



## **UNIVERSITIES FUND**

# **WHISTLE BLOWING POLICY**

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## ABBREVIATIONS AND ACRONYMS

**CPC – Corruption Prevention Committee**

**IAO – Integrity Assurance Officer**

**UF – Universities Fund**



**Whistleblowing** is the disclosure based on one's reasonable belief that any person has engaged, is engaging, or preparing to engage in improper conduct.

**Whistle-blower** is a person who discloses information of improper conduct in accordance with this policy.

Improper Conduct is any conduct which if proved, constitutes a breach of integrity.

**Appointed Officer** means authorised person appointed to receive reports on Whistleblowing matters.

Disciplinary Offence means any action or omission which constitutes a breach as provided by law or the Fund's code of conduct and ethics, policies, or a contract of employment.

**Detrimental Action includes:**

- a) Action causing injury, loss or damage;
- b) Intimidation or harassment;
- c) Interference with the lawful employment or livelihood of any person; or
- d) Threat to take any of the actions referred to above.

**Confidential Information includes:**

- a) Information about the identity, occupation, residential address, work address or whereabouts of:
  - (I) A Whistle-blower; and
  - (II) A person against whom a Whistle-blower has made a disclosure of improper conduct;
- b) Information disclosed by a Whistle-blower; and
- c) Information that, if disclosed, may cause detriment to any person.

Investigating Officer means a person assigned to conduct an investigation of an Improper Conduct.

**Corruption Prevention Committee (CPC):** This is an Institutional committee consisting of heads of departments whose main responsibility is to keep constant check organisational operations and procedures to ensure that there are no opportunities for corruption in the organisation.

**Integrity Assurance Officer (IAO):** This is an officer within an organisation selected, trained, and assigned the duties to offer technical expertise on the implementation of corruption prevention activities.

Employee – means an employee of the Universities Fund

### **The Fund – The Universities Fund**

**Complaint:** An allegation or concern that is subject to investigation by the Fund or an appropriate authority.

**Detriment:** Victimization or reprisal of a whistle-blower which can take any or a combination of the following forms: dismissal, termination, redundancy, undue influence, duress, withholding of benefit and/or entitlements and any other act that has negative impact on the whistle-blower.

**Good Faith:** This is evident when a report or concern is made without malice or consideration of personal benefit and the employee, student or stakeholder has a reasonable basis to believe that the report is true; provided, however, a report does not have to be proven to be true to be made in good faith. Good faith is lacking when the disclosure is known to be malicious or false.

**Investigation:** A process designed to gather and analyse information in order to determine whether misconduct has occurred and if so, the party or parties responsible.

**Misconduct:** A failure by a staff member or other relevant stakeholder to observe the rules of conduct or standards of behaviour prescribed by the College or any written law, rule and regulation. Suspect: A person who is alleged to have committed a misconduct and subject of investigation.



## **1.0 PREAMBLE**

The UF in efforts to ensure a high ethical standard in all its business activities has established a code of ethics and Corruption Prevention Policy which sets out the standard of conduct expected in the management of UF's procedures on whistle blowing investigating and dealing with all reported cases of illegal, unethical conduct or any other misconduct across the Fund. This Policy is in compliance with the requirements of various regulatory authorities with oversight on the conduct of Public Officers in conducting their duties.

### **1.1 Vision**

A valued fund for universities

To ensure that universities in Kenya have adequate financial resources to confidently advance education, research, scholarship, training, innovation, outreach, creativity, entrepreneurship and access to knowledge for every citizen.

### **1.2 Mission**

Sustainable financing for universities

Our mission is to be the premium provider of funding and funding solutions for universities in Kenya, helping them play their part in Kenya's transformation and development.

### **1.3 Core Values**

Fairness – Treating each person and entity on merit, a relent focus on customer service and national interest.

Equity – Inclusivity providing opportunity to all.

