

PRESIDENT'S EMPLOYMENT AGREEMENT

This President's Employment Agreement (the "Agreement") is entered into by the **Florida Polytechnic University Board of Trustees** ("the Board" or "the Board of Trustees"), a public body corporate of the State of Florida, on behalf of Florida Polytechnic University ("University"), and **Dr. Randy K. Avent** ("President").

Background

WHEREAS, the Board, acting on behalf of Florida Polytechnic University (the "University"), has the authority to select and employ the President of the University; and

WHEREAS, the Board previously selected Dr. Randy Avent to serve as President of the University, subject to confirmation of the Board of Governors; and

WHEREAS, the Board wishes to continue to employ Dr. Randy Avent as the University's President, and Dr. Randy Avent wishes to serve as President and be a University employee, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of mutual promises and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the parties, the parties agree to this Agreement as follows:

1.0 Powers and Duties of President While Serving as President

- 1.1 The President reports to the Board and is the Corporate Secretary of the Board and the Chief Executive Officer of the University, subject to the supervision of the Board, the laws of Florida, and the rules, regulations, and policies of the Board, the University and the Board of Governors. During the Presidential Appointment Term (as defined in section 3.1 below), the President has the powers and duties reserved to the position of president by the Florida Statutes and the University regulations and other actions of the Board (collectively "Duties"), as they presently exist or may hereafter be amended. The President and the Board acknowledge and agree that the Duties hereunder are and shall be consistent with those customary for the position of a university president, including, but not limited to educational leadership, faculty relations, budgeting, long-range planning, fundraising, public relations, student services, recruitment of personnel, appointment, promotion and dismissal of all faculty and staff members, as well as any such additional duties commensurate with such position as may be specified from time-to-time by the Board. The President has the full power and authority to direct the operation and management of the University, subject to the direction, control and instructions of the Board.

2.0 Best Efforts While Serving as President

- 2.1 During the Presidential Appointment Term, the President will diligently devote his full professional time, ability, and attention to the day-to-day operations of the University, including without limitation, all administrative, executive and academic functions.
- 2.2 During the Presidential Appointment Term, the President's expenditure of reasonable amounts of time for personal or outside business, as well as non-University related charitable and professional development activities, shall not be deemed a breach of this Agreement, provided such activities do not interfere with the services required to be rendered to the University under the provisions of this Agreement, Part III of Chapter 112 of the Florida Statutes: Code of Ethics for Public Officers and Employees, and applicable regulations or policies of the Board of Trustees or University.
- 2.3 The President shall not knowingly engage in any activity that may be competitive with or adverse to the best interests of the Board of Trustees or the University.
- 2.4 During the Presidential Appointment Term, the President shall seek approval from the Board prior to agreeing to serve on any boards of directors or engaging in outside employment, business or professional activities subject to the provisions of University regulation or policy. Any and all income or other compensation earned by the President in connection with approved non-University outside activities shall be paid to and retained by him, and such income or other compensation shall have no effect on the amount of salary, compensation, or benefits he is otherwise entitled to receive under this Agreement.
- 2.5 During the Presidential Appointment Term, the President shall perform the duties of president for all existing and future campuses of the University, and for and at such other place or places as the Board deems appropriate for the interests, needs, business, or goals of the University.

3.0 Presidential Appointment Term; Evaluation; Renewal

- 3.1 Presidential Appointment Term. The appointment as President ("Presidential Appointment Term") commenced on July 7, 2014 and ends on July 6, 2021. This appointment and the Agreement are renewable by mutual written consent of the parties. This appointment and this Agreement is subject to prior termination as provided for in this Agreement, and by the applicable laws of the State of Florida, the regulations and policies of the Board of Trustees, the University, and the Florida Board of Governors.

