

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

**ASSOCIATED FACULTY OF MONTANA STATE
UNIVERSITY**

[Tenure and Tenure Track Faculty]

AND THE

MONTANA UNIVERSITY SYSTEM

JULY 1, 2011 TO JUNE 30, 2013

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ARTICLE 1: PREAMBLE

This agreement covering certain tenured and tenure-track faculty positions is entered into by the Commissioner of Higher Education as agent for the Board of Regents of Higher Education on behalf of Montana State University hereinafter referred to as "Commissioner" or "Employer" and the Associated Faculty of Montana State University (AFMSU) [Local 7734] hereinafter referred to as the "Association" or "AFMSU". Its goals are the furtherance of quality education, research, creative activity and service. This agreement is in accordance with the Public Employees Collective Bargaining Act (MCA Title 39). The purpose of this agreement includes but is not limited to establishing the terms and conditions of employment in regard to working conditions, compensation, benefits and the establishment of an equitable procedure for the resolution of grievances.

ARTICLE 2: CONTRACT MANAGEMENT

2.01 ENTIRE AGREEMENT

This agreement constitutes the entire negotiated agreement between the Parties and supersedes any previous regulations, faculty contracts, previous practices, or policies which are in conflict with the expressed terms of this agreement. This agreement shall constitute the master agreement for all faculty members in the bargaining unit.

2.02 TERM OF AGREEMENT

This agreement is effective upon ratification by the Board of Regents and shall remain in full force and effect through the _____ day of _____ 20_____

Negotiations on a subsequent agreement shall commence on a mutually-agreeable date.

This Agreement is entered into on this _____ day of _____ of 20_____

For the Employer

For the AFMSU

Sheila M. Stearns
Commissioner of Higher Education

Sandy Osborne
President, AFMSU (TT)

Kevin McRae
Director of Labor Relations

2.03 DISTRIBUTION OF CONTRACT

Upon final ratification and approval of this agreement a copy will be posted on the Board of Regents

website. The AFMSU will prepare and distribute electronic copies and/or hard copies of the agreement to members of the bargaining unit.

2.04 PRINTING COSTS

Costs for printing up to 50 copies of this agreement and all attachments herein shall be shared equally by the parties.

2.05 WAIVER CLAUSE

Regardless of any procedure set forth in this agreement, the signatory parties may mutually agree upon any method for achieving goals; or resolving any question, controversy, claim or matter of difference related to this agreement or the performance or breach of any part thereof. No action taken under the provisions of this section shall constitute a past practice for future negotiations.

2.06 SEVERABILITY

It is understood and agreed by the parties to this Agreement that any provision inconsistent with or contrary to law shall be considered as deleted from the agreement without harm to the remaining provisions of the agreement. If any section of this Agreement or any addendum to it is held invalid by operation of law or by any tribunal of competent jurisdiction, or if compliance with or enforcement of any section is restrained by such tribunal, the remainder of this Agreement shall not be affected thereby, and the parties shall enter into immediate negotiations for the purpose of arriving at a mutually satisfactory replacement for such section.

2.07 AMENDMENT

If a mutually acceptable amendment to this agreement is negotiated by the parties, it shall be written and submitted for ratification by the Board of Regents and the Association. When it is ratified by both the BOR and the members of the Association, it shall become a part of the agreement.

Changes or additions to this agreement during its term may be negotiated only upon mutual agreement of the parties. Any agreed-to changes or additions shall be made effective upon any date agreed upon by both parties and shall expire upon the expiration of this agreement. For changes or additions to be effective, they must be set down in writing and approved and signed by the union President and the Commissioner.

2.08 EFFECT BY PASSAGE OF LAW

Any provision of this agreement that is contrary to law, but becomes legal during the life of this agreement, shall take immediate effect upon the enactment of such legislation.

2.09 NEGOTIATIONS AND SUBMISSION OF PROPOSALS

By February 1 (four months prior to the expiration of the Agreement), the parties will exchange lists of new items and of those existing sections they intend to modify, amend, delete, or otherwise change. The scope of bargaining during the initial bargaining session shall be limited to provisions included on the exchange of lists. However, both parties may expand their lists or raise new issues through two subsequent meetings (up to and including the third bargaining session). Nothing in this provision prevents either party from introducing new provisions or proposals after the third bargaining session for reasons that are permissible and in good faith under collective bargaining laws; however, neither party is obligated to agree with a particular proposal.

2.10 REFERENCES

Any references to policies in this agreement shall be a reference to the policy as of the date of ratification of this agreement.

2.11 BUDGET RESCISSIONS

If the University has its appropriation reduced by the legislature or the Governor during the term of this agreement, those portions of this agreement that are contingent upon the availability of resources may be opened for negotiations by mutual agreement of the parties.

2.12 NON-DISCRIMINATION

The Parties shall not discriminate on the basis of race, creed, religion, color, sex, physical or mental disability, age, national origin, political belief, or sexual orientation.

The exclusive remedy for adjudicating claims of discrimination that are subject to the Montana Human Rights Act shall be the statutory complaint procedures provided for in Title 49, MCA. For all other claims of alleged discrimination, the exclusive remedy for adjudicating disputes shall be the grievance and arbitration provisions of this collective bargaining agreement.

The Parties shall refrain from unfair labor practices, including but not limited to anti-union animus or retaliation for free exercise of rights provided by this collective bargaining agreement. The exclusive remedy for adjudicating disputes over alleged unfair labor practices or discrimination on the basis of protected union activity shall be the statutory complaint procedure of the Board of Personnel Appeals as provided for in Title 39, MCA.

2.13 NO STRIKE - NO LOCKOUT

The parties agree that bargaining unit members shall not engage in any strike, work stoppage, or slowdown; and that the Administration shall not lockout bargaining unit members during the term of this agreement.

2.14 LABOR-MANAGEMENT COMMITTEE

The Parties value a cooperative working relationship as effective in promoting excellence in education. In the interest of cooperation and good communication, the Parties agree to establish a labor-management committee consisting of six members / representatives. The Association shall appoint three representatives of the Association. The Administration shall appoint three representatives of the Administration. The committee is encouraged to seek labor-management committee training and develop a committee charter with a structure for meeting agendas, procedures, etc.

ARTICLE 3: UNION RIGHTS

3.01 RECOGNITION

The Board of Regents recognizes the AFMSU as the exclusive bargaining representative for all persons in the bargaining unit of tenured and tenure-track faculty positions as certified by the Board of Personnel Appeals in Unit Determination No.16-2008 on April 23, 2009.

The parties recognize that any disagreement over positions to be included in, or excluded from, the bargaining unit may be resolved through negotiation or through the unit clarification process of the Montana Board of Personnel Appeals.

3.02 DUTY OF FAIR REPRESENTATION AND REPRESENTATION FEE

AFMSU, as exclusive representative of all employees described in Section 3.01 will represent all such persons fairly whether members or not. No employee shall be required to join AFMSU, but membership in AFMSU shall be made available to all who apply, consistent with AFMSU constitution, bylaws, and policies.

- (A) Beginning in AY 2012-2013, the amount of the representation fee shall be determined by an independent audit annually conducted of the MEA-MFT and NEA/AFT/AFL-CIO and in no case will the representation fee exceed the annual membership dues.
- (B) The representation fee shall be forwarded to MSU annually on or before September 1. The University shall deduct the fee from non-members and transmit the monies to AFMSU in the same manner specified in the collection of dues article. If the University offers individual contracts, the individual contract shall contain an authorization for payroll deduction of the representation fee by non-members.
- (C) Any dispute concerning the amount, the method of determining the amount or of notifying non-members of the representation fee shall be solely between the affected bargaining unit member and AFMSU. AFMSU will provide an internal review procedure wherein nonmembers may challenge the determination of the fee for AFMSU services in representing members of the bargaining unit in the process of negotiating and administering the collective bargaining agreement. Disputes concerning the representation fee assessed to such nonmembers cannot be processed through the grievance procedure provided for under this Agreement.
- (D) Except as provided above, the University will require of each nonmember payment of the representation fee and the fee shall be specified as a condition of employment noted in the individual's employment contract. The fee shall cover the services of AFMSU in discharging its obligation to represent members of the bargaining unit in the process of negotiating and administering the collective bargaining agreement, or other obligatory employment relations representation responsibilities by law.

The Union agrees to defend and hold the University harmless from any claim or suit filed by an employee arising from the University's compliance with this provision.

3.03 PROFESSIONAL DUES AND FEES/PAYROLL DEDUCTIONS

The University shall deduct, in equal installments for the duration of the contract, as elected by the employee such monies for annual unified membership dues (as certified by the secretary of the exclusive representative), and shall deliver the dues to the treasurer of the exclusive representative within ten (10) days of the monthly payroll. Deductions for new employees, who submit their membership forms to the University, shall be prorated in equal payments.

No later than September 1 annually, AFMSU will notify the University in writing, of all employees authorizing the University to deduct annual membership dues and the amount of the dues to be deducted. The University shall deduct and transmit the dues (identifying the individual by name and dues deduction amount) to MEA-MFT Treasurer or its designee. Transmittal must occur on or before the last day of each month.

3.04 INFORMATION AND DATA

The Parties shall comply with their statutory duty to furnish information necessary for collective bargaining, including data and financial information relevant to negotiating or enforcing the collective bargaining agreement. Voluminous information shall be made available for inspection where it is normally kept or, upon request, shall be provided to the other party at cost.

By October 1, the Employer will provide the AFMSU a list of tenure-track faculty members in the collective bargaining unit. The parties understand that the data has not been checked for accuracy and may not be the final roster of tenure track faculty members in the unit. The report will typically identify faculty members by name, rank, department, and salary. Upon request, the Administration shall provide supplemental information regarding tenure status (e.g., tenured or tenure-track) and FTE (full-time-equivalent) status.

3.05 MEETING ROOMS AND COMMUNICATION FACILITIES

AFMSU may meet in University facilities provided that it follows the same procedures for scheduling meetings and reserving facilities as other campus organizations.

The Employer's information technology systems (including telephones, computers, email, and Internet) are the property of the Employer and their use is subject to Board of Regents Information Technology Policy Section 1300 (<http://mus.edu/borpol/bor1300/bor1300.asp>) and the University information technology policies (<http://www2.montana.edu/policy/>).

The Employer agrees to allow employees reasonable use of telephones, email, and campus mail and bulletin boards for union-related communications, and the Union agrees that misuse of the Employer's computing or information resources may result in disciplinary action appropriate to the misuse and subject to just cause.

3.06 ADDRESSING THE BOARD OF REGENTS

Officers of the AFMSU shall have the right to address the Board on relevant topics. The AFMSU shall provide advance notice of the topic to the University Administration and to the Commissioner.

Officers of the AFMSU who exercise this right are responsible for alternative arrangements to provide class coverage during the faculty member's attendance at the Board of Regents meeting.

Full and timely access to the Board of Regents agenda and approved minutes exists at <http://mus.edu/board/default.asp>.

3.07 RELEASE TIME

Upon approval by the University administration, the AFMSU President of the Tenure Track faculty bargaining unit may request release from teaching one three credit course per semester with no reduction in pay to work on union matters. The University administration will grant this reassignment if the course release will not adversely affect the department and students. If the AFMSU President is unable to take release time, another officer may request release time in lieu of the AFMSU President.

The AFMSU President will submit to the Provost the request for the following academic year by May 15th of each year. The AFMSU and University administration will provide funds necessary to hire temporary faculty to teach the reassigned courses. The funding will be based upon the cost of replacement and will be one-half from AFMSU and one-half from the Administration.