Transparency – Consultative in our approach using criteria that can stand scrutiny.

Integrity – Honest and ethical in our conduct.

Innovation – Visionary, embarrassing technology, willing to see new and better ways of doing things, challenging convention.

## 1.4 PURPOSE

The purpose of this Policy is to promote integrity and ethical behavior at the Universities Fund. It also provides a mechanism for stakeholders of the UF including the Board, employees and members of the public, to report any legal violations and incorrect or misrepresentation of any financial statements and reports.

## 1.5 SCOPE

This Policy applies to all employees and members of the Board and stakeholders of the Universities Fund. It covers the following areas:

1. **Suspected fraud and corruption.**
2. **Criminal offences that have or are likely to be committed.**
3. **Disregard for the relevant legislation and regulations governing Conduct and Ethics for UF staff and Board members.**
4. **Breach of the UF Code of Conduct.**
5. **Damage to the environment.**
6. **Misuse of public property.**
7. **Breach of the rules and regulations governing financial management, recruitment, and procurement.**

## 1.6 OBJECTIVES

The objectives of this policy are to:

- a. Provide employees and other parties dealing with the Universities Fund with proper procedures in disclosing cases of improper conduct.
- b. Manage disclosures of improper conduct in an appropriate and timely manner;
- c. Provide protection to whistle-blowers from detrimental action that may result from the disclosure of improper conduct;

- d. Provide fair treatment to both the whistle-blower and the alleged wrongdoer when a disclosure of improper conduct is made;
- e. Encourage reporting of issues of legitimate concern;
- f. Provide a framework to remove inhibitions that may impede such disclosures;
- g. Establish procedures that enable protection for whistle blowers, independent internal inquiry/investigation of disclosures made, and resolution of any issues reported.

## **2.0 POLICY STATEMENT**

The Universities Fund is mandated by Section 53 of the Universities Act, 2012 to finance universities in Kenya. The mandate of the Universities Fund is to develop a detailed institutional funding criterion, apportioning and disbursing all government grants, resource mobilization, monitoring the utilization and impact of the funds by the universities. In order to achieve this, the UF should be able to carry out the following: develop incentives for private sector participation in university education, develop public private partnership frameworks for university education, negotiate tax waivers to foster individual and corporate/institutional support to university education.

To achieve its mandate, the Universities Fund has developed a Strategic Plan 2021-2026 with the key pillars. The expectations placed on the Fund are very high and it is imperative that we foster a culture committed to promoting and maintaining high standards of transparency, accountability, ethics and integrity at the service of the Fund. An important aspect of accountability and transparency is a mechanism to enable staff, stakeholders of the Fund and the general public to create an open and honest culture hence a better working relationships and dedication resulting to higher productivity.