- 3.2 Goals and Objectives While Serving as President. Before June 1 of each year, the President will provide the Chair of the Board of Trustees (“Chair”) with a list of proposed goals and objectives for the upcoming fiscal year. The proposed goals and objectives shall be related to, and in furtherance of, the University’s strategic plan goals, work plan and accountability report, and the Board of Governors’ strategic plan and performance funding model , and other priorities as established by the Board of Trustees or the Board of Governors. The goals and objectives are be presented to the Board for discussion and approval. The Board and the President may agree to revise the goals and objectives as necessary during the fiscal year.
- 3.3 Annual Evaluation While Serving as President. While the President is employed as president, the President shall initiate the evaluation process for the prior fiscal year ending June 30 of such year by preparing a self-appraisal of his performance for submission to the Chair and evaluation by the Board, its designee, or both, in accordance with directives, policies and procedures established by the Board as the Board may deem appropriate. The President will furnish any additional information requested by the Chair to aid the Board in its annual performance review of the President. Pursuant to Board of Governors Regulations, the Chair will solicit input from the Chair of the Board of Governors during the evaluation process. The Board will complete the annual evaluation and make any compensation award under Section 5.3.

4.0 Salary

- 4.1 **Base Salary.** As compensation for all services rendered by the President as president pursuant to this Agreement, the University will pay the President according to the pay plan for Executive Service employees, an annual base salary of Four Hundred forty-one thousand seven hundred ninety-seven dollars (\$441,797) as of July 7, 2020 (“Presidential Base Salary), of which a maximum of Two Hundred Thousand Dollars (\$200,000) can be paid for with state funds. This amount shall be paid in accordance with the University’s standard payroll practices, with appropriate deductions for taxes and benefits. The President shall be responsible for any income tax liability incurred as a result of this Agreement.
- 4.2 **Increase to Presidential Base Salary During Annual Evaluation.** Effective with the Board's evaluation of the President's performance for the July 1, 2019 to June 30, 2020 fiscal year and continuing each year thereafter while he serves as president, the President’s salary shall be reviewed annually for increase by the Board in conjunction with the Board’s evaluation of job performance, as set forth in Section 3.3 of this Agreement. The President shall each year also be eligible for any salary increase generally applicable to University employees in his employment classification, but in no event

shall the Base Salary increase be less than Three and One-Half Percent (3.5%) of the prior year's Base Salary.

5.0 Other Compensation While Serving as President

5.1 Insurance, Annual and Sick Leave. While serving as president during the Presidential Appointment Term, the President shall receive leave and other usual and customary benefits equal to those provided to Florida Polytechnic University Executive Service employees, except as provided in this Agreement.

5.2 Intentionally Deleted.

5.3 Effective with the Board's evaluation of the President's performance for the July 1, 2019 – June 30, 2020 fiscal year and continuing each year thereafter while he serves as president, the President shall be eligible for performance compensation as follows:

5.3.1 Performance Compensation. The President shall be eligible for performance compensation as a percent of his annual base salary then in effect. However, if the President receives an overall evaluation of "Achieved" or higher from the Board in his annual evaluation, the amount shall be not less than Twenty Percent (20%); if the President receives an overall evaluation of "Exceeded" or higher from the Board in his annual evaluation, the amount may be increased, not to exceed Thirty Percent (30%) of the annual base salary. The award of performance compensation shall be awarded based on the Board's assessment, in its sole and absolute discretion, of the President's performance as President during the fiscal year under review. In making its determination, the Board shall consider the President's achievement of the annual goals and objectives set pursuant to Section 3.2, the evaluation results pursuant to Section 3.3, and/or other criteria set by the Board prior to the start of the evaluation period and provided to the President in writing. The President shall receive such award if he remains as President through the end of a fiscal year for which performance is determined even though the award is determined later. Any performance compensation awarded shall be paid to the President within 90 days of the date on which it is awarded.

5.3.2 Intentionally Deleted.

6.0 Annual Appropriation and Source of Funding

- 6.1 The performance of the University of any of its obligations under this contract shall be subject to and contingent upon the availability of funds appropriated by the legislature for the current and future periods.
- 6.2 While the President is serving as president during the term of this Agreement and contingent upon the availability of funds, the Board shall not be responsible for, but authorizes this compensation arrangement and shall use its best efforts to cause the Florida Polytechnic University Foundation, Inc. ("Foundation") to contribute to the University the portions of all payments provided for in this Agreement that exceed the limits set forth in Florida Statutes Section 1012.975. The Board further authorizes the use of the University's auxiliary funds to pay for the President's compensation which exceeds the limits set forth in the statute.