ARTICLE 4: MANAGEMENT RIGHTS

The Association recognizes the prerogatives of the Employer to operate and manage its affairs in such areas as, but not limited to:

- (A) direct employees;
- (B) hire, promote, transfer, assign, and retain employees;
- (C) relieve employees from duties because of lack of work or funds or under conditions where continuation of such work be inefficient and nonproductive;
- (D) maintain the efficiency of government operations;
- (E) determine the methods, means, job classifications, and personnel by which government operations are to be conducted;
- (F) take whatever actions may be necessary to carry out the missions of the agency in situations of emergency;
- (G) establish the methods and processes by which work is performed.

4.01 PERFORMANCE BY DESIGNEE

Any responsibility assigned to a specific representative of the Employer may be performed by a designee of such representative.

ARTICLE 5: SHARED GOVERNANCE

The Parties recognize the authority of the Association as the exclusive bargaining agent for members of the bargaining unit on matters of wages, hours, fringe benefits, and other conditions of employment (39-31-305, MCA). The Parties also recognize the prerogative of the Employer to establish and/or support faculty participation in shared governance efforts including, but not limited to, the organization of the Faculty Senate. Matters that shall be reviewed and recommended by the Senate, in accordance with regulations of the Board, shall include:

- (A) specific curricular changes submitted by the faculties of the various departments, units, and schools through the appropriate University committee;
- (B) general requirements for various degrees, including honorary degrees, and nomination of candidates for graduation;
- (C) general requirements for admission and retention of students;
- (D) development, curtailment, discontinuance, or reorganization of academic programs;
- (E) issues that pertain to the academic affairs of the University;
- (F) establishment of committees and other bodies deemed necessary to carry out the responsibilities under this provision.

ARTICLE 6: FACULTY RIGHTS AND WORKING CONDITIONS

6.01 INDIVIDUAL EMPLOYMENT CONTRACTS

Any individual employed in a position within the bargaining unit, or reappointed to a position within the bargaining unit, shall be given an individual contract. The individual contract shall be subject to the terms of this Agreement. In the event of conflict between the terms of an individual employment contract and the terms of this Agreement, the latter shall be controlling.

6.02 SAFE WORKING ENVIRONMENT

The Employer shall provide a place of employment which does not endanger the health or safety of any member of the faculty. Faculty members shall notify the Employer of any safety or health concerns and the Employer shall institute appropriate remedial action.

6.03 WORKSPACE & MATERIALS

The Employer shall provide all tenure-track and tenured faculty members with enclosed lockable workspace (either shared or private). All tenure-track and tenured faculty members shall have reasonable access to a desk, desk chair, telephone, file cabinet, bookcase, and computer with internet access. In cases of shared workspace, each faculty member will be provided with a lockable file cabinet. Faculty may retain personally owned items or property in their offices at their own risk of loss. The Employer shall provide access to laboratory facilities for faculty members who are required by the University to conduct laboratory-based research.

6.04 ADMINISTRATIVE SUPPORT

Faculty will be provided with access to administrative support services in the performance of their responsibilities.

6.05 FAMILY / BREASTFEEDING ROOM

In accordance with 39-2-215-217, MCA, the University supports women who want to continue breastfeeding after returning from maternity leave.

The University will designate at least one (1) room for breastfeeding / breast pumping on campus, located in Hamilton Hall. The room will be equipped with lockable door, lighting, electricity, a small refrigerator for the storage of breast milk, and convenient access to a sink with running water. This room will remain open for use during the building's operating hours.

The University will designate a 45-minute parking space adjacent to Hamilton Hall, specifically for nursing mothers to use while breastfeeding / breast pumping.

If necessary, faculty will have access to other space suitable for breastfeeding / pumping. The faculty member will inform the department head or supervisor, who shall then be responsible for identifying space suitable for such use in accordance with University policy and state law.

HR/AA/EEO shall be considered as a resource for the supervisor in identifying such suitable alternative space.

6.06 PERSONNEL FILES

Each faculty member shall have one personnel file which shall reside in the office of Human Resources, with the exception that formal reviews (annual, retention, promotion and tenure, post-tenure) shall reside in files kept in the departments. Except for formal reviews that are kept in department files, any information concerning a faculty member that exists outside of the file in the office of Human Resources shall not be construed to belong in the official personnel file of a faculty member. No anonymous material shall be placed in a personnel file. Complaints against the faculty member shall not be placed in the file until an investigation has been completed and the faculty member has been made aware of the investigation, its outcome. Should the complaint be found to have merit, the faculty member may respond in writing to the complaint and the response will be placed in the file. Inclusion of a complaint in the file is subject to the grievance and arbitration provision in this agreement.

Each faculty member's personnel file shall be open to him/her, except for confidential correspondence connected with initial employment, and peer reviews obtained during formal reviews. The opportunity to rebut, comment on, and/or clarify any unfavorable item in the file shall be guaranteed to the faculty member. Such rebuttal, commentary, and/or clarification shall be attached to the relevant item in the file. Copies of any item in his/her personnel file shall be provided to the faculty member upon request at his/her expense.

6.07 TRAVEL EXPENSES

Expenses incurred by faculty for University travel, meals, lodging, and miscellaneous items shall be reimbursed in accordance with Title 2, MCA.

6.08 EMPLOYEE INDEMNITY

Employees covered by this agreement are entitled to indemnification in accordance with the provisions of Section 2-9-305, MCA, for their actions taken within the course and scope of their employment.

ARTICLE 7: ACADEMIC FREEDOM AND RESPONSIBILITIES

7.01 ACADEMIC FREEDOM

Faculty members are entitled to freedom in the classroom, on campus, and off campus while in the course of fulfilling their obligations as University faculty members. In discussing their subject, they should be careful not to introduce into their teaching controversial matter that has no relation to their subject. The intent of this statement is not to discourage what is "controversial." Controversy is at the heart of the free academic inquiry which the entire statement is designed to foster. This passage serves to underscore the need for faculty members to avoid persistently intruding material that has no relation to their subject.

Faculty members are citizens, members of a learned profession, and officers of an educational institution. When they speak or write as citizens, they should be free from institutional censorship or discipline, but their special position in the community imposes special obligations. As scholars and educational officers, they should remember that the public may judge their profession and their institution by their utterances. Hence they should at all times be accurate, should exercise appropriate restraint, should show respect for the opinions of others, and should make every effort to indicate that they are not speaking for the institution.

7.02 ACADEMIC RESPONSIBILITIES

All members of the University community are expected to relate in a professional manner. It is the responsibility of administration and faculty to ensure that members of the University community are free from being subject to abuse, threats, intimidation, bullying, discrimination or unprofessional behavior. The definition of a safe working environment (see Section 6.022) shall include ethical and professional standards as defined (Section 12.02) and non-discrimination (Section 2.12). Similarly, each faculty member is expected to participate in the work of the department and of the institution.

7.02.01 COURSE OUTLINE/SYLLABUS

The general content of a course or academic program must be described with reasonable accuracy in catalogs and other documents available to students. Instructors must state in writing (which may include writing available online) the course content and objectives. This material must be made available to the students by the second class meeting.

7.02.02 COURSE EXPECTATIONS

Faculty are expected to teach classes in accordance with official descriptions and meet classes in accordance with published schedules at on-campus locations, off-campus locations germane to the subject matter, or at other locations. No classes will be taught off-campus or unscheduled locations without prior approval of the department head and dean.

(A) Classroom Behavior

Instructors may establish reasonable rules for classroom behavior, in addition to those in the Student Conduct Code. Such rules shall be articulated as part of the written course materials provided to the students.

(B) Collaboration Among Students

Instructors are encouraged to provide collaborative learning opportunities but must state in writing the limits of assistance permitted between and among students in a course assignment.

(C) Instruction Responsibilities

Instructors may establish rules for attendance and make-up exams and must state these in writing. Instructors must be prompt in meeting their scheduled classes, be available for appointments with students at designated times, be well prepared for classes, and be fair and prompt in grading class assignments and tests. The scheduled final examination period must be used for final examinations in the class or other instruction.

7.02.03 PERSONAL INFORMATION ABOUT STUDENTS

Factors such as race, creed, color, religion, sex, age, national origin, disability, political beliefs or personal relationships must not be considered in matters of academic evaluation, academic assignments, or classroom procedures. If an instructor learns personal information about the student (religious and political views, sexual orientation, etc.) during the progress of the course, he or she must not share such information with the other students, except with permission of the student.

Additionally, all University employees—both faculty and staff—must abide by the Family Educational Rights and Privacy Act of 1974 (FERPA) which affords students certain rights with respect to their education records.

7.02.04 OFFICE HOURS

Instructors are required to make time available for student conferences through regularly scheduled

office hours. Office hours should be convenient for both students and the instructor with the opportunity provided for prearranged appointments. Available office hours will be communicated to students in writing.

7.02.05 ABSENCE FROM CLASS

In case of illness or emergency, the faculty member shall notify the department and arrangements should be made to have another staff member instruct the class or promptly notify students of cancellation. Classes may not be canceled for the convenience of the instructor. When an instructor knows in advance that he or she will miss a class, arrangements must be made to have the work of the class continue, either by arranging for a substitute instructor, by scheduling an examination for that day, or by providing some alternate work assignment for the students.

7.02.06 GRADING

Grading is the prerogative and responsibility of the instructor. Instructors must specify in writing, as part of the syllabus, the specific grading policies for the class. The assigned final grade must reflect the performance of the student in the course commensurate with the content and objectives of the course. If a student questions his or her grade, the instructor has a responsibility to discuss the matter with the student. If the instructor cannot satisfactorily resolve the matter, the student must be advised of the grading grievance procedures, see Section 20.02.

Graded examinations, papers, and other sources of evaluation are to be available to the student for inspection and discussion. If the instructor chooses to retain these materials rather than return them to students, they must be kept for a period of one year. If graded materials become the property of the student, then uncollected materials must be kept for one semester. Adjunct and part-time instructors should arrange for storage with the department in their absence. The grade records will be retained for at least one year to provide the opportunity for review and resolution of grade disputes.

7.02.07 INSTRUCTION COMPLAINT PROCEDURES

Students who have complaints about instructors who have failed to meet the instructional responsibilities set forth in Sections 7.02.01-7.02.06 may submit an Instruction Complaint Form to the instructor's Department Head.

The complaint must be presented in writing to the Department Head or Director no later than the fifteenth day of University instruction of the following term. The Department Head will address the matters raised in the complaint with the instructor and will advise the student of his or her determination regarding the complaint within ten (10) working days.

If the Department Head fails to act or the student is dissatisfied with the Department Head's action, the student may forward the complaint to the Dean of the College within five (5) working days of receipt of the Department Head's determination. The Dean will submit a written decision to the student within ten (10) working days of the receipt of the appeal. The Dean's decision is the final decision of the University.

7.03 WORKLOAD

The assignment of faculty responsibilities is a shared function of the departments, colleges or units, and the central University administration.

The faculty and department head in each department will develop written workload expectations for the department. The dean and Provost will review the proposed workload expectations taking into account the department's level of activity in the degree programs it offers and the role and scope

documents of the departments and college.

In determining the relative emphasis that a given department would place upon undergraduate programs, graduate programs, research and creative work, and service/outreach, consideration should also be given to the scholarly and creative productivity of the faculty, including externally-funded research, the size of the graduate program(s), and the expectations for service and outreach.

The instructional portion of the workload must be sufficient to meet programmatic needs as determined by the dean and department head in consultation with the faculty. While it is not expected that the teaching portion of workloads be identical within and among units, assignments must be made relative to the total activity of faculty and reflective of total activity of the department (including research/scholarship/creative activity and service). One factor in determining appropriate workload assignments is the workload assignments of faculty in comparable disciplines in comparable peer institutions.

It is understood by the parties that workload expectations must be flexible enough to allow for unanticipated needs and unique challenges that may be presented from time to time.

