any additional documents presented by the grievant at or prior to the Step 2 meeting  
193 shall be attached to the decision unless such documents are public and readily available, together  
194 with a list of these documents.

195 (f) Step 3 Arbitration.

196 (1) Filing. If the grievance has not been satisfactorily resolved at Step 2, the UFF may,  
197 upon the request of the grievant and when permitted by law, proceed to arbitration by filing a  
198 written notice of the intent to do so. Notice of intent to proceed to arbitration must be filed with  
199 the Office of the President within fifteen (15) days after receipt of the Step 2 decision by the

\_\_\_\_\_  
Renisha Gibbs  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
Michael Mattimore  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
Jennifer Proffitt  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Scott Hannahs  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
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200 grievant’s Step 2 representative and shall be signed by the grievant and the state UFF President or  
201 representative, or state UFF Director of Arbitrations Fifteen (15) days shall be determined by a  
202 receipt executed by the office receiving the grievance, or by the date of mailing as determined by  
203 the postmark. The grievance may be withdrawn at any time by the grievant or by the UFF President  
204 or Director of Arbitrations at any point during Step 3. The parties shall stipulate to the issue(s)  
205 prior to the arbitration. In the event a stipulation is not reached, the parties shall proceed to a  
206 hearing on arbitrability pursuant to Section 20.8 (f)(4).

207 (2) Selection of Arbitrator. For the first filing of a notice of intent to arbitrate during the  
208 term of this contract, representatives of the University and the UFF shall meet within fifteen (15)  
209 days after receipt of a notice of intent to arbitrate, for the purpose of selecting an Arbitration Panel,  
210 which will be used for any further arbitrations during the term of this contract. The parties will  
211 meet to select an arbitrator from an Arbitration Panel consisting of no fewer than six (6) members.  
212 Selection of an individual arbitrator shall be by mutual agreement or by alternately striking names  
213 from the Arbitration Panel until one name remains. The right of the first choice to strike from the  
214 list shall be determined by the flip of a coin. If the parties are unable to agree on a panel of  
215 arbitrators, they shall follow the normal American Arbitration Association procedure for the  
216 selection of an arbitrator. The parties may mutually select as the arbitrator an individual who is not  
217 a member of the Arbitration Panel. The arbitration shall be held within sixty (60) days following  
218 the selection of the arbitrator.

219 (3) Authority of the Arbitrator.

220 a. The arbitrator shall neither add to, subtract from, modify, nor alter the terms or  
221 provisions of this Agreement. Arbitration shall be confined solely to the application and/or  
222 interpretation of this Agreement and the precise issue(s) submitted for arbitration. The arbitrator  
223 shall refrain from issuing any statements of opinion or conclusions not essential to the  
224 determination of the issues submitted.

225 b. Where an administrator has made a judgment involving the exercise of discretion,  
226 such as decisions regarding tenure or promotion, the arbitrator shall not substitute the arbitrator’s  
227 judgment for that of the administrator. Nor shall the arbitrator review such decision except for the  
228 purpose of determining whether the decision has violated this Agreement. If the arbitrator  
229 determines that the Agreement has been violated, the arbitrator shall direct the University to take  
230 appropriate action that the arbitrator shall specify. An arbitrator may award back salary where the  
231 arbitrator determines that the faculty member is not receiving the appropriate salary from the  
232 University, and any other payments to which a faculty member is entitled by the provisions of this  
233 Agreement, but the arbitrator may not award other monetary damages or penalties. If notice that  
234 further employment will not be offered is not given on time, the arbitrator may direct the University  
235 to renew the appointment only upon a finding that no other remedy is adequate, and that the notice  
236 was given so late that (a) the faculty member was deprived of reasonable opportunity to seek other  
237 employment, or (b) the faculty member actually rejected an offer of comparable employment  
238 which the faculty member otherwise would have accepted.

239 c. An arbitrator’s decision awarding employment beyond the sixth year shall not of  
240 itself entitle the faculty member to tenure; however, the decision shall not curtail their right to re-  
241 apply for tenure. In such cases the faculty member shall serve during the seventh year without  
242 further right to notice that the faculty member will not be offered employment thereafter. If a

\_\_\_\_\_  
Renisha Gibbs  
Co-Chief Negotiator  
FSU - BOT

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Date

\_\_\_\_\_  
Michael Mattimore  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jennifer Proffitt  
Co-Chief Negotiator  
UFF – FSU Chapter

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Date

\_\_\_\_\_  
Scott Hannahs  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Date

243 faculty member is reappointed at the direction of an arbitrator, the President or representative may  
244 reassign the faculty member during such reappointment.