7.0 Other Benefits

- 7.1 The President is eligible for all applicable State of Florida and University developed benefits and perquisite programs as authorized by the legislature or other authorized governing bodies. The Board further agrees that while serving as president, the President is entitled, at all times, to the state sponsored life insurance benefits applicable to Executive Service personnel.
- 7.2 Supplemental Retirement Benefit. During each year of the Presidential Appointment Term and while serving as president, the President will receive and reserve on a quarterly basis, in addition to his base salary, fifteen percent (15%) of the President's annual base salary which shall be used to establish a supplemental retirement benefit in a form reasonably acceptable to the President, such as an annuity or other tax deferred product to supplement his retirement. The FPU Foundation will contribute the sum required to fund this retirement benefit or, if permitted, the sum will be paid, in whole or in part, with University auxiliary funds.
- 7.3 Business/Travel Expenses. During the Presidential Appointment Term and while serving as President, the University will cover the cost of the President's reasonable business expenses, including professional dues, meetings, business travel, and entertainment. In addition, when the President's spouse travels with him on University-related business while he is serving as President, the FPU Foundation shall cover the cost of her reasonable travel expenses for travel serving a bona fide business purpose. Funding for spouse travel is only authorized in conjunction with the President's travel outside of the University service area.

8.0 Housing

8.1 The University deems it to be in its best interest that the President, while serving as President, is required to reside as a condition of his employment in the University's Presidential Home, and to the extent reasonable, to use the residence in the performance of his duties hereunder including, but not limited to receptions and meetings benefiting the University. The University is responsible for providing utilities, maintenance, service fees, internet and television service for the Presidential Home.

9.0 Automobile

9.1 During the Presidential Appointment Term and while serving as president, the University or the FPU Foundation will provide a flat monthly automobile allowance in the amount of \$850. The allowance will cover all automobile related expenses including, but not limited to, gas, maintenance, and repairs. The University will reimburse the President when he rents a vehicle for purposes of traveling long distance for University business.

10.0 Professional Dues, Meeting and Entertainment

10.1 During the Presidential Appointment Term and while serving as president, the Board will authorize and provide for the President's reasonable expenses related to his joining and participating in University-related social, professional or service organizations and activities. The Board may fulfill this obligation through the use of available FPU Foundation funds.

11.0 Expense Receipts and Documentation

11.1 The President agrees to maintain and furnish to the Controller an accounting of reimbursable expenses and membership dues and fees provided for in this Agreement in reasonable detail and consistent with University policies, standards, and procedures and applicable State law on no less than a monthly basis, or as requested. Following the President's submission of an accounting, the University shall promptly reimburse the President for such expenses, membership dues and fees in accordance with University policies, standards and procedures and applicable State law.

12.0 Termination of the Contract for Cause

12.1 Notwithstanding anything in this Agreement to the contrary, the parties agree that, upon a vote of two thirds (2/3) of the Board of Trustees, the Board may terminate this Agreement at any time for "just cause" (as hereinafter defined).

- 12.2 “Just cause” shall be deemed to include, but shall not be limited to:
- (i) a deliberate or material violation by the President of the Duties or his refusal or unwillingness to perform the Duties in good faith, during his full business time, or to the best of his abilities if, within thirty (30) days following the President’s receipt of the written notice of what the Board considers to be the violation, the President fails to cure the same;
 - (ii) materially harmful neglect of essential responsibilities of the President’s duties; (iii) material dishonesty or serious misconduct that adversely affects the University; (iv) the commission of any felony or of a misdemeanor involving moral turpitude; or (v) a material, significant, or repetitive breach of this Agreement.
- 12.3 In the event of termination for “just cause” by the Board, the President’s employment with the University shall cease. The Board’s obligations under this Agreement in such event shall be limited to: (a) the prorated payment of his salary through the date of termination; (b) the payment of any performance compensation or supplemental retirement benefit that is awarded and/or due, though unpaid as of the date of termination; (c) the payment of accrued and unused leave through the date of termination in accordance with University regulation; and (d) the payment of any unpaid reimbursable business/travel/relocation expenses incurred prior to the date of termination and documented by him in accordance with University procedures. The President shall not be entitled to any further employment, compensation or benefits from the University in any capacity except for benefits required to be continued by law.