Deans and department heads are responsible for making individual faculty teaching assignments from semester to semester in a manner consistent with the department workload expectations and this section. All faculty members will receive a Letter of Hire/Faculty Role Statement [See Section 8.02] that specifies the percentage commitments for teaching, research, creative activities as well as service and outreach. The percentages can be changed if there is mutual agreement between the faculty member and his/her Department Head, Dean and Provost.

7.03.01 WORKLOAD APPEAL

Workload assignments described in the preceding provision (titled "WORKLOAD") may be appealed to a workload appeals committee composed of two tenured or tenure-track faculty, two academic administrators, and one at-large member serving staggered four-year terms. The AFMSU shall appoint the two faculty members, the Administration shall appoint the administrators, and the foregoing four members shall select unanimously the fifth member. The procedural rules of the committee shall be as follows:

The dean, or department head, and faculty member shall make formal proposals concerning the assignment of workload to the committee. The committee will be charged with resolving the differences. Such a resolution may include selecting one of the formal proposals or a compromise assignment. In making its decision, the committee will attempt to balance the following standards:

- (A) Demonstrated need for the assignment, according to departmental, college/school, or University demands, or University-wide productivity guidelines.
- (B) Conformity of the assignment with equitable distribution of teaching, research, and service loads within the academic unit.
- (C) Conformity of the assignment with provisions of the collective bargaining agreement.

The committee shall submit its recommendation to the Provost for a decision. The Provost's decision shall focus solely on the above listed standards. The Provost's decision can be grieved pursuant to the grievance and arbitration provision of the collective bargaining agreement only if it is in conflict with a four-to-one or five-to-zero vote of the committee in favor of the faculty member.

ARTICLE 8: PROBATIONARY AND TENURED APPOINTMENTS

8.01 APPOINTMENT OF TENURABLE FACULTY

8.01.01 TENURABLE APPOINTMENTS

A tenurable appointment is an appointment to a faculty position that may lead to an award of tenure as provided in Section 9.05. Tenurable appointments shall be made at the rank of assistant professor, associate professor, or professor. The tenurable appointment is that of probationary status. The appointee remains in probationary status until the appointment is terminated or tenured status is awarded. Unless an individual contract expressly provides to the contrary, the contract term for all tenurable appointees shall be the academic year. Regardless of the term of any individual contract, no such person has, or shall acquire, a right to reappointment for more than an academic year.

8.01.02 PROBATIONARY APPOINTMENTS

The total time period of full-time service prior to the acquisition of continuous tenure shall normally not exceed seven academic years, which may include up to three years of full-time service in tenurable ranks at accredited, United States four-year institutions of higher education (or equivalent international institutions of higher education) if specified in the letter of hire.

Probationary faculty shall normally serve four academic years of full-time service at the campus before the award of continuous tenure. Exceptionally meritorious cases may be brought earlier to the Board of Regents if reviewed as specified in Section 9.05.06 and recommended by the Provost and President. Time spent on authorized leave of absence from the campus will not count as probationary period service, unless the faculty member and the President or his or her designee agree to the contrary, in writing, at the time leave is granted.

8.01.03 REAPPOINTMENT AND NON-REAPPOINTMENT OF PROBATIONARY FACULTY

- (A) A tenurable appointee with probationary status (hereinafter referred to as a probationary appointee) has the right to serve the specified term of the appointment and may not be discharged without cause during that term.
- (B) Reappointment of probationary appointees shall be at the discretion of the Employer. Written notice of non-renewal of a probationary appointee shall be mailed or given by the President or his or her designee by March 1 of the first year of service, by December 15 of the second year of service, and by June 30 prior to the final year of appointment in the third or later years of service.
- (C) Failure to provide a probationary appointee with the required notice period shall not result in automatic reappointment or create any right for an additional term. The Employer shall have the option of providing employment or severance pay in lieu of any portion or all of the notice to which the employee is entitled, so long as the extension of employment or severance pay is commensurate with the notice to which the employee is otherwise entitled.

8.02 LETTER OF HIRE/FACULTY ROLE STATEMENT

The letter of hire identifies the instructional or professional practice expectations of the faculty member's appointment and sets the initial Role Statement for the faculty member. A faculty member's role statement identifies the broad responsibilities he or she performs in furtherance of the

mission of the department.

The University expects that a faculty member's role will evolve over time as the needs and goals of the department and the faculty member change. Role statements are based on the faculty member's initial letter of hire and may be revised with the written agreement of the department head, dean, and Provost, after negotiation with the faculty member. If the faculty member is dissatisfied with the change in role statement, he or she may appeal to the workload appeals committee.

The faculty member receives specific assignments for each contract term and is expected to perform the duties and responsibilities of the assignment. Annual reviews evaluate the faculty member's success in meeting duties and assignments identified in the letter of hire or role statement.

ARTICLE 9: ANNUAL, RETENTION, TENURE & PROMOTION, AND POST-TENURE REVIEW

9.01 DEFINITIONS

"Department Head" means the head/director of the academic unit in which a faculty member's locus of tenure resides. If a faculty member's locus of tenure resides in a college rather than a department, the academic department head is the academic administrator of the college who conducts annual reviews of the faculty. "Letter of Hire" means the initial letter offering a tenurable position to an employee. The letter of hire is intended as a temporary contract for the period from the date of hire until the issuance of the MUS contract. The letter of hire specifies the initial terms, conditions, and expectations of the position.

"Teaching" is a form of scholarship that fosters critical and ethical thinking and problem solving. It develops creativity, improves communication skills and promotes citizenship and professional competency. It requires a command of one's subject matter, continuous growth in the subject field, and an ability to create and maintain instructional environments to promote student learning. It includes, but is not limited to, the following activities: class preparation; curriculum preparation; scheduled and unscheduled instruction in classes, seminars, and workshops, both on and off campus, informal meetings, help sessions, individual instruction and office hours; designing and or teaching distance delivered courses; laboratory and studio or clinical-based teaching and training; pedagogical innovation – including the incorporation of new technologies and approaches to learning and assessment, course and curriculum design and development; development of teaching materials, documented study of curricular and pedagogical issues – and incorporation of this information into the classrooms, pedagogically-oriented research, contributions to professional societies and organizations that seek to improve teaching, thesis and professional project assistance and participation in the presentation and defense of theses and projects; grading and assessment of student work; academic and career advising of undergraduate and graduate students; supervision of student teachers, teaching and research assistants, professional interns, and volunteer instructors; and, for library and Extension faculty, any tasks that contribute to the overall academic enterprise.

"Creative Activity" is a form of scholarship that generates new aesthetic experiences through composition, design, production, direction, performance, exhibition, synthesis, or discovery and involves the presentation of that experience. This work includes creating new works of art, film, theater, music, and architecture; public performance and exhibiting creative works.

"Research" is a form of scholarship that involves discovery, application and/or integration of new knowledge and the dissemination of that knowledge. This work includes conducting specific research projects; supervising research staff and postdoctoral associates; securing and administering grants and contracts; writing/editing books, articles, and other research-based materials representing one's

original or collaborative research; developing new clinical practice models, presentations at scholarly conferences.

"Service" assists individuals or organizations in solving problems through consultation and information transfer. Service activities fall into three categories: professional service such as holding office in a professional society, serving as an editor on an editorial board, and reviewing manuscripts for professional journals; public service which means providing service within one's professional discipline to the general public rather than students, the institution or the profession; and University service which facilitates the effective operation of the institution.

"Department" means recognized departments/schools within a college or, in colleges without departments, the appropriate equivalent.

"Faculty with Instructional Expectations" means tenurable faculty who have responsibilities in each area of teaching, research/creative activity, and service. "Faculty with Professional Practice Expectations" means tenurable faculty who have responsibilities in any sub-set of the areas of teaching, research/creative activity, or outreach service.

"Role Statement" means the general percentage of teaching, research and service assigned to a faculty member. Administrative duties that do not clearly fall within teaching, research and service will be separately denominated.

"RSCSP" means Role, Scope, Criteria, Standards and Procedures.

9.02 TYPES OF REVIEW

Evaluation of faculty members at is a continuing process. Several types of review take place at specific times in the career of a faculty member:

- (A) Annual Review, which is conducted in the Spring semester and based upon the previous calendar year's activities.
- (B) Third Year (Retention) Review, which is conducted in the Fall semester of the faculty member's third year of appointment in a tenurable position and must be based upon no fewer than three (3) preceding semesters' activities.
- (C) Tenure Review, which commences in the Fall semester of the faculty member's sixth year of full-time service in a tenurable position. The award of tenure automatically advances the candidate to the rank of Associate Professor, unless that rank has been previously awarded.
- (D) Promotion Review, which is conducted simultaneously with tenure review if promotion to Associate Professor has not previously been awarded or is conducted at the request of the faculty member, the department head, or department review committee. Promotion is normally awarded after the completion of no fewer than five (5) years in academic rank.
- (E) Post Tenure Review, which is conducted when a faculty member has two consecutive annual reviews that are rated as below expectations or unacceptable.

9.03 ANNUAL REVIEW

Annual review assesses the faculty member's performance over the preceding calendar year with the major aim of improvement ("formative") and is based upon the faculty member's letter of hire, role statements, annual assignments, self-assessment, and review of the individual's performance. Reviews must be completed by April 10 or the date specified by the Provost. The annual review with

ratings and any written appeals to the review shall be included in the candidate's personnel file.

Third year, tenure and promotion reviews are summative reviews based upon cumulative performance in each area (teaching, research/creative activity, and service) over the total period preceding review. In contrast, annual reviews are a formative process intended to assess the faculty member's performance towards goals, negotiated with the department head within a year. Thus, a record of having met performance expectations as indicated by Annual Reviews does not necessarily guarantee the candidate has assembled and demonstrated a cumulative record that meets the standards for retention, tenure or promotion.

9.03.01 PROCEDURES FOR CONDUCTING ANNUAL REVIEWS

The following procedures should be used in conducting annual reviews:

- (A) The faculty member and the department head and/or department assessment committee annually review the faculty member's performance relative to the faculty member's role and responsibilities. Reviews are expected to recognize the requirements and expectations of the position and the proportionate time and resources officially allocated to particular activities. Student assessment data are appropriate for use in annual reviews.
- (B) The department head and/or department assessment committee rates the performance of each faculty member and submits the rating to the college dean.
- (C) The faculty member must be provided written notice of the rating that is communicated to the dean.
- (D) A faculty member who disagrees with an annual review or rating may appeal by submitting a rationale for his or her disagreement and forwarding it to the college dean. The rationale must be filed with the dean within ten (10) days of the receipt of the rating. The dean shall consider the appeal and assign a performance rating. The dean shall notify the faculty member, in writing, of the decision regarding the appeal within ten (10) days of receipt of the request.
- (E) Copies of all annual reviews and the performance ratings of each faculty member shall be maintained in the faculty member's personnel file in the department. These files shall be kept confidential and maintained in conformity with Section 6.066 of this agreement.

9.04 RETENTION

The University-wide criteria for retention of probationary faculty members are:

- (A) demonstrated and sustained effectiveness in the performance of their responsibilities,
- (B) demonstrated potential for continuing effectiveness, and
- (C) demonstrated ability to attain the standards for tenure and promotion by the time of the tenure review, as demonstrated by a clear progression of accomplishment.

A candidate for retention is subject to the RSCSP document in effect at the date of hire.

9.05 TENURE

The University-wide criteria for the award of tenure to faculty with instructional expectations are:

- (A) a terminal degree appropriate to the field or department,

- (B) a record of demonstrated and sustained effectiveness in each of the three areas of teaching, research/creative activity and service, appropriate to the assignment as set forth in the letter of hire and role statements, and
- (C) demonstrated accomplishment in teaching and/or research/creative activity or, for faculty with professional practice expectations, demonstrated accomplishment in at least one of the areas of teaching, research/creative activity or service, appropriate to responsibilities of the assignment.