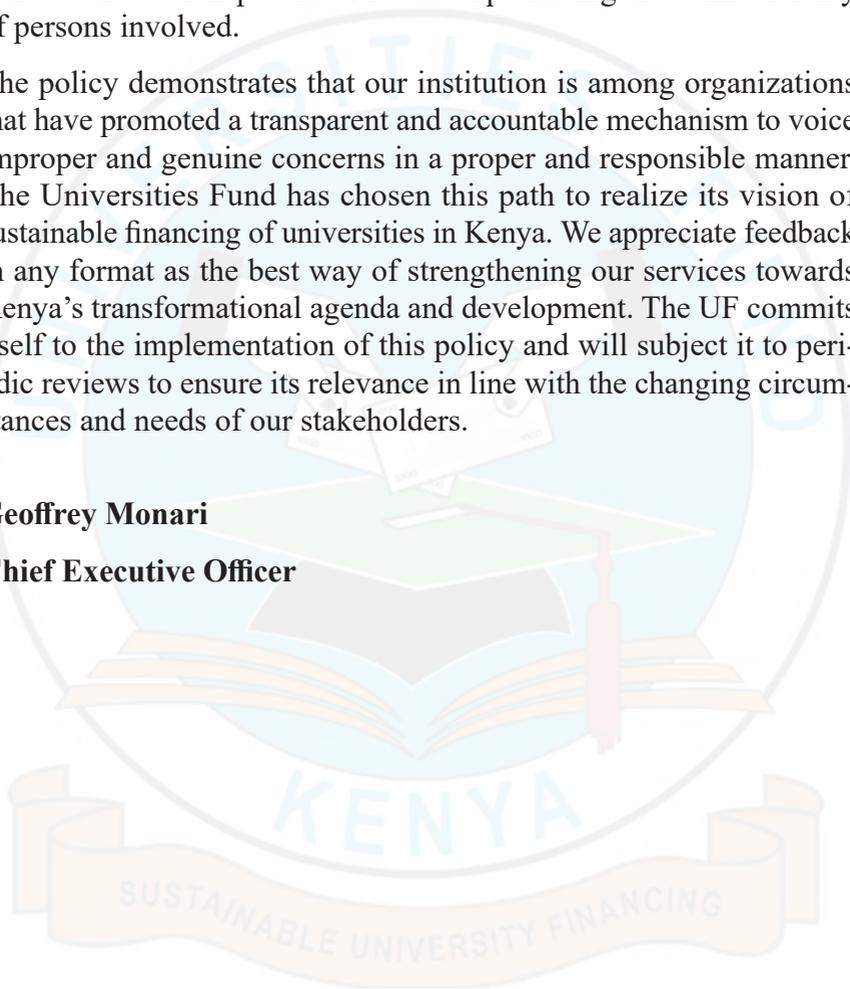
Against this background, the UF has developed this Whistle Blowing Policy to support the Fund's core values and facilitate reporting of employees' and other parties' concerns about possible improprieties

at the earliest opportunity to ensure that concerns can be raised without fear of reprisal or detrimental action. The procedures contained in this policy provide a process of managing disclosures of improper conduct that is transparent without compromising the confidentiality of persons involved.

The policy demonstrates that our institution is among organizations that have promoted a transparent and accountable mechanism to voice improper and genuine concerns in a proper and responsible manner. The Universities Fund has chosen this path to realize its vision of sustainable financing of universities in Kenya. We appreciate feedback in any format as the best way of strengthening our services towards Kenya's transformational agenda and development. The UF commits itself to the implementation of this policy and will subject it to periodic reviews to ensure its relevance in line with the changing circumstances and needs of our stakeholders.

**Geoffrey Monari**

**Chief Executive Officer**



## **3.0 LEGAL AND POLICY FRAMEWORK**

The Constitution of Kenya and other laws, some of which are listed below, provide the framework upon which this whistle blowing policy shall be implemented.

### **3.1 Constitution of Kenya, 2010**

The Constitution of Kenya has provided set standards to be upheld by all persons who interpret and apply the Constitution and other laws of Kenya. These standards have been outlined in Article 10 on National values and principles of governance as well as Chapter Six on Leadership and Integrity.

### **3.2 Leadership and Integrity Act, Cap 182 Laws of Kenya & Public Officer Ethics Act, Cap, 183 Laws of Kenya**

The Leadership and Integrity Act, Cap 182 Laws of Kenya and the Public Officer Ethics Act, Cap, 183 Laws of Kenya provide for reporting mechanisms for a public officer in situations which he or she is required to contravene the Code of Conduct and Ethics or carry out improper or unethical actions.

### **3.3 Mwongozo, Code of Governance for State Corporations**

Chapter Two of the Mwongozo, Code of Governance for State Corporations requires state corporations to report on the effectiveness of the organization's Code of Ethics, Code of Conduct and Whistle blowing policy in tackling unethical behaviour in the organization. Chapter four also provides for the development and implementation of a whistle blowing policy.