13.0 Termination Without Cause

- 13.1 Notwithstanding anything in this Agreement to the contrary, the parties agree that upon a vote of two thirds (2/3) of the Board of Trustees, the Board may terminate the Agreement at any time prior to its term expiration without cause, provided that the President is given thirty (30) days prior written notice of this issue coming before the University’s Board of Trustees. Upon receiving notice from the Board, the President may waive any portion or the entire notice period at his discretion and terminate earlier.
- 13.2 The President may terminate the Agreement at any time prior to its term expiration without cause, provided that the President gives ninety (90) days prior written notice to the Board of Trustees. Upon receiving notice from the President, the Chair may waive any portion or the entire notice period at his/her discretion and terminate earlier.

14.0 Professorial Appointment

- 14.1 If the President is terminated without cause or resigns from his position as president and chooses to join the teaching faculty of the University upon conclusion of his presidency, he will be eligible for sabbatical leave of one calendar year commencing immediately after his employment as president ends and prior to joining the University's faculty. Prior to beginning any sabbatical leave, he will have committed to fill a faculty position at the rank of "Full Professor" or other mutually agreeable faculty position. Upon conclusion of the sabbatical, if taken, President's teaching, research, and service responsibilities will be substantially equivalent to similarly situated faculty positions.
- 14.2 During this first year post-presidency, the President's initial 12 month base salary, whether on sabbatical leave or serving as Professor ("initial base salary as a Professor"), will be 90% of his final annual base salary as President, not to include any deferred compensation or performance incentive payment. During his second year post-presidency and for the balance of the Presidential Appointment Term, his 12 month base salary as a Professor will be 90% of his initial base salary as a Professor, and he will be eligible for any salary increments provided to regular, full-time faculty members. Usual faculty and administrative processes will determine such salary increments. While on sabbatical, if any, and while serving as a Professor, he shall receive leave and other usual and customary benefits equal to those provided to University Faculty members.

15.0 Termination due to Resignation, Death or Disability

- 15.1 Notwithstanding anything in this Agreement to the contrary, this Agreement shall terminate upon the President's resignation from employment at the University, death, or "permanent disability" (as hereinafter defined). Such termination shall be deemed to have occurred for "just cause" and the President's employment with the University shall cease, and he shall not be entitled to any further employment, compensation or benefits from the University in any capacity except for compensation as provided in Section 12.3 and for benefits required to be continued by law. For purposes of this Agreement, "permanent disability" shall be defined as the President's inability to perform the applicable job duties for a minimum of six (6) continuous months.
- 15.2 In the event of the President's death during the term of this Agreement, his spouse or, if none, his estate, shall receive all accrued benefits as of the date of his death to the extent permitted by law.

16.0 Non-binding Mediation

16.1 The Board and the President agree that if any dispute arises concerning this Agreement, they will first attempt in good faith to resolve the dispute to their mutual satisfaction. If they are unable to do so, the Board and the President agree that they will submit the dispute to non-binding mediation in Lakeland, Florida, in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association then in effect. The Board and the President will use their best efforts, to the extent permitted under Florida law, to keep any disputes and any efforts to resolve disputes confidential, informing only their respective legal counsel and other persons determined in good faith to have a need to know. To the extent permitted under Florida law, they will use their best efforts to ensure that such persons do not further disclose any such information. The Board and the President agree that no mediator or arbitrator may have any material ongoing relationship with the University.