A candidate for tenure will be subject to the RSCSP document in effect when retention was conferred or the document in effect at the time of tenure review. The candidate shall indicate in writing the document by which he or she will be reviewed when the dossier is submitted.

9.05.01 TENURE REVIEW TIMELINES

Normally, faculty members will be reviewed for tenure in their sixth year (or equivalent year if credited for prior service) of full-time service in a tenurable position. In exceptionally meritorious cases, a faculty member may seek tenure earlier by providing written notification to his or her department head and submission of his or her materials for tenure. If supported by the University's promotion and tenure process and recommended by the Provost, the faculty member will be forwarded for approval to the Board of Regents.

9.05.02 CREDIT FOR PRIOR SERVICE

Normally, no more than three (3) years of full-time service at another institution may be credited toward determining the sixth year of service. The amount of creditable prior service is determined at the time of initial appointment and must be confirmed in writing by the Provost.

9.05.03 EXTENDING THE TENURE REVIEW PERIOD

The tenure review period established at the time of hire may be extended for good cause, provided that no combination of extensions shall be granted for more than three (3) years total.

For purposes of this agreement, good cause includes authorized leave of absence from campus, birth or adoption of a child, serious illness of the candidate, administrative or special assignment given by the University or similar unanticipated circumstances that may limit the faculty member's available time to devote to teaching, research and service.

9.05.04 EXTENDING THE TENURE REVIEW PERIOD BY TAKING AN AUTHORIZED LEAVE OF ABSENCE

A (tenurable) faculty member's time spent on an authorized leave of absence from campus will not count as probationary period service, unless the faculty member and the President agree to the contrary in writing at the time the leave is granted.

For purposes of this agreement, authorized leaves of absence include any combinations of annual leave, sick leave, maternity leave, parental leave, military leave, family and medical leave and leave without pay that result in the faculty member's absence from campus for one semester or more.

9.05.05 REQUESTING EXTENSION OF THE TENURE REVIEW PERIOD

Any faculty member may request an extension of his or her tenure review date by submitting a written request to the Department Head as soon as possible after the need for extension arises. Since external letters are required for tenure, written requests for extension should be made by April 30 of

the year of before the tenure review. In cases of extreme and unforeseen emergency, written requests for extension may be made no later than one week before the date the candidate's dossier must be submitted to the primary review committee.

The extension of the tenure review date must be approved in writing by the Provost. The tenure review will be extended upon request for one year at a time, consistent with this agreement.

- (A) Extension of the tenure review date for birth or adoption of a child is available to either or both parents/domestic partners and may be granted for up to a total of one year per child not to exceed a total of two years.
- (B) Extension of the tenure review date for other purposes may not exceed two years.
- (C) Extension of the tenure review date for all reasons may not exceed three years per faculty member.

Actions that result in extending the original date of a faculty member's tenure review shall not otherwise affect or alter the criteria and standards for the tenure and promotion review.

9.05.06 TENURE RECOMMENDATION AT HIRE

In extraordinarily meritorious cases, finalists for tenurable faculty positions or administrative positions who have received tenure at a comparable university will be eligible for an Expedited Tenure Review. If the department head and dean agree that an Expedited Tenure Review is appropriate, the department head will forward the candidate's job application materials to the Primary Review Parties to determine if, in both parties' judgment, the candidate would be recommended for tenure. If the Primary Review Parties determine the candidate will be recommended for tenure, the decision will be one of record upon hire. The recommendation will be forwarded to the Provost, who will make a recommendation to the President to hire the employee with tenure, subject to the approval of the Board of Regents.

The President's recommendation will be forwarded to the Office of the Commissioner of Higher Education for consideration by the Board of Regents as soon as possible for inclusion on a Board agenda.

9.05.07 POST TENURE REVIEW

A faculty member who receives an overall annual performance rating of "Below Expectations (including BE+) or Unsatisfactory" during the annual review process [Section 9.03] will be given a remediation plan, developed by the department head in consultation with the faculty member. This plan will document the actions required to obtain at least a "meets expectations" performance rating on the following annual review.

The plan should be completed within thirty (30) days after the faculty member has received the "Below Expectations or Unsatisfactory" evaluation or denial of the faculty member's appeal, whichever is later. In cases where the parties cannot agree to the terms of the plan, the dean will resolve the disagreement.

Failure to receive at least a Meets Expectation {ME-} performance rating for two (2) consecutive years will require a post – tenure review for the purpose of determining whether the faculty member should be retained as a tenured faculty member of the University. The review will be conducted during the Fall semester following the second 'below expectations' or 'unsatisfactory' performance evaluation using the criteria and standards relevant to tenured faculty at the same rank in the department. If the faculty member does not meet the standards for a tenured faculty member of the same rank in the department, the faculty member will not be retained and the University will proceed with discharge proceedings under ARTICLE 18 of this agreement for failure to carry out the

responsibilities of a faculty member. If the faculty member is discharged, he or she may grieve the discharge under ARTICLE 19.

9.06 PROMOTION

Normally, promotion is awarded after the completion of no fewer than five (5) years of service, which is generally considered the minimum time needed to meet the standards for promotion. The standards for promotion to each rank are set forth in Section 9.06.01.

Faculty who wish to be considered for promotion should submit a formal request for consideration to the department head. Since promotion, except in cases of automatic review with tenure, is optional, a faculty member may withdraw his or her materials from further consideration at any time during the review process.

9.06.01 FACULTY RANKS

Rank of Assistant Professor.

(A) Appointments with Instructional Expectations: To be appointed as Assistant Professor, a faculty member with instructional expectations shall, at a minimum, have:

1. a terminal degree appropriate to the field or department,
1. demonstrated potential to teach at the undergraduate and/or graduate levels, and
2. qualifications to conduct research/creative activity in a specialized field.

(B) Appointments with Professional Practice Expectations: To be appointed as an Assistant Professor, a faculty member with professional practice expectations shall, at a minimum, have:

1. a terminal degree appropriate to the field or department, and
2. demonstrated potential to carry out the primary duties of his or her assignments.

Rank of Associate Professor:

A candidate of Assistant Professor rank shall be expected to be approved for tenure and promotion to Associate Professor simultaneously, unless Associate Professor rank has been previously awarded.

(A) Appointments with Instructional Expectations: To be appointed as, or promoted to Associate Professor, a faculty member with instructional expectations shall, at a minimum, have:

1. a terminal degree appropriate to the field or department,
2. a record of demonstrated and sustained effectiveness in each of the three areas of teaching, research/creative activity and service, appropriate to the assignment as set forth in the letter of hire and role statements, and
3. demonstrated accomplishment in teaching and/or research/creative activity.

(B) Appointments with Professional Practice Expectations: To be appointed as an Associate Professor, a faculty member with professional practice expectations shall, at a minimum, have:

1. a terminal degree appropriate to the field or department,

2. a record of demonstrated and sustained effectiveness in the primary responsibilities of the assignment as set forth in the letter of hire and role statements, and
3. demonstrated accomplishment in at least one of the three areas of teaching, research/creative activity, and service.

Rank of Professor

- (A) Appointments with Instructional Expectations: To be appointed as, or promoted to Professor, a faculty member with instructional expectations shall, at a minimum, have:
1. a terminal degree appropriate to the field or department,
 2. a record of demonstrated and sustained effectiveness in each of the three areas of teaching, research/creative activity, and service, appropriate to the assignment, and
 3. a record of excellence in teaching and/or research/creative activity.
- (B) Appointments with Professional Practice Expectations: To be appointed as a Professor, a faculty member with professional practice expectations shall, at a minimum, have:
1. a terminal degree appropriate to the field or department,
 2. a record of demonstrated and sustained effectiveness in the primary duties of their assignment,
 3. a record of excellence in at least one of the three areas of teaching, research/creative activity, or service as demonstrated by recognition of the outstanding nature of the candidate's contributions to the public, the discipline and/or profession from peers outside the University.

9.07 UNIVERSITY STANDARDS

As defined below, demonstrated and sustained effectiveness in all areas of a faculty member's assignment is a University-wide requirement for retention, tenure and promotion. In addition, a record of accomplishment is required for tenure and promotion to Associate Professor rank; a record of excellence is required for promotion to Professor rank.

Effectiveness

Faculty performance in teaching, research/creative activity, and service will be judged effective if it demonstrates competent execution of scholarly activities and products, in both quantity and quality.

Accomplishment:

- (A) Accomplishment in Teaching: Faculty performance in the scholarship of teaching will be judged accomplished if it:
1. demonstrates meritorious execution of scholarly activities and products related to teaching, in both quantity and quality,
 2. receives recognition from peers and colleagues as having made positive contributions to the candidate's discipline or profession, and
 3. receives recognition from former students/clientele as having made positive contributions to their education.
- (B) Accomplishment in Research/Creative Activity: Faculty performance in research/creative activity will be judged accomplished if it:

1. demonstrates meritorious execution of scholarly activities and products, in both quantity and quality, and
2. receives recognition from peers and colleagues as having made positive contributions to the candidate's discipline or profession.

Excellence:

(A) Excellence in Teaching: Faculty performance in the scholarship of teaching will be judged excellent if it:

1. demonstrates sustained superior execution of scholarly activities and products related to teaching, in both quantity and quality,
2. receives national recognition from peers and colleagues as having made significant, positive contributions to the candidate's discipline or profession, and
3. receives recognition from former students/clientele as having made significant, positive contributions to their education.

(B) Excellence in Research/Creative Activity: Faculty performance in research/creative activity will be judged excellent if it:

1. demonstrates sustained superior execution of scholarly activities and products, in both quantity and quality, and
2. receives national recognition from peers and colleagues as having made significant, positive contributions to the candidate's discipline or profession.

ARTICLE 10: ROLE, SCOPE, CRITERIA, STANDARDS AND PROCEDURES

Any review of faculty members for purposes of promotion, tenure, retention, or salary determination shall involve consideration of appropriate University Standards as well as the standards of the respective academic departments as set forth in each academic department's approved Role, Scope, Criteria, Standards and Procedures [RSCSP] Document.

The department head shall be responsible for distributing the approved RSCSP document to appropriate faculty prior to initiating the review process. Subsequent to the effective date of this agreement, if University Standards as contained herein and Department RSCSP document conflict with each other or are otherwise inconsistent with each other, the University Standards shall control all interpretations and applications.

University Standards shall be the minimum standards. Departments may impose more stringent standards. Departments must define, in the context of their discipline and work environment, the general terms included in the University Standards (e.g., terminal degree, effectiveness, accomplishment, excellence). Those definitions in turn must meet University consistency criteria established by the University Retention, Promotion and Tenure Committee [URPTC].

10.01 DEPARTMENT ROLE, SCOPE, CRITERIA, STANDARDS AND PROCEDURES FOR FACULTY REVIEW

For the purposes of this agreement, the current academic departments of the University for which department RSCSP documents for faculty review are required are as follows:

- College of Agriculture

- Departments of: Agricultural Economics & Economics, Animal & Range Sciences, Land Resources & Environmental Sciences, Plant Sciences & Plant Pathology, Immunology and Infectious Diseases and Division of Agricultural Education
- College of Arts & Architecture
 - Schools of: Architecture, Art, Film & Photography and Music
- College of Education, Human & Human Development
 - Departments of: Education, Health & Human Development
- College of Business
- College of Engineering
 - Departments of: Chemical & Biological Engineering, Civil Engineering, Computer Science, Electrical & Computer Engineering, Mechanical & Industrial Engineering
- College of Letters & Science
 - Departments of: Agricultural Economics & Economics, Cell Biology & Neuroscience, Chemistry & Biochemistry, Earth Sciences, Ecology, English, History & Philosophy, Mathematical Sciences, Microbiology, Modern Languages & Literatures, Native American Studies, Physics, Political Science, Psychology, Sociology and Anthropology
- College of Nursing
- Libraries
- College of Technology in Bozeman [Gallatin College - pending]

The above academic departments are subject to addition, deletion, or change by the Employer in accordance with provisions of ARTICLE 5 of this agreement.