### **3.4 6.4 Executive Orders no. 6 and 7 of 2015**

The Executive Orders no. 6 and 7 of 2015 requires all Government Agencies to implement programmes in line with Article 10 of the Constitution (2010), Public Officer Ethics Act, Cap, 183 Laws of Kenya, Leadership and Integrity Act, Cap 182 Laws of Kenya and basic tenets of Corporate Governance.

### 3.5 Bribery Act, 2016

The Act defines a whistle blower and provides for the protection of whistle blowers and witnesses.

### 3.6 Ethics and Anti-Corruption Act, 2011

The Ethics and Anti-Corruption Act establishes the Ethics and Anti-Corruption Commission. The Commission was established for purposes of ensuring compliance with, and enforcement of the Constitutional provisions of Leadership and Integrity. Further to this, it has also been mandated to work with other State and public offices in the development and promotion of standards and best practices in integrity and anti-corruption.

### 3.7 Witness Protection Act, 2006

The Witness Protection Act establishes the witness protection Agency. The object and purpose of the Agency is to provide the framework and procedures for giving special protection, on behalf of the State, to persons in possession of important information and who are facing potential risk or intimidation due to their co-operation with prosecution and other law enforcement agencies.

## 4.0 GUIDING PRINCIPLES

This policy is guided by five key principles:

- a. **Fairness:** Fairness and appropriateness of response complains on fraudulent or unethical conduct that is genuine.
- b. **Protection:** Freedom to raise genuine Concern without fear of harassment, discrimination, and victimization.
- c. **Confidentiality:** Information on any individual making a Disclosure will be kept confident unless he/she agrees otherwise
- d. **Transparency and feedback towards the persons raising the Concern:** The UF will ensure that any individual raising

a concern is aware of who is handling the matter and that feedback is provided as appropriate.

- e. **Legitimacy of concern:** This policy supports all genuine concerns and does not cover any issues that are raised maliciously and those based on falsehood.

#### 4.1 Responsibilities

All staff have the responsibility to ensure that the best possible standards of care are achieved and to act in accordance with their professional codes of conduct. In this regard, they shall:

- a. Report to the Management, Integrity Assurance Officers, that something is happening which might compromise the rules contained in the code of conduct. This shall be raised through various reporting channels such as the Corruption Reporting Box, the website anonymous reporting and e-mails.
- b. Raise concerns in good faith with the true belief that a malpractice has occurred.
- c. Not raise concerns with any malicious intent or vexatious nature.
- d. Raise concerns with an appropriate officer as outlined in the Corruption Prevention Policy.

#### 4.2 Allocation of responsibilities

The Board of Trustees shall be responsible for the overall handling of the whistleblowing process.

The Board of Trustees shall appoint a Chairperson from among them, who will be responsible for leading the handling of whistleblowing disclosures. The Chairperson must be not compromised and have access to all Universities Fund data, records and information.

#### **The Chairperson will be responsible for:**

1. Receiving whistleblowing disclosures.

2. Leading the investigation of whistleblowing disclosures.
3. Making recommendations to the Board based on the outcome of the investigation.
4. Reporting on the outcome of the investigation to the Board of Trustees and senior management.
5. Ensuring protection of whistle-blowers.

### **Corruption Prevention Committee and Integrity Assurance Committee;**

The members who receive the information have a duty to:

- a. Treat concerns in a confidential manner.
- b. Take staff concerns seriously.
- c. Consider them carefully and undertake an investigation.
- d. Understand the difficult position a member of staff may be in.
- e. Seek appropriate advice.
- f. Take appropriate action to resolve the concern or refer it to an appropriate institution
- g. Keep the member of staff informed of the progress.
- h. Monitor and review the situation.
- i. Ensure that individuals who genuinely report concerns are not penalized in any way.