17.0 Notice

17.1 Unless and until changed by a party giving written notice to the other, the addresses below shall be the addresses to which all notices required or allowed by this Agreement shall be sent:

If to the Board:

Chairperson
Florida Polytechnic University Board of Trustees
Florida Polytechnic University
4700 Research Way
Lakeland, Florida 33805-8531

With a copy to:

General Counsel
Florida Polytechnic University

4700 Research Way
Lakeland, Florida 33805-8531

If to the President:

18.0 Entire Agreement: Modification

- 18.1 This Agreement constitutes the entire understanding of the parties and supersedes any and all prior or contemporaneous representations or Agreements, whether written or oral, between the parties. There are no other promises, understandings, obligations, inducements, or considerations between the parties or owed by either party to the other that are not set forth in this Agreement.
- 18.2 This Agreement cannot be changed or modified unless accomplished in writing and signed by the parties.

19.0 Severability

- 19.1 The terms of this Agreement are severable, meaning that if any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable, the remainder of the provisions shall continue to be valid and enforceable to the extent possible.

20.0 Governing Law and Forum

- 20.1 This Agreement shall be interpreted and construed in accordance with the laws of the State of Florida, excluding choice of law rules.
- 20.2 Notwithstanding any other terms and conditions of this Agreement, either party may bring an action for the sole and limited purpose of enforcing the terms and conditions of this Agreement in any court of competent jurisdiction. Venue shall be in Polk County, Florida.

21.0 Understanding of the Agreement

- 21.1 Both parties represent that they have thoroughly read this Agreement, that they understand it to be a binding contract, that they understand each provision, term, and condition of this Agreement as well as its legal effect, and that they have signed the Agreement voluntarily and of their own free will with the intention to comply with its terms. Both parties have participated in the preparation of this Agreement. Therefore, the Agreement shall not be construed against or in favor of either party based upon which party was responsible for the drafting of the Agreement.

22.0 Public Disclosure of the Agreement

22.1 Both Parties agree and acknowledge that this Agreement is subject to the Florida public records laws and may, therefore, be subject to disclosure by and in the manner provided by law.

23.0 Waiver

23.1 No delay or failure to enforce any provision of this Agreement shall constitute a waiver or limitation of rights enforceable under this Agreement.

24.0 Assignment

24.1 This Agreement is not assignable, but shall be binding upon the heirs, administrators, personal representatives, successors, and assigns of both parties.

25.0 Execution and Counterparts

25.1 This Agreement may be executed in counterparts and by the parties on separate counterparts each of which, when so executed, shall constitute but one and the same instrument.

26.0 No Trust Fund

26.1 Nothing contained in this Agreement and no action taken pursuant to the provisions of this Agreement shall create or be construed to create a trust of any kind. To the extent that the President acquires a right to receive payments from the University, such rights shall be no greater than the right of any unsecured, general creditor of the University.

27.0 Taxes

27.1 The President understands that the services to be rendered by him under this Agreement will cause him to recognize taxable income, which is considered under the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder as compensation income subject to the withholding of income tax (any social security or other employment taxes). The President hereby consents to the withholding of such taxes as are required by law. All sums payable to the President under this Agreement will be reduced by all federal, state and other withholdings and similar taxes and payments required by law.

28.0 Miscellaneous

28.1 The headings in this Agreement are for convenience only and shall not be used in construing or interpreting this Agreement. The terms "Board," "Board of Trustees" and "University," where applicable or appropriate, shall include or refer to any duly authorized board, committee, officer, or employee of said entity. Whenever the context requires, the masculine shall include the feminine and neuter, the singular shall include the plural, and conversely.

28.2 General Cooperation Covenant. Without limitation of the obligations specified in the Agreement and applicable University rules, regulations, policies and procedures, the President agrees to cooperate fully in any review or investigation involving University matters in which he may possess pertinent information. This obligations shall survive the expiration or earlier termination of this Agreement.

THEREFORE, Dr. Randy Avent, President, and _____, Chair and authorized representative of the Florida Polytechnic University Board of Trustees, have executed this Agreement on the dates appearing below.

Florida Polytechnic University Board of Trustees

By: _____ Date _____
Chairperson

President

_____ Date _____
Dr. Randy K. Avent