10.01.01 DEVELOPMENT OF DEPARTMENT AND COLLEGE ROLE, SCOPE, CRITERIA, STANDARDS AND PROCEDURES DOCUMENTS

Each department and college shall develop and annually review a document describing its role and scope, defining its responsibilities and obligations in furtherance of the mission of the University, and setting forth the criteria, standards and procedures for review of faculty members. If the document is not updated annually, the last updated and approved document shall be effective.

The RSCSP document of the department and college defines the responsibilities of the department and guides the department in developing the criteria, standards and procedures for the review of faculty members. The role and scope statement of each college identifies how each department contributes to meeting the responsibilities of the college and forms the basis for the approval of departmental role and scope statements and for the review and approval of department criteria, standards and procedures.

Department and college criteria for retention, tenure and promotion may recognize differential staffing and allow for individual uniqueness in faculty assignments. Standards should not make all faculty perform alike, but commensurate quality must be expected for all equivalent reviews.

The criteria and standards defined in this document are the minimum acceptable standards for the University; departments and colleges are expected to develop criteria and standards based on, and no less rigorous than, those described herein.

Role, scope, criteria, standards and procedures documents shall be approved by the department faculty, the department head serving as the primary administrator of the academic department, the college review committee, the college dean, the URPTC, and the Provost. If two of these entities cannot agree on a document, the URPTC will determine the appropriate resolution of the conflict.

10.01.02 CONTENTS OF DEPARTMENT AND COLLEGE DOCUMENTS

The criteria, standards and procedures documents of the department and college shall, at a minimum, contain the following information, as appropriate:

- (A) The criteria and standards used to assess a faculty member's contributions to the department and evaluate their performance (effectiveness, excellence, accomplishment) in their assigned responsibilities and in teaching, research/creative activity, and service, according to the type and level of review.
- (B) Any quantitative and qualitative expectations in terms of job performance, teaching, research/creative activity, and/or service.
- (C) The procedures used to select the membership of review committees.
- (D) The department's designation as to which courses and presentations are to be evaluated using student evaluation forms and the evaluation instruments to be used.
- (E) A description of the methods, in addition to student evaluations, to be used to obtain formal, in-depth assessment of a faculty member's teaching performance. University guidelines do not require an in-depth assessment of teaching for third-year (retention) reviews. However, college or department guidelines may require such an assessment.
- (F) The type of materials accepted or required in the documentation of research and creative activities and of outreach and public service.
- (G) The dates and times of review.
- (H) The procedures for obtaining outside peer reviews and soliciting internal letters of support/evaluation. The University guidelines do not require external peer reviews for third-year (retention) reviews. However, college or department guidelines may require external reviews.
- (I) The methods for designating and handling confidential materials.

10.02 UNIVERSITY ROLE, SCOPE, CRITERIA, STANDARDS AND PROCEDURES DOCUMENTS COMMITTEE

Members of the URPTC who have served their term will be asked to serve an additional year on the RSCSP Documents Committee. The committee will be responsible for reviewing the RSCSP Documents from each department and college to assure that the documents are consistent with Sections **Error! Reference source not found.** and 10.01.02 of this agreement. Any documents that require revisions shall be sent to the department or college with recommendations for revisions and a deadline for submission of the revised documents for approval. The RSCSP Documents Committee shall approve all documents on behalf of the URPTC and forward to the Provost for final approval.

Any department that proposes a change to the RSCSP document must submit the proposed change to the faculty, department head, dean, RSCSP Committee and Provost for approval before the document can be used in a review of a faculty member.

ARTICLE 11: RETENTION, PROMOTION, AND TENURE REVIEW PROCEDURES

11.01 RESPONSIBILITY OF THE CANDIDATE TO SUBMIT DOSSIER

The candidate is responsible for preparing the dossier and making her or his case for retention, tenure, and/or promotion. Each candidate shall submit her or his dossier by the date established by the Provost, dean, and department head.

The candidate who fails to submit the dossier by the established deadline forfeits his or her opportunity for review. In cases of retention or tenure, the faculty member who fails to submit a dossier shall be issued a terminal contract for the next contract term.

Candidates shall submit to the primary review committee or primary administrative reviewer, a dossier, which shall include:

- (A) A curriculum vitae listing all teaching, research/creative activities and outreach/public service activities.
- (B) A narrative self-evaluation or personal statement,
- (C) Documentation of role, assignments, and performance including the letter of hire, any subsequent role statements or reassignments, and annual reviews and ratings, and all the letters conveying administrators' and committees' recommendations from the most recent formal review (if such a review has occurred within the past 7 years).
- (D) Information as to performance and accomplishments in teaching, research/creative activity, outreach/public service, and professional development, appropriate to the assignment.
- (E) A list of persons from whom the department committee or department head may solicit evaluations and letters of support. Candidates shall not themselves solicit letters of support.

If appropriate to the assignment, the dossier shall also include a set of articles, publications, creative endeavors, or other evidence that, in the candidate's judgment, represents his or her best efforts to advance the discipline or profession. This set of materials shall be sent to external peer reviewers.

The candidate may provide supporting documentation including but not limited to publications, video and audio tapes, student-teacher evaluations, and other material separate from the dossier. During the review period, this supporting documentation shall be retained by the college dean and transmitted to the URPTC upon request.

The "Cover Sheet--Candidate's Dossier," available from the office of the Provost, shall be used as the cover page of the dossier.

11.02 MANDATORY PROCEDURES AT ALL LEVELS OF REVIEW

In conducting the review, each review committee and reviewing administrator shall consider the following:

- (A) The dossier submitted by the candidate and the recommendations of each preceding level of review,
- (B) The University Standards in Section 9.07,

- (C) The previously approved role and scope, criteria and standards document of the department and college,
- (D) The letter of hire and all subsequent faculty role statements,
- (E) The candidate's annual reviews,
- (F) In cases of review for promotion and tenure, the in-depth assessment of teaching, and
- (G) In cases of review for promotion and tenure, the written evaluations of external and internal peer reviewers.

University guidelines do not require in depth teaching assessment or external peer reviews for retention reviews. However, college or department guidelines may require such an assessment and/or reviews.

No materials except required documentation specified in the role, scope, criteria, standards and procedures of the department and college may be added to or deleted from a candidate's dossier without notice to the candidate and an opportunity for the candidate to respond. Notice shall also be given to any preceding review committees and reviewing administrators and each will have an opportunity to respond

Each review committee or reviewing administrator may request further documentation from the candidate and solicit and obtain additional materials deemed necessary to make a thorough and substantive review of the candidate's qualifications.

Each review committee and reviewing administrator shall determine, to the best of its ability, whether a candidate's preceding reviews have been conducted in substantial compliance with the procedures set forth by the department, college and this agreement.

11.03 ADDITIONS TO THE DOSSIER OR RECORD

The candidate may not add to, alter, modify, delete or remove documents from his or her dossier once it has been submitted except by:

- (A) updating the status of materials in support of tenure unknown at the time the dossier was submitted,
- (B) responding to a review committee's or reviewing administrator's request for additional materials or notice that materials in addition to those required by the role, scope, criteria, standards and procedures document have been added to the dossier.

11.04 RESPONSE TO REQUESTS FOR ADDITIONAL MATERIALS

A review committee or reviewing administrator requesting that additional materials be added to a candidate's dossier shall notify the candidate of the request in writing and send copies of the request to all preceding review committees and reviewing administrators. If the request requires re-review of the candidate's dossier with the additional materials, the notice shall so specify.

Any review committee or reviewing administrator may respond to the request for additional materials in writing within five (5) days of receiving notice of the request. The responding committee or administrator shall send copies of the response to the candidate and preceding level(s) of review. Responses received within the specified time frames shall be added to the dossier and transmitted to the next level of review.

11.05 CONFLICTS OF INTEREST IN FACULTY REVIEW

No person shall participate in his/her own review; or that of any other person to whom he/she has a relationship by blood or marriage, or cohabitation, or with whom he/she is engaged in adversarial litigation or proceedings. No person shall participate in the review, even as a peer reviewer, of any person with whom he/she has joined in a business or other relationship which would reasonably be presumed to preclude objective application of professional judgment.

Allegations of conflict of interest will be filed with Labor-Management Committee within ten (10) working days of discovering such a conflict. That committee will make a recommendation to the Provost. The Provost will determine if a conflict of interest exists. The failure to timely file an allegation of conflict of interest shall prevent the later allegation of a conflict of interest during the review.

11.06 LEVELS OF REVIEW

11.06.01 PRIMARY REVIEW COMMITTEE

Each department shall establish the policies and procedures for appointing and/or electing the primary review committee. The committee shall be composed only of tenured faculty, at least a majority of whom shall be elected by departmental (or college) faculty or appointed as outlined in the RSCSP document. A department committee shall have at least twenty five percent (25%) female and/or minority representation whenever possible. The primary administrative reviewer may be present at committee meetings at the discretion of the committee. The administrator may present data that is essential to the committee's deliberations, but shall not be present when the committee votes.

The primary review committee shall review all submitted materials, provide any required materials, and solicit and obtain additional materials it deems necessary to make a fair, objective, independent, thorough and substantive review of the candidate's qualifications. The committee shall prepare its written recommendation concerning the retention, tenure, and/or promotion of each candidate. This recommendation shall include a rationale explaining the reasons for the decision, vote tally and will be forwarded to the primary administrative reviewer with a copy sent to the candidate. The recommendation becomes a permanent part of the faculty member's personnel files maintained in the department or college offices.

The meetings in which the committee discusses individual faculty reviews shall be closed to the faculty member being reviewed and to anyone else not a member of the committee

If the review results in a recommendation with any negative votes, the faculty member may submit a written response within ten (10) days of receipt of the review. The faculty member's response will be a part of the record going forward.

The candidate may also respond to peer reviews. Within three (3) working days from the date of receipt of a recommendation with any negative votes, the candidate may submit a written request to the primary administrative reviewer for a summary of all peer reviews contained in the dossier. The primary administrative reviewer shall have five (5) working days from the date of receipt of the candidate's written request to compile the summary of the peer reviews and forward it to the candidate. The summary should convey the substance of the peer review but must protect the identities of the reviewers.

11.06.02 PRIMARY ACADEMIC REVIEWER (DEPARTMENT HEAD/DEAN)

The primary administrative reviewer shall review all submitted materials, provide any required

materials, and conduct an independent and substantive review of the candidate's dossier and make recommendations regarding retention, tenure, and/or promotion. The recommendation shall include a written rationale. If the administrator's recommendation does not concur with that of the primary review committee, the administrator's rationale must explain the point(s) of difference, i.e., the reason for the non-concurrence.

The primary administrator is also responsible for:

- (A) accurately describing in the initial letter of hire, the primary duties, responsibilities and conditions of employment, including the instructional or professional practice expectations of the appointment and years of credit toward tenure, of the faculty member.
- (B) informing the faculty member of the University, college, and department role and scope, criteria and standards documents which form the basis of formal review.
- (C) ensuring that each faculty member has access to the University, college, and department documents related to annual review, retention, tenure, and promotion.
- (D) preparing role statements, after negotiation with the faculty member, that accurately describe the faculty member's current responsibilities, including any agreement regarding differential assignments which have been approved by the dean and Provost.
- (E) informing faculty members of the applicable time lines for review.
- (F) providing the primary review committee with information and materials essential to their deliberations, according to department, college and University procedures.
- (G) forwarding the candidate's dossier, including recommendation(s) and faculty response (if any), to the next administrative reviewer and sending a copy of the recommendation(s) to the candidate.
- (H) maintaining complete, accurate and up-to-date files on each faculty member, including an electronic or paper copy of any dossier submitted for formal review. Primary administrators shall ensure that external review letters have been removed from the dossier before placing it in the employee's department personnel file.