### **4.3 Disclosure of Improper Conduct**

An employee, member of the board of the Fund or third party who becomes aware of an alleged improper conduct shall make a disclosure as provided for in the policy. For the purpose of this policy an improper conduct includes:

- a. Criminal offences, unlawful acts, fraud, corruption, bribery and blackmail;
- b. Failure to comply with legal or regulatory obligations;
- c. Misuse of the Fund's assets.

- d. An act or omission which creates a substantial and specific danger to the lives, health or safety of the employees or the public or the environment;
- e. Unsafe work practices.
- f. Abuse of power by an officer of the Fund;
- g. Falsification of data or documents
- h. Practising of nepotism and tribalism.
- i. Concealment of any of the above.

The Whistle-blower while making a report needs to have a reasonable belief of the occurrence of Improper Conduct.

In order to give the Fund an opportunity to investigate the alleged Improper Conduct and to take the necessary internal corrective actions, Whistle-blowers are encouraged to lodge a report by providing, to the extent that is possible, the following information: -

- a. Description of the people or parties that are involved in the improper conduct.
- b. Details of the Improper Conduct, including the relevant dates of occurrence.
- c. Particulars of witnesses, if any.
- d. Particulars of production of documentary evidence, if any.
- e. A disclosure of Improper Conduct may be made even though the person making the disclosure is not able to identify a particular person to which the disclosure relates.

#### **4.4 Safeguards**

The Fund is committed to good practice and high standards and wants to be supportive of employees. The Fund recognizes the difficulty staff may face in voicing concerns and assures them of support and confidentiality during the investigation process. It will not tolerate any harassment or victimization and will protect any member of staff that raises a concern in good faith. It may be necessary to take action against the complainant under the Fund's disciplinary procedures, where it concludes that false or malicious allegation have been made.

The Fund will not retaliate and will not allow any retaliation or discrimination by its employees of any kind against any employee who submitted a complaint in good faith. Specifically, the Fund will not discharge, demote, suspend, have salary increases or employment related benefits withheld, threaten, harass or in any other manner discriminate or retaliate against any employee who lawfully provides information to the authorities regarding any conduct which the employee reasonably believes constitutes a violation.

#### **4.5 Confidentiality**

The substance of an investigation including the identities of the parties to it will remain confidential and may only be disclosed;

- 1. With the consent of the complainant,**
- 2. Where the law requires disclosure,**
- 3. where the identity of the whistle blower or substance of disclosure is already publicly known.**
- 4. Where the information is given on strictly confidential basis for the purpose of obtaining professional advice.**

The Fund will protect the confidentiality of all matters raised by concerned employees. In case of any breach of confidentiality by any of the officers, the employee raising concern can take the appropriate action under the Fund's Human Resource Policies and procedures.

#### **4.6 Anonymous Allegations**

This policy encourages all complainants to provide sufficient information for future reference. To the extent possible, any complaint should be factual rather than speculative and should contain as much information as possible to allow for proper assessment. Concerns expressed anonymously are much less powerful but will be considered at the discretion of the Fund. In exercising this discretion, the factors to be taken into account would include:

- a. The seriousness of the issues raised

- b. The credibility of the concern and
- c. The likelihood of confirming the allegation from attributable source.

#### **4.7 False Allegations**

If a staff member makes an allegation in good faith but it is not confirmed by the investigation, no action will be taken against him/her. If, however, an employee makes the allegation frivolously, maliciously or for personal gain, disciplinary action will be taken against him/her as per the Human Resource policies and procedures.

#### **4.8 Whistle Blowing Procedures**

7.8.1. A concern shall be raised orally, (i.e., face to face or via the phone) or in writing to the responsible officers. If in writing, the envelope should be marked 'personal, private and confidential' and if the concern is of a serious nature, the envelope should be hand delivered to the appropriate person. If an employee wishes to discuss the matter orally, he or she should indicate this in the submission and include a telephone number at which he/she might be contacted if the CPC, IAO or CEO deems it appropriate.