245 (4) Arbitrability. Issues of arbitrability shall be bifurcated from the substantive issue(s)  
246 and, whenever possible, determined by means of a hearing conducted by conference call. The  
247 arbitrator shall have ten (10) days from the hearing to render a decision on arbitrability. If the issue  
248 is judged to be arbitrable, an arbitrator shall then be selected to hear the substantive issue(s) in  
249 accordance with the provisions of Section 20.8(f)(2).

250 (5) Conduct of Hearing. The arbitrator shall hold the hearing in Tallahassee, unless  
251 otherwise agreed by the parties. The hearing shall commence within sixty (60) days of the  
252 arbitrator's acceptance of selection and the arbitrator shall issue the decision within forty-five (45)  
253 days of the close of the hearing or the submission of briefs, whichever is later, unless additional  
254 time is agreed to by the parties. The decision shall be in writing and shall set forth findings of fact,  
255 reasoning, and conclusions on the issues submitted. Except as modified by the provisions of this  
256 Agreement, arbitration proceedings shall be conducted in accordance with the rules and procedures  
257 of the American Arbitration Association.

258 (6) Effect of Decision. The decision or award of the arbitrator shall be final and binding  
259 upon the University, the UFF, and the grievant, provided that either party may appeal such award  
260 to an appropriate court of law pursuant to the Florida Arbitration Code, Chapter 682, Florida  
261 Statutes.

262 (7) Venue. For purposes of venue in any judicial review of an arbitrator's decision issued  
263 under this agreement, the parties agree that such an appeal shall be filed in the courts in Leon  
264 County, Florida, unless both parties specifically agree otherwise in a particular instance. In an  
265 action commenced in Leon County, neither the Board nor the UFF will move for a change of venue  
266 based upon the defendant's residence in fact if other than Leon County.

267 (8) Fees and Expenses. All fees and expenses of the arbitrator shall be divided equally  
268 between the parties. Each party shall bear the cost of preparing and presenting its own case. The  
269 party desiring a transcript of the arbitration proceedings shall provide written notice to the other  
270 party of its intention to have a transcript of the arbitration made at least one week prior to the date  
271 of the arbitration. The party desiring such transcript shall be responsible for scheduling a stenotype  
272 reporter to record the proceedings. The parties shall share equally the appearance fee of the  
273 stenotype reporter and the cost of obtaining an original transcript and one copy for the party  
274 originally requesting a transcript of the proceedings. The requesting party shall, at its expense,  
275 photocopy the copy of the transcript received from the reporter and deliver the photocopy to the  
276 other party within five days after receiving the copy of the transcript from the reporter.

277 (9) Retroactivity. An arbitrator's award may or may not be retroactive as the equities of  
278 each case may demand, but in no case shall an award be retroactive to a date earlier than sixty (60)  
279 days prior to the date the grievance was initially filed in accordance with this Article.  
280

281 ~~(g) — Step 3 Mediation.~~

282 ~~(1) — Filing. If the grievance has not been satisfactorily resolved at Step 2 and arbitration~~  
283 ~~is barred by law, the UFF may, upon the request of the grievant proceed to mediation by filing a~~  
284 ~~written notice of the intent to do so. Notice of intent to proceed to mediation must be filed with the~~

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Renisha Gibbs  
Co-Chief Negotiator  
FSU - BOT

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Date

\_\_\_\_\_  
Michael Mattimore  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jennifer Proffitt  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Date

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Scott Hannahs  
Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Date

285 ~~Office of the President within fifteen (15) days after receipt of the Step 2 decision by the grievant's~~  
286 ~~Step 2 representative and shall be signed by the grievant and the UFF-FSU President or~~  
287 ~~representative, or UFF-FSU Grievance Committee Chair. Fifteen (15) days shall be determined~~  
288 ~~by a receipt executed by the office receiving the grievance, or by the date of mailing as determined~~  
289 ~~by the postmark. The grievance may be withdrawn at any time by the grievant or by the UFF-FSU~~  
290 ~~President or Grievance Committee Chair at any point during Step 3. The parties shall stipulate to~~  
291 ~~the issue(s) prior to the mediation. In the event a stipulation is not reached, the parties shall proceed~~  
292 ~~to mediation.~~