The primary administrative reviewer shall determine, to the best of her or his ability, whether the candidate's preceding reviews were conducted in substantial compliance with the procedures set forth by the department (if applicable), college and University. The primary administrative reviewer may return the candidate's materials to the primary review committee to correct any non-compliance. The primary administrative reviewer shall also conduct an independent and substantive review of the candidate's dossier and make recommendations regarding retention, tenure, and/or promotion. In cases of non-concurrence with a preceding review, the recommendation shall include a written rationale for non-concurrence.

The primary administrative reviewer shall make his/her review available to the faculty member. If the review results in a negative recommendation, the faculty member may submit a written response within ten (10) days of receipt of the department head's review. The faculty member's response will be part of the record going forward to the next level of review.

11.06.03 INTERMEDIATE REVIEW COMMITTEE

Each college that is not the primary level of review shall establish an "intermediate review committee" to consider the dossier submitted by each candidate and formulate its recommendation for retention, tenure, and/or promotion. Each college shall establish the policies and procedures by which the membership of the committee shall be established. The intermediate review committee shall be

composed only of tenured faculty, at least a majority of whom shall be elected by college faculty. The committee shall have at least 25% female and/or minority representation. If that representation is not achieved by election, the dean shall appoint such additional members as may be necessary to achieve that representation. No faculty member shall serve on the committee during the year of review of her or his own dossier.

The intermediate review committee shall review all submitted materials, provide any required materials, conduct a fair, objective, independent, and substantive review of the candidate's dossier based on department, college, and University criteria and standards and make recommendations regarding retention, tenure or promotion. The recommendation shall include a written rationale with vote tally. If the intermediate review committee's recommendation does not concur with those of the primary review committee or the primary administrative reviewer, the committee's rationale must explain the point(s) of difference, i.e., the reason for the non-concurrence.

If the review results in a recommendation with any negative votes, the faculty member may submit a written response within ten (10) days of receipt of the review. The faculty member's response will be a part of the record going forward. The college dean may be present at committee meetings, at the discretion of the committee, to present data that is essential to the committee's deliberations but shall not be present when the committee votes.

The intermediate review committee is also responsible for reviewing, making suggestions for modification, and approving of the role and scope, criteria and standards documents of the departments.

11.06.04 COLLEGE DEAN

The college dean (where not the primary administrative reviewer) is responsible for:

- (A) informing faculty members, committee members, and department heads of the applicable time lines for review.
- (B) providing the intermediate review committee with information and materials essential to their deliberations, according to college and University policies and procedures.
- (C) forwarding the candidate's dossier, with her or his recommendations and the faculty response (if any), to the URPTC and sending a copy of the written recommendation to the candidate.
- (D) conducting the election for faculty representatives to the college and URPTC.

The dean shall determine, to the best of her or his ability, whether the candidate's preceding reviews were conducted in substantial compliance with the procedures set forth by the department, college and University. The dean may send a faculty member's review materials back to the department or department head to remedy any noncompliance. The dean shall also conduct an independent and substantive review of the candidate's dossier and make recommendations regarding retention, tenure, and/or promotion. In cases of non-concurrence with a preceding review, the recommendation shall include a written rationale for non-concurrence.

The dean shall make his/her review available to the faculty member. If the review results in a negative recommendation, the faculty member may submit a written response within ten (10) days of receipt of the dean's review. The faculty member's response will be part of the record going forward to the next level of review.

11.06.05 UNIVERSITY RETENTION, PROMOTION, AND TENURE COMMITTEE

The URPTC shall be composed of the chair of the Faculty Affairs Committee of the Faculty Senate and one (1) elected representative from each of the colleges. An administrator for academic affairs, designated by the Provost, shall serve as a chair of the committee, without vote.

At least twenty-five percent (25%) of the membership of the committee shall be women and/or minorities; if this membership is not achieved by election, the Provost shall appoint such additional membership as may be necessary to achieve that representation.

- (A) Election of Members: Elected members of the URPTC serve three (3) year terms and are elected according to the calendar and procedures established by the Provost and dean of the college. Colleges may elect alternates to serve should the elected member be unable to serve. Members may not be reelected to consecutive terms.
- (B) Eligibility: Only tenured faculty at the Associate Professor or Professor rank shall be eligible for election to the URPTC. No faculty member up for review shall be a member of the Committee. No faculty member may serve as a member of a departmental or college review committee and of the University committee simultaneously.
- (C) Start of Appointment: Members assume their appointments with the beginning of Fall semester.

11.06.05.a Committee Responsibilities

- (A) The Committee reviews, makes suggestions for change, and approves all departmental and college role and scope statements, procedures, criteria, and standards related to tenure and promotion.
- (B) The Committee conducts an independent and substantive review of dossiers of all candidates subject to review.
- (C) The Committee makes and forwards to the Provost its recommendation concerning the retention, tenure and/or promotion of each faculty member reviewed. The Committee also determines, to the best of its ability, whether a candidate's preceding reviews were conducted in substantial compliance with the procedures set forth by the department, college and this Agreement.

The college representative to the Committee shall not vote when a candidate from his or her college is reviewed. The Chair of Faculty Affairs shall not vote when a candidate from his or her department is reviewed. If the Faculty Affairs Chair is from a college without constituent departments, he or she shall not vote when a candidate from his or her college is reviewed. In these instances, the representative may provide background information about the college and department but shall not express personal opinions about the candidate or the candidate's qualifications or experience.

The Committee shall determine, to the best of its ability, whether the candidate's preceding reviews were conducted in substantial compliance with the procedures set forth by the department, college and University. In the event of noncompliance with University procedures or standards, the Committee may send a faculty member's review materials back to the review level where the noncompliance first occurred to remedy any noncompliance.

The Committee shall also conduct an independent and substantive review of the candidate's dossier and make recommendations regarding retention, tenure, and/or promotion. In cases of non-concurrence with a preceding review, the recommendation shall include a written rationale for non-concurrence.

The Committee shall make its review available to the faculty member within ten (10) days of receipt of the Committee's review. If the review results in a recommendation with any negative votes, the

faculty member may submit a written response to the Chair. The Committee shall send the review forward including the faculty member's response as a part of the record.

11.06.06 PROVOST REVIEW

The Provost shall determine, to the best of her or his ability, whether the candidate's preceding reviews were conducted in substantial compliance with the procedures set forth by the department, college and University. The Provost may send a faculty member's review materials back to any review level to remedy any noncompliance.

The Provost shall also conduct an independent and substantive review of the candidate's dossier and make recommendations regarding retention, tenure, and/or promotion. In cases of non-concurrence with a preceding review, the recommendation shall include a written rationale for non-concurrence.

11.06.06.a Deadlines for Notification

The Provost shall make every reasonable effort to notify candidates of the recommendation regarding retention, tenure and promotion by the dates listed below. Failure to give notice at these times will not constitute retention, an award of tenure or promotion by default.

- (A) Notice of retention recommendation resulting from third year review shall be sent by January 15.
- (B) Notice of tenure and tenure-associated promotion recommendations shall be sent by April 15.
- (C) Notice of promotion not associated with tenure recommendations shall be sent by May 15.

11.06.07 PRESIDENT'S DECISION

The President shall determine, to the best of her or his ability, whether the candidate's preceding reviews were conducted in substantial compliance with the procedures set forth by the department, college and University. The President may send a faculty member's review materials back to any review level to remedy any noncompliance. The President may also conduct an independent and substantive review of the candidate's dossier and make recommendations regarding retention, tenure, and/or promotion.

The decision of the President shall be based on the total evaluation record and shall constitute the final institutional recommendation to the Board of Regents regarding matters of faculty retention, promotion, and tenure.

The recommendation of the President shall be forwarded to each faculty member within ten (10) days of the receipt of all recommendations.

When a faculty member is not awarded retention or tenure, he or she shall be reappointed on a terminal contract for the next academic year. Employment will terminate with the expiration of the terminal contract, even if the appeal process has not been concluded as of the date of termination. The filing of a request for appeal and any subsequent proceedings concerning retention or tenure shall not extend the date of termination.

If the President's decision results in the reversal of the non-retention or denial of tenure decision, the faculty member will be reinstated to her or his position within the University.

ARTICLE 12: ETHICAL AND PROFESSIONAL STANDARDS

12.01 DEFINITIONS

"*Consensual Romantic Relationship*" means an amorous relationship between unrelated adults to which both parties have consented.

"*Employee*" means a regularly employed faculty or staff member, part-time or academic support faculty or staff member, a student employed by any department of the University, and any other persons, including students, using facilities who are not covered by contract or agreement.

"*Inquiry*" means information gathering and initial fact-finding to determine if the allegation or apparent instance of misconduct warrants an investigation.

"*Investigator*" means the principal investigator, co-principal investigator, and any other person who is responsible for the design, conduct, or reporting of a sponsored activity. For purposes of the requirements of this section pertaining to disclosure of financial interests and sponsored activities, the term "investigator" includes the investigator's spouse and dependent children.

"*Research*" means a systemic investigation designed to develop or contribute to generalizable knowledge including, but not limited to, scientific, applied, behavioral and social-sciences research and/or any such activity for which funding is available from federal agencies.

"*Research misconduct*" means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

- (A) Fabrication is making up data or results and recording or reporting them;
- (B) Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record;
- (C) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit;
- (D) Research misconduct does not include honest error or differences of opinion.

"*Sponsored Activities*" means research, creative and educational activities that are funded by grants, contracts or other agreements administered by the University.

12.02 STANDARDS

The faculty and University Administration are responsible for assuring the highest ethical and professional standards and behavior in:

- (A) working with undergraduate and graduate students, including the elimination of racial, ethnic and sexual prejudice and harassment from the classroom and entire University community,
- (B) working with faculty and staff,
- (C) performing their contracted responsibilities, including the employment and use of graduate assistants or adjunct faculty and staff,
- (D) working with public and private agencies, organizations and businesses,

- (E) preventing conflicts of interest [12.05] and reporting work done outside the University (see Section 16.03),
- (F) conducting peer review for all faculty members,
- (G) conducting research and creative activity (see Section 12.04 for "research misconduct")
- (H) adhering to standards for biosafety, research utilizing human and animal subjects, and the use of radioactive materials,
- (I) respecting confidentiality and privacy in the use of information systems (see Section 3.05 and Computing Policies Manual),
- (J) respecting copyright and patent requirements (see Sections 15.03 and 15.04),
- (K) participating in University planning and governance

12.03 INVESTIGATIONS OF COMPLAINTS OF VIOLATIONS OF STANDARDS

Complaints of alleged breaches of these standards shall be investigated using the procedures set forth in Section 12.04, Research Misconduct, as general guidelines. The procedures may be adapted as necessary to consider a specific complaint.

12.04 RESEARCH MISCONDUCT

It is the policy of the University to require the highest ethical standards in the research of its faculty and staff; to inquire into and, if necessary, investigate and resolve promptly and fairly all instances of alleged or apparent misconduct; and, as appropriate, to comply in a timely manner with requirements for reporting cases of possible misconduct to sponsoring agencies when sponsored research funds are involved. Misconduct in research shall be considered a breach of contract between the employee and the University.