7.8.2. Whichever way the complainant chooses; he/she should provide adequate information. The complainant should identify or provide evidence of the following to the extent that this detail is known or available to the complainant:

- a. Why he/she is concerned and the background information
- b. Any other procedures which he/she may have already used and what happened.
- c. The section or location of the alleged behaviour.
- d. Key personnel involved in the alleged behaviour.
- e. The nature of the alleged incident.
- f. The time/period over which the alleged incident occurred.
- g. An estimate of the monetary value, if applicable, associated with the alleged incident.

- h. Documentary evidence in support of the alleged incident, where possible.
- i. Names and positions of other employees who may support the complainant's concern where necessary.

7.8.3. The responsible person(s) receiving the concerns shall be required to undertake thorough investigations on the matter reported. The whistle blower shall receive an initial response within ten working days, including details of any further action to be taken and full written response within seven working days of the completion of the investigation where appropriate. These time scales may be extended if necessary.

7.8.4. The whistle blower shall need to demonstrate that there is a reasonable ground of concern though he/she shall not be expected to prove beyond reasonable doubt the truth of an allegation.

7.8.5. The whistle blower may invite a colleague or another person to be present during any meetings or interviews in connection with the concern raised. In this case, he/she may remain anonymous when the concern is first raised but may have to be involved personally if the matter goes further.

## **5.0 REPORTING CONCERNS**

### **5.1 Employees**

- Employees may raise any concerns with their immediate supervisor within a reasonable time. However, depending on the seriousness and sensitivity of the issue, and who is thought to be involved, employees may raise the concerns with any other senior manager with whom they feel comfortable. Alternatively, employees may raise their concerns with the Integrity Assurance Officer.
- Whistle blowing reports may also be made to the Secretary of the CPC and the Chief Executive Officer, unless the report is about the Secretary of the CPC and Chief Executive Officer

himself or herself, in which case the report should be made to the Chairperson of the Board Audit and Risk Committee.

- If the report is about a Board member or the Chairperson of the Board, the report should be made to the Chairperson of the Board Audit and Risk committee. The Board should also ensure that it has designated an independent party to receive those reports, which cannot be appropriately reported as set out above.
- Such independent party can be the Commission of Administrative Justice or such other independent party as the Board may contract and notify employees and the public.

## **5.2 Members of the Public or other Third Parties**

Members of the public or other third parties may raise concerns with either the Commission on Administrative Justice, the Chairperson of the Board or the Board Audit and Risk committee where appropriate or an appropriate third party.

## **6.0 THE FUND'S RESPONSE**

Based on the Investigation Report received from the Corruption Prevention Committee (CPC), the C.E.O may decide to do any of the following:

- a. Recommend to Board audit and risk committee for applicable internal policies and procedures.
- b. Recommend to the External Auditors.
- c. Recommend to the Police (Investigation and Enforcement Department).
- d. Recommend the subject of an independent inquiry.

The whistle blower may be interviewed by the person investigating the matter. In order to protect individuals accused of a possible malpractice, inquiries shall be made to decide whether an investigation is appropriate.

## **7.0 RESPONSE TO THE WHISTLE BLOWER**

The whistle-blower shall be contacted within 10 working days detailing the following:

- a. Acknowledge that the concern has been received.
- b. Indicate how the Fund intends to deal with the matter.
- c. Give an estimate of how long it will take to provide a final response.

Upon conclusion of the investigation and a decision is taken the whistle blower shall be contacted and informed on the outcome.