293 ~~(2) — Selection of Mediator. The parties may select any person who is mutually agreeable~~  
294 ~~to serve as the mediator. In the event the parties are unable to agree on a mediator, the parties will~~  
295 ~~request a Mediation Panel consisting of at least six qualified mediators from the American~~  
296 ~~Arbitration Association, Federal Mediation and Conciliation Service, or a similar organization that~~  
297 ~~can provide a panel of at least six qualified mediators. Representatives of the University and the~~  
298 ~~UFF shall meet within fifteen (15) days after receipt of a notice of intent to mediate for the purpose~~  
299 ~~of selecting a mediator from the Mediation Panel. Selection of an individual mediator shall be by~~  
300 ~~mutual agreement or by alternately striking names from the Mediation Panel until one name~~  
301 ~~remains. The right of the first choice to strike from the list shall be determined by the flip of a coin.~~  
302 ~~If the parties are unable to agree on a panel of mediators, they shall follow the normal American~~  
303 ~~Arbitration Association procedure for the selection of a mediator. The parties may mutually select~~  
304 ~~as the mediator an individual who is not a member of the Mediation Panel. The mediation shall be~~  
305 ~~held within sixty (60) days following the selection of the mediator.~~

306 ~~(3) — Authority of the Mediator:~~

307 ~~a. — The mediator's primary role is to assist the parties in resolving the dispute~~  
308 ~~presented in the grievance. The mediator shall neither add to, subtract from, modify, nor alter the~~  
309 ~~terms or provisions of this Agreement. Mediation shall be confined solely to assisting the parties~~  
310 ~~in reaching agreement on the application and/or interpretation of this Agreement and the precise~~  
311 ~~issue(s) submitted for mediation. In the event that the mediation is unsuccessful in producing~~  
312 ~~agreement on resolution of the grievance, the mediator shall prepare a brief written report on the~~  
313 ~~issue(s) in dispute, the positions of the parties, any additional relevant facts, and recommendations~~  
314 ~~for resolution of the dispute. The mediator shall refrain from issuing any statements of opinion or~~  
315 ~~conclusions not essential to the determination of the issues submitted. The report shall be sent to~~  
316 ~~the University President or representative, the Provost or representative, the grievant, the UFF-~~  
317 ~~FSU President, and the UFF-FSU Grievance Chair within fifteen (15) days of the conclusion of~~  
318 ~~mediation.~~

319 ~~b. — Where an administrator has made a judgment involving the exercise of discretion,~~  
320 ~~such as decisions regarding tenure or promotion, the mediator shall not substitute their judgment~~  
321 ~~for that of the administrator. Nor shall the mediator review such decision except for the purpose~~  
322 ~~of determining whether the decision has violated this Agreement. If the mediator determines that~~  
323 ~~the Agreement has been violated, the mediator shall recommend that the University take~~  
324 ~~appropriate action that the mediator shall specify. A mediator may recommend back salary where~~  
325 ~~the mediator determines that the faculty member is not receiving the appropriate salary from the~~  
326 ~~University, and any other payments to which a faculty member is entitled by the provisions of this~~  
327 ~~Agreement, but the mediator may not recommend other monetary damages or penalties. If notice~~

Renisha Gibbs  
Co-Chief Negotiator  
FSU - BOT

Michael Mattimore  
Co-Chief Negotiator  
FSU - BOT

Jennifer Proffitt  
Co-Chief Negotiator  
UFF – FSU Chapter

Scott Hannahs  
Co-Chief Negotiator  
UFF – FSU Chapter

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328 ~~that further employment will not be offered is not given on time, the mediator may recommend~~  
329 ~~that the University renew the appointment only upon a finding that no other remedy is adequate,~~  
330 ~~and that the notice was given so late that (a) the faculty member was deprived of reasonable~~  
331 ~~opportunity to seek other employment, or (b) the faculty member actually rejected an offer of~~  
332 ~~comparable employment which the faculty member otherwise would have accepted.~~

333 ~~c. — A mediator’s recommendation to award employment beyond the sixth year shall~~  
334 ~~not of itself entitle the faculty member to tenure; however, the decision shall not curtail their right~~  
335 ~~to re-apply for tenure. In such cases the faculty member shall serve during the seventh year without~~  
336 ~~further right to notice that the faculty member will not be offered employment thereafter. If a~~  
337 ~~faculty member is reappointed, the President or representative may reassign the faculty member~~  
338 ~~during such reappointment.~~