This policy applies to any research activity undertaken by faculty or staff. Cases of research/academic misconduct involving students are subject to the disciplinary rules governing students, but may be reviewed, where appropriate, under this policy.

In addition to the research itself, this policy applies to:

- (A) applications or proposals for extramural or intramural funding of research, research training or activities related to research, or training, such as the dissemination of research information;
- (B) plagiarism of records produced in the course of research or activities related to that research or training.

This policy addresses only research misconduct as defined herein. Other misconduct such as reckless disregard for accuracy, failure to supervise, and other serious deficiencies but not within the definition of research misconduct may constitute breaches of Section 12.02, Ethical and Professional Standards and shall be addressed by the cognizant dean, Provost, or Vice President as provided in that Section.

For purposes of the research misconduct provisions, the definitions found in 45 CFR Parts 50 and 93 shall apply in addition to the definitions herein. To the extent the definitions are restricted to U.S. Public Health Service [PHS] research, the University hereby adopts the definitions to apply to all research misconduct regardless of funding source. ORI, as used herein, means the U.S. Department of Health and Human Services Office of Research Integrity.

12.04.01 REPORTING THE ALLEGATION

An allegation of misconduct in research, defined as a disclosure of possible research misconduct through any means of communication, should be made to the appropriate department head or dean who shall report the allegation to the Vice President for Research, Creativity & Technology Transfer (VPR). Promptly after receiving a disclosure of possible research misconduct through any means of communication, the VPR shall assess the allegation to determine if an inquiry (i.e., an initial review of the evidence to determine if the criteria for conducting an investigation have been met) will be conducted. An inquiry is warranted if:

- (A) it meets the definition of research misconduct;
- (B) it involves either the research, applications for research support, or research records; and,
- (C) the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

12.04.02 INQUIRY – APPOINTING THE INQUIRER

The VPR shall appoint an inquirer who shall complete the inquiry within sixty (60) calendar days of its initiation, unless circumstances warrant a longer period. The inquirer shall conduct the review, prepare the inquiry report, solicit comments on the report from the respondent, consider the respondent's comments, and issue the final inquiry report within the 60 day period. If the inquiry takes longer than 60 days to complete, the inquirer shall include documentation of the reasons for the delay in the inquiry record.

The purpose of the inquiry is to determine whether there is reasonable cause to believe misconduct occurred and whether a formal investigation is recommended.

Upon appointment, the inquirer will receive a briefing from the VPR and the University Legal Counsel on the relevant misconduct guidelines, federal regulations, and the legal parameters of the inquiry.

12.04.03 THE INQUIRY REPORT

The inquiry report shall contain the following information:

- (A) The name and position of the respondent(s);
- (B) A description of the allegations of research misconduct;
- (C) The federal or sponsor support involved, including, for example, grant numbers, grant applications, contracts, and publications listing support;
- (D) The basis for recommending that the alleged actions warrant an investigation; and
- (E) Any comments on the report by the respondent or the complainant.

12.04.04 THE INQUIRY DETERMINATION

The VPR will make a written determination of whether an investigation is warranted. In making his or her determination, the VPR may take into account the information provided by the Inquirer and any oral or written statements made by the person accused of misconduct. The VPR may choose not to proceed with an Investigation if there is no reason to believe the misconduct occurred or if the person accused of misconduct admits the misconduct occurred and it is determined that an investigation will not likely uncover further information necessary to reach a final conclusion regarding the allegation.

The VPR shall notify the person who reported the alleged misconduct and the person accused of

misconduct of his or her determination and recommendations in writing. If an investigation is to be conducted, the notification shall include a clear statement of the allegations to be investigated.

If a decision not to investigate is rendered, the complainant may appeal to the President who will render the final decision of the University.

The VPR will notify granting agencies supporting the research/creative activity under investigation as may be required by the granting agency, state or federal law or regulations.

12.04.05 THE INVESTIGATION – APPOINTMENT OF THE INVESTIGATOR(S)

If the inquiry results in a determination that an investigation is warranted, the VPR shall appoint investigators to conduct the investigation. The investigator may be either:

- (A) a group of institutions, professional organizations, or mixed groups which will conduct research misconduct proceedings for other institutions, or
- (B) other person(s) that the VPR reasonably determines to be qualified by practice or experience to conduct research misconduct proceedings.

12.04.06 INVESTIGATION TIMELINES

The appointed Investigator(s) shall begin the investigation within thirty (30) calendar days of the VPR's written determination. On or before the date on which the investigation begins, the VPR will send the inquiry report and the written determination to the Office of Research Integrity [ORI], or other federal agency, if required under federal regulations.

The Investigator(s) shall use best efforts to complete the investigation within one hundred twenty (120) calendar days of the date on which it began, including conducting the investigation, preparing the report of findings, providing the draft report for comment, and sending the final report to ORI, if applicable.

If it becomes apparent that the investigation cannot be completed within that period, the VPR shall promptly request an extension in writing from Office of Research Integrity, if applicable. This time period does not apply to separate personnel actions that may be undertaken as a result of the investigation.

12.04.07 CONDUCT OF THE INVESTIGATION

In conducting all investigations, the Investigator(s) shall:

- (A) use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all reasonably available research records and evidence relevant to reaching a decision on the merits of the allegations;
- (B) interview each respondent, complainant, and any other available person who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the respondent; record or transcribe each interview; provide the recording or transcript to the interviewee for correction; and include the recording or transcript in the record of investigation;
- (C) pursue diligently all significant issues and leads discovered that are determined relevant to the investigation by the investigator(s), including any evidence of additional instances of possible research misconduct, and continue the investigation to completion; and

- (D) otherwise comply with the requirements for conducting an investigation in the federal regulations that may apply based upon the funding source for the research.

12.04.08 REQUIREMENTS FOR FINDINGS OF RESEARCH MISCONDUCT

A finding of research misconduct under this policy requires that:

- (A) there is a significant departure from accepted practices of the relevant research community;
and
- (B) the misconduct was committed intentionally, knowingly, or recklessly; and
- (C) the allegation of misconduct is proven by a preponderance of the evidence.

12.04.09 INVESTIGATION REPORT

The Investigator(s) shall prepare the draft and final institutional investigation reports in writing and provide the draft report for comment by respondent in a manner consistent with applicable federal regulations. The final investigation report shall:

- (A) describe the nature of the allegations of research misconduct;
- (B) describe and document the federal, state or private financial support, including, any grant numbers, grant applications, contracts, and publications listing federal, state or sponsor support;
- (C) describe the specific allegations of research misconduct considered in the investigation;
- (D) include the institutional policies and procedures under which the investigation was conducted;
- (E) identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody, but not reviewed. The report should also describe any relevant records and evidence not taken into custody and explain why.
- (F) provide a finding as to whether research misconduct did or did not occur for each separate allegation of research misconduct identified during the investigation, and if misconduct was found,
 1. identify it as falsification, fabrication, and/or plagiarism and whether it was intentional, knowing, or in reckless disregard,
 2. summarize the facts and the analysis supporting the conclusion and consider the merits of any reasonable explanation by the respondent and any evidence that rebuts the respondent's explanations,
 3. identify the specific federal, state or other grant support for the research;
 4. identify any publications that need correction or retraction;
 5. identify the person(s) responsible for the misconduct, and
 6. list any current support or known applications or proposals for support that the respondent(s) has pending with federal, state or private agencies; and
- (G) include and consider any comments made by the respondent and complainant on the draft investigation report.

Upon receipt of the report, the VPR shall determine whether the institution accepts the findings in the report. If any finding is not accepted, the finding and the reasons why it is not accepted shall be

identified and included in a written report by the VPR.

The University shall maintain and provide to ORI upon request all relevant research records and records of the research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

12.04.10 CONFIDENTIALITY

To the extent allowed by law, the University shall maintain the identity of respondents and complainants securely and confidentially and shall not disclose any identifying information, except to: (1) those who need to know in order to carry out a thorough, competent, objective and fair research misconduct proceeding; and (2) the Office of Research Integrity, if applicable, as it conducts its review of the research misconduct proceeding and any subsequent proceedings.

To the extent allowed by law, any information obtained during the research misconduct proceeding that might identify the subjects of research shall be maintained securely and confidentially and shall not be disclosed, except to those who need to know in order to carry out the research misconduct proceeding.

In conducting any inquiry or investigation into allegations of misconduct, the University shall protect, to the maximum extent possible under the law, the privacy of individuals who, in good faith, report apparent misconduct.

12.04.11 RESTORING REPUTATIONS

Respondents

MSU shall undertake all reasonable, practical, and appropriate efforts to protect and restore the reputation of any person alleged to have engaged in research misconduct, but against whom no finding of research misconduct was made, if that person or his/her legal counsel or other authorized representative requests that the University do so.

Complainants, Witnesses, and Committee Members

The University shall undertake all reasonable and practical efforts to protect and restore the position and reputation of any good faith complainant, witness, or committee member and to counter potential or actual retaliation against those complainants, witnesses and committee members.

12.04.12 APPOINTMENT OF IMPARTIAL INQUIRER OR INVESTIGATOR

The University shall take all reasonable steps to ensure an impartial and unbiased research misconduct proceeding to the maximum extent practicable. The University shall select those conducting the inquiry or investigation on the basis of scientific expertise that is pertinent to the matter and, prior to selection, the VPR or designee shall screen them for any unresolved personal, professional, or financial conflicts of interest with the respondent, complainant, potential witnesses, or others involved in the matter. Any such conflict that a reasonable person would consider to demonstrate potential bias shall disqualify the individual from selection.

A respondent may request disqualification of an inquirer or investigator upon filing of a timely and sufficient affidavit of personal bias, lack of independence, or other basis for disqualification. The affidavit must state the facts and the reasons for the belief that the inquirer or investigator should be disqualified and must be filed not less than five (5) days from the date the respondent receives notice of appointment of the inquirer or investigator. The VPR shall determine the matter and submit a written decision on the request for disqualification.

12.04.13 NOTICE TO RESPONDENT

During the research misconduct proceeding, the University will provide the following notifications to all identified respondents:

(A) Initiation of Inquiry

Prior to or at the beginning of the inquiry, the VPR shall provide the respondent(s) with written notification of the inquiry and contemporaneously sequester all research records and other evidence needed to conduct the research misconduct proceeding. If the inquiry subsequently identifies additional respondents, they shall be promptly notified in writing.

(B) Comment on Inquiry Report

The inquirer shall provide the respondent(s) an opportunity to comment on the inquiry report in a timely fashion so that any comments can be attached to the report.

(C) Results of the Inquiry

The inquirer shall notify the respondent(s) of the results of the inquiry and attach to the notification copies of the inquiry report and these institutional policies and procedures for the handling of research misconduct allegations.

(D) Initiation of Investigation

Within a reasonable time after the VPR's determination that an investigation is warranted, but not later than thirty (30) calendar days after that determination, the VPR or designee shall notify the respondent(s) in writing of the allegations to be investigated. The VPR or designee shall give respondent(s) written notice of any new allegations within a reasonable time after determining to pursue allegations not addressed in the inquiry or in the initial notice of the investigation.

(E) Scheduling of Interview

The Investigator(s) will notify the respondent sufficiently in advance of the scheduling of his/her interview in the investigation so that the respondent may prepare for the interview and arrange for the attendance of legal counsel, if the respondent wishes.

(F) Comment on Draft Investigation Report

The Investigator(s) shall give the respondent(s) a copy of the draft investigation report, and concurrently, a copy of, or supervised access to, the evidence on which the report is based and notify the respondent(s) that any comments must be submitted within thirty (30) days of the date on which he/she received the draft report. The Investigator(s) shall ensure that these comments are included and considered in the final investigation report.