## **8.0 WHISTLEBLOWER'S RECOURSE**

This procedure is meant to give a whistle-blower an alternative justice mechanism if they are not satisfied with the Fund's decision. These include:

1. **Office of the Auditor General (OAG)**
2. **A relevant professional or regulatory body.**
3. **A relevant voluntary organization.**
4. **Efficiency Monitoring Unit (EMU)**
5. **Ethics and Anti-Corruption Commission (EACC)**
6. **Directorate of Criminal Investigation. (DCI)**
7. **Commission on Administrative Justice (CAJ)**

## **9.0 PUBLIC INTEREST DISCLOSURE**

- Whistle blowers are also at liberty to raise concerns with the independent third party identified by the Board to receive concerns and such whistle blowers will also receive protection under this policy.
- Whistle blowers are also at liberty to make a wider disclosure to the Police, or other relevant public bodies such as the Ethics and

Anti-Corruption Commission in the event that they reasonably believe that they will be victimized if they raised the matter internally or with the prescribed independent third party.

- Any whistle blower who is unsure about whether to use this procedure or wants independent advice at any stage, may contact the Commission on Administrative Justice at the following address for advice.

### **Commission on Administrative Justice**

**2nd Floor, West End Towers**

**Opposite Aga Khan High School off Waiyaki Way - West lands**

**P.O. Box 20414 – 00200**

**NAIROBI.**

- If at any stage of the process, or even before a concern is raised a whistle blower wishes to contact, seek advice or speak to a trained counsellor on any issues of concern in the strictest confidence, they may contact the prescribed party on the corruption reporting e-mail: [corruption.reporting@ufb.go.ke](mailto:corruption.reporting@ufb.go.ke)

### **10.0 ASSESSING DISCLOSURES**

The Board of Trustees led by a chairperson must consider the information in the context of what they know about the particular area or activity and the information the whistle-blower provides. From that, and on the assumption that the information is well-founded, members of the Board of Trustees should assess:

1. **How serious and urgent the risk is.**
2. **Whether the disclosure can best be dealt with under the whistleblowing policy or some other procedure (such as the Human Resources Policy).**

3. **Whether the help of or referral to a specialist function will be desirable or necessary.**
4. **Specifically, for whistleblowing concerns made anonymously, the likelihood of verifying the allegation from independent sources; and**
5. **To the extent possible, any complaint should be factual rather than speculative or conclusory.**

Where an individual formally invokes the Whistleblowing Policy and raises a disclosure with the Board of Trustees, it is helpful that the Board establishes:

1. **If the individual is anxious about reprisals.**
2. **When the disclosure first arose and, where relevant, what is prompting the decision to speak up now.**
3. **Whether the information is first hand or hearsay.**
4. **Whether confidentiality is sought.**
5. **Whether and when the individual wants feedback.**
6. **If there is anything else relevant the individual should mention.**
7. **The Chairperson appointed shall notify the whistle-blower and acknowledge receipt of the reported or suspected violation within 24 hours after lodging a concern.**
8. **IMPLEMENTATION**

This Policy takes effect on the date it is approved by the UF Board of Trustees.

The Chief Executive Officer is responsible in consultation with the UF management, for ensuring that this Policy is distributed and complied with.

## **11.0 TRAINING**

- a. While the Fund recognizes the need for preparing and implementing this Policy, its successful implementation and its general credibility will depend largely on the effectiveness of programmed training and responsiveness of employees throughout the organization.
- b. To facilitate this, the Fund supports the concept of training, particularly for employees involved in internal control systems, to ensure that their responsibilities and duties in this respect are regularly highlighted and reinforced.

## **12.0 ASSURANCE**

- The Board shall not retaliate nor tolerate retaliation against any person who discloses information in good faith.
- At the same time, the policy should not be used to spread falsehoods or threaten others, or with the intent of damaging another person's reputation.

## **13.0 MONITORING AND EVALUATION**

The Fund shall conduct monitoring and evaluation of the effectiveness of this policy in line with the Monitoring, Evaluation and Reporting framework through the management.

The Fund shall undertake annual evaluation on the implementation of the policy and use the information for planning and management and propose potential areas for review.

## **14.0 POLICY REVIEW**

The Policy shall be reviewed after every three (3) years or earlier as need arises with an aim to enhance efficient delivery of effective outcomes.