339 ~~(4) — Conduct of Mediation. The mediator shall hold the mediation in Tallahassee, unless~~  
340 ~~otherwise agreed by the parties. The mediation shall commence within sixty (60) days of the~~  
341 ~~mediator’s acceptance of selection and the mediator shall conclude the mediation within forty five~~  
342 ~~(45) days, unless additional time is agreed to by the parties. The mediator shall within fifteen (15)~~  
343 ~~days of the conclusion of mediation report the results to the parties as specified above in Section~~  
344 ~~20.8(f)(3). The report shall be in writing and shall report the settlement of the dispute agreed upon~~  
345 ~~by the parties if the dispute was resolved. If unresolved, the mediator’s report shall summarize the~~  
346 ~~issues in dispute, the positions of the parties, findings of fact, reasoning, and recommendations on~~  
347 ~~the issues submitted. Except as modified by the provisions of this Agreement, mediation~~  
348 ~~proceedings shall be conducted in accordance with the mediation rules and procedures of the~~  
349 ~~American Arbitration Association (*Mediation Procedures of the American Arbitration*~~  
350 ~~*Association*, Amended and Effective October 1, 2009).~~

351 ~~(5) — Effect of Report. The report of the mediator including its recommendations are~~  
352 ~~advisory to the parties.~~

353 ~~(6) — Venue. For purposes of venue in any judicial review of a mediator’s report issued~~  
354 ~~under this agreement, the parties agree that such an appeal shall be filed in the courts in Leon~~  
355 ~~County, Florida, unless both parties specifically agree otherwise in a particular instance. In an~~  
356 ~~action commenced in Leon County, neither the Board nor the UFF will move for a change of venue~~  
357 ~~based upon the defendant’s residence in fact if other than Leon County.~~

358 ~~(7) — Fees and Expenses. All fees and expenses of the mediator shall be divided equally~~  
359 ~~between the parties. Each party shall bear the cost of preparing and presenting its own case. If a~~  
360 ~~faculty member elects self-representation or to be represented by legal counsel pursuant to Sec.~~  
361 ~~20.5, the faculty member is a party for the purposes of this section and the UFF and UFF-FSU are~~  
362 ~~not parties for the purposes of this section.~~

363 ~~(8) — Retroactivity. A mediator’s recommendations may or may not be retroactive as the~~  
364 ~~equities of each case may demand, but in no case shall a recommendation be retroactive to a date~~  
365 ~~earlier than sixty (60) days prior to the date the grievance was initially filed in accordance with~~  
366 ~~this Article.~~

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Renisha Gibbs  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
Michael Mattimore  
Co-Chief Negotiator  
FSU - BOT

\_\_\_\_\_  
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Co-Chief Negotiator  
UFF – FSU Chapter

\_\_\_\_\_  
Scott Hannahs  
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369 20.9 Filings and Notification. With the exception of Step 1 and Step 2 decisions, all documents  
370 required or permitted to be issued or filed pursuant to this Article may be transmitted ~~by fax,~~ United  
371 States mail, or any other recognized delivery service (note: e-mail is not an acceptable form of  
372 delivery). Step 1 and Step 2 decisions shall be transmitted to the grievant's representative(s) by  
373 personal delivery with written documentation of receipt or by certified mail, return receipt  
374 requested. In the event that any action falls due on a Saturday, Sunday, or holiday (as referred to  
375 in Section 17.5), the action will be considered timely if it is accomplished by 5:00 P.M. on the  
376 following business day.

377 20.10 Precedent. No complaint informally resolved, or grievance resolved at either Step 1 or 2,  
378 shall constitute a precedent for any purpose unless agreed to in writing by the Board of Trustees  
379 or representative and the UFF acting through its President or representative.

380 20.11 Processing.

381 (a) The filing or pendency of any grievance or ~~arbitration post-grievance arbitration post-~~  
382 ~~grievance arbitration post-grievance~~ proceedings under this Article shall not operate to impede,  
383 preclude, or delay the University from taking the action complained of. Reasonable efforts,  
384 including the shortening of time limits when practical, shall be made to conclude the processing  
385 of a grievance prior to the expiration of the grievant's employment, whether by termination or  
386 failure to reappoint. A faculty member with a pending grievance will not continue to be  
387 compensated beyond the last date of employment.

388 (b) Nothing herein shall be construed to authorize the ~~Chair/Dean/~~Unit Head, ~~the Dean,~~ the  
389 President, the Provost, or their representatives to refuse to respond to a grievance filed under this  
390 Article.

391 20.12 Reprisal. No reprisal of any kind will be made by the University or the UFF against any  
392 grievant, any witness, any UFF representative, or any other participant in the grievance procedure  
393 by reason of such participation. In a grievance ~~or post-grievance procedure or post-grievance~~  
394 ~~procedure~~ where the arbitrator ~~or mediator or panel or panel~~ has established that the grievant has  
395 made a prima facie case of reprisal, the burden of proof shall be on the Board to demonstrate that  
396 there was no reprisal.

397 20.13 Records. All written materials pertinent to a grievance shall be filed separately from the  
398 evaluation file of the grievant or witnesses, except decisions resulting from arbitration, ~~post-~~  
399 ~~grievance procedure, post-grievance procedure,~~ final disposition, or settlement.

400 20.14 Inactive Grievances. A grievance which has been filed at Step 2 or Step 3 and on which no  
401 action has been taken by the grievant or the UFF for sixty (60) days shall be deemed withdrawn  
402 and resolved in accordance with the decision issued at the prior Step.

403 20.15 Expedited Grievance Procedure for Conflict of Interest (Section 19.5).

404 (a) A grievance alleging a violation of Article 19 shall be heard at Step 1 by the ~~President or~~  
405 ~~representative~~ Chief Compliance and Ethics Officer no more than seven (7) days after it has been

\_\_\_\_\_  
Renisha Gibbs  
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FSU - BOT

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\_\_\_\_\_  
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Co-Chief Negotiator  
FSU - BOT

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UFF – FSU Chapter

\_\_\_\_\_  
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406 filed. The ~~President or representative~~Chief Compliance and Ethics Officer shall issue a Step 1  
407 decision no more than 7 days after the Step 1 meeting.

408 (b) A request for review of the Step 1 decision shall be filed ~~with the President Provost or~~  
409 ~~representative~~ using Appendix “D<sub>1</sub>”; no more than seven (7) days following the receipt of the Step  
410 1 decision. The Step 2 meeting shall be held no more than 7 days after the receipt of Appendix  
411 “D<sub>1</sub>”; and the Step 2 decision shall be issued no more than 7 days after the meeting.

412 (c) A request for ~~Step 3~~ arbitration ~~or mediation or Peer Panel or NIRD procedure or NIRD~~  
413 ~~procedure~~ using Appendix “E” shall be filed within fourteen (14) days after receipt of the Step 2  
414 decision. An arbitrator ~~or Peer Panel or mediator~~ shall be selected by the parties no more than  
415 fourteen (14) days following the receipt of the Appendix “E.”. ~~For arbitration, The~~ The arbitrator  
416 ~~or Peer Panel or NIRD Panel or NIRD Panel~~ shall issue a memorandum of decision ~~or~~  
417 ~~recommendation, as appropriate,~~ within 7 days following the conclusion of the ~~dispute~~  
418 ~~resolution~~ ~~arbitration~~ ~~arbitration~~ ~~dispute~~ ~~resolution~~ ~~arbitration~~ ~~or Peer Panel Review~~, to be followed  
419 by a written opinion and award ~~or recommendation, as appropriate,~~ in accordance with Section  
420 20.8(f)(5). ~~For mediation, the mediator shall issue a report and recommendation within 7 days~~  
421 ~~following the conclusion of the mediation in accordance with 20.8(g)(3)a.~~

422 (d) ~~If Section 1001.741 limiting the use of arbitrations is struck or enjoined by a court of~~  
423 ~~competent jurisdiction or amended by the legislature to permit the arbitration of these decisions,~~  
424 ~~the parties shall establish a panel of three (3) experienced arbitrators to hear a grievance filed in~~  
425 ~~accordance with this Section. Section 1001.741, Florida Statutes applies to this section as it~~  
426 ~~pertains to arbitration pursuant to Section 20.8(e)(3)(a).~~

427 (d) ~~For arbitrations, The parties shall establish a panel of three (3) experienced arbitrators~~  
428 ~~to hear a grievance filed in accordance with this Section.~~

429 (e) All other provisions of Article 20 shall apply to these grievances, except as noted  
430 above.

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Renisha Gibbs  
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FSU - BOT

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