(G) Appeal

Respondent shall be advised of his/her right to appeal the findings of the investigative report. The respondent may appeal the findings of the Investigative Report to the VPR by filing a written appeal with the VPR within ten (10) days of receipt of the report. The grounds for appeal would be that the report is not supported by the evidence, the policies were misapplied to the evidence or that new evidence that was not available to the Investigator should be considered in reaching a final decision. The respondent shall be given timely notification of the appeal process. Any appeal process must be completed within one hundred twenty (120) days unless the institution has requested and received an extension from ORI. This 120 day deadline does not apply to institutional termination hearings that are conducted separately from the appeal process.

After appeal, any disciplinary action that might be proposed to be taken against a member of the

bargaining unit as a result of the investigation will be subject to the requirements in ARTICLE 18 of this agreement.

12.04.14 MAINTENANCE AND CUSTODY OF RESEARCH RECORDS AND EVIDENCE

The University shall take the following specific steps to obtain, secure, and maintain the research records and evidence pertinent to the research misconduct proceeding:

- (A) Either before or when the VPR notifies the respondent of the allegation, the University shall promptly take all reasonable and practical steps to obtain custody of all research records and evidence needed to conduct the research misconduct proceeding, inventory those materials, and sequester them in a secure manner, except in those cases where the research records or evidence encompass scientific instruments shared by a number of users. Custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.
- (B) Where appropriate, give the respondent copies of, or reasonable, supervised access to the research records.
- (C) Undertake all reasonable and practical efforts to take custody of additional research records and evidence discovered during the course of the research misconduct proceeding, including at the inquiry and investigation stages, or if new allegations arise, subject to the exception for scientific instruments in (A) above.
- (D) The University shall maintain all records of the research misconduct proceeding, as defined in 42 CFR Section 93.317(a), for seven (7) years after completion of the proceeding, or any ORI or HHS proceeding under Subparts 0 and E of 42 CFR Part 93 (copies attached), whichever is later, unless the University transferred custody of the records and evidence to HHS, or ORI has advised us that the University no longer needs to retain the records.

12.04.15 INTERIM PROTECTIVE ACTIONS

At any time during a research misconduct proceeding, the University shall take appropriate interim actions to protect public health, federal funds and equipment, and the integrity of the supported research process.

The necessary actions will vary according to the circumstances of each case, but examples of actions that may be necessary include delaying the publication of research results, providing for closer supervision of one or more researchers, requiring approvals for actions relating to the research that did not previously require approval, auditing pertinent records, or taking steps to contact other institutions that may be affected by an allegation of research misconduct.

12.04.16 NOTIFICATION AND COORDINATION WITH ORI

If the research misconduct allegations involve PHS research, the VPR or designee shall provide ORI with the written finding by the Vice President and a copy of the inquiry report containing the information required by 42 CFR Section 93.309(a).

Upon a request from ORI, the University shall promptly send: (1) a copy of institutional policies and procedures under which the inquiry was conducted; (2) the research records and evidence reviewed, transcripts or recordings of any interviews, and copies of all relevant documents; and (3) the charges for the investigation to consider.

The VPR or designee shall promptly provide to ORI after the investigation:

- (A) A copy of the investigation report, all attachments, and any appeals;
- (B) A statement of whether the institution found research misconduct and, if so, who committed it;
- (C) A statement of whether the institution accepts the findings in the investigation report; and
- (D) A description of any pending or completed administrative actions against the respondent.

At any time during a research misconduct proceeding the University shall notify ORI immediately if there is reason to believe that any of the following conditions exist:

- (A) Health or safety of the public is at risk, including an immediate need to protect human or animal subjects.
- (B) U.S. Department of Health and Human Services [HHS] resources or interests are threatened.
- (C) Research activities should be suspended.
- (D) There is a reasonable indication of violations of civil or criminal law.
- (E) Federal action is required to protect the interests of those involved in the research misconduct proceeding.
- (F) The University believes the research misconduct proceeding may be made public prematurely, so that HHS may take appropriate steps to safeguard evidence and protect the rights of those involved.
- (G) The University believes the research community or public should be informed.

The University will cooperate with and assist ORI and HHS, as needed, to carry out any administrative actions HHS may impose as a result of a final finding of research misconduct by HHS.

12.04.17 COOPERATION WITH ORI

The University shall cooperate fully and on a continuing basis with ORI during its oversight reviews of this institution and its research misconduct proceedings and during the process under which the respondent may contest ORI findings of research misconduct and proposed HHS administrative actions. This includes providing, as necessary to develop a complete record of relevant evidence, all witnesses, research records, and other evidence under university control or custody, or in the possession of, or accessible to, all persons that are subject to university authority.

When required by regulation, the VPR will report to ORI any proposed settlements, admissions of research misconduct, or institutional findings of misconduct that arise at any stage of a misconduct proceeding, including the allegation and inquiry stages.

12.05 CONFLICT OF INTEREST

Members of the bargaining unit are subject to the University conflict of interest policy found at http://www2.montana.edu/policy/conflict_of_interest/coi_policy_04_2008.htm

12.05.01 CONSENSUAL RELATIONS

Since a consenting romantic or sexual relationship, especially one between a teacher and a student or a supervisor and an employee, may be unethical and unprofessional, faculty, administrators, supervisors, and others in positions of authority shall take care always to maintain the highest ethical and professional standards in their interactions with students and employees.

A consensual relationship in which one party is in a position to review the work of the other or

influence the other person's opportunities is a conflict of interest and may provide grounds for a formal complaint and/or appropriate disciplinary action.

When a consensual relationship results in a conflict of interest, the faculty or staff member shall immediately disclose the conflict of interest to his or her supervisor. The supervisor and the employee shall take steps to ensure that the conflict of interest is eliminated.

ARTICLE 13: COMPENSATION

13.01 ANNUAL INCREASES

Faculty who receive an annual review evaluation of "meets expectations" or above shall receive a "normal increase."

Effective October 1, 2011, the normal salary increase for full-time equivalent faculty members shall be 1% plus \$500 (base salary) per year. New hires will not be eligible for the normal increase in the year their employment becomes effective.

Effective October 1, 2012, the normal salary increase for full-time equivalent faculty members shall be 2% plus \$500 (base salary) per year. New hires will not be eligible for the normal increase in the year their employment becomes effective.

13.02 PROMOTION

Faculty members promoted during the 2010-2011 academic year to the rank of associate professor, consistent with the promotion procedures of this contract, shall have an amount equal to \$3,000 added to their base salary effective October 1, 2011.

Faculty members promoted during the 2010-2011 academic year to the rank of professor, consistent with the promotion procedures of the contract, shall have an amount equal to \$6,000 added to their base salary effective October 1, 2011.

Faculty members promoted during the 2011-2012 academic year to the rank of associate professor, consistent with the promotion procedures of this contract, shall have an amount equal to \$3,000 added to their base salary effective October 1, 2012.

Faculty members promoted during the 2012-2013 academic year to the rank of professor, consistent with the promotion procedures of this contract, shall have an amount equal to \$6,000 added to their base salary effective October 1, 2013.

13.03 MERIT

The department head and/or department assessment committee will use the annual review for each faculty member to rank faculty to be considered for a merit increase in the department. The criteria used to make these rankings will be specified in the department's role and scope document.

The department head and/or department assessment committee will forward recommendations for merit increases to the Deans who will distribute merit increases of \$1000 per 1.0 FTE to the most meritorious among the faculty members recommended by the departments.

The following merit increase pool shall be allocated to the colleges for merit increases.

11-12 Merit increase pool – \$100,000

12-13 Merit increase pool – \$100,000

Merit increases are in addition to other salary increases provided in this contract. Merit increases awarded in the 2011-2012 academic year will be added to the faculty member's base salary effective October 1, 2013 and merit increases awarded in the 2012-2013 academic year will be added to the faculty member's base salary effective October 1, 2014.

A report of merit increases, including names, amounts, and academic units, will be provided to the AFMSU Executive Committee each September for the previous fiscal year.

13.04 OTHER ADJUSTMENTS

Flexibility is needed to respond to exceptional salary circumstances. After consultation with AFMSU, the University administration may make individual salary adjustments for faculty outside of the normal salary provisions of this article to address issues such as retention, market equity, gender/racial equity considerations and internal salary compression or inversion. Justification must accompany such adjustments, including a specific analysis of salary relationships, comparison to accepted faculty salary data (e.g., OSU) in cases of mitigating salary problems and offers of employment from another employer or other compelling evidence of marketability for retention cases.

The following pool is designated for market adjustments based upon department comparison to accepted salary data (e.g. OSU) by rank. The market adjustment will be \$1,000 per 1.0 FTE faculty member.

11-12 - \$100,000

12-13 - \$100,000

The University reserves the right to make other adjustments as outlined in this section.

13.05 ADDITIONAL COMPENSATION

Additional compensation from University controlled sources is, except for retention incentives, a temporary adjustment in salary which must be annually specified and approved in writing by the department head, the dean, and appropriate Vice President. Royalties, copyrights, and patents, as well as monetary awards, prizes, recognitions, and honors, are not considered additional compensation.

Faculty may receive additional compensation during the academic year of up to 20% of their base salary in accordance with state and federal law and regulations and University policy.

Whenever additional compensation is provided for extra work, a description of the extra work and the additional compensation shall be maintained by the faculty member's department head or other primary administrator. (An assignment or appointment for summer session duties can be used to fulfill this requirement.)

13.06 SUMMER SALARY

The University may rehire faculty members on AY contracts for specific duties during the summer. Maximum allowable summer salary (exclusive of the 20% additional compensation supplements allowed in Section 13.05) varies depending on source of funds. From all University-controlled sources, summer salary will not exceed 3/9ths of AY salary. Summer salary from State funds (e.g.,

summer session duties) will not exceed 2/9ths of AY salary, unless a greater amount is specifically authorized by the Provost.

Faculty on AY contracts may earn up to 3/9ths of their AY salary during the summer if there is sufficient external funding available, and the external sponsor(s) and the appropriate University administrators approve it. Salary will be based on the faculty member's salary rate as of April 1 of the academic year preceding the summer appointment. Faculty who receive some summer salary from State funds may also be compensated from external sources as long as the total does not exceed 3/9th of their AY salary. Funds from external sources must be identified in the direct costs of sponsored projects.

ARTICLE 14: BENEFITS

14.01 GROUP INSURANCE

Employer contributions for eligible employees of the Montana University System group insurance plan shall be equivalent to the amount provided by state statutes for the years of this agreement.

14.02 UNEMPLOYMENT INSURANCE

The Employer agrees that all employees covered under this agreement shall be covered by unemployment insurance as provided by Sections 39-51-101, et seq., MCA.

14.03 WORKERS' COMPENSATION

All faculty will be entitled to worker's compensation benefits as outlined in the MUS Worker's Compensation program.

14.04 TUITION WAIVERS

Employee and dependent tuition waivers will be administered in accordance with Board of Regents policies as provided in the policies as of November 15, 2010.

14.05 RETIREMENT SYSTEMS

Both parties will work towards equal contributions to the two retirement systems.

14.05.01 MONTANA TEACHERS' RETIREMENT SYSTEM (TRS)

Faculty who participate in the teachers' retirement system are subject to retirement provisions as outlined in Section 19-4-101, et seq., MCA.

14.05.02 UNIVERSITY SYSTEM OPTIONAL REQUIREMENT PROGRAM (TIAA-CREF)

Faculty who participate in the University System Optional Retirement Program (TIAA-CREF) are subject to the retirement provisions appropriate to their individual contracts and elected options. Authority for participation in the Optional Retirement Program is found in, Title 19, sec. 21, MCA.

ARTICLE 15: INTELLECTUAL PROPERTY

15.01 COURSE MATERIALS

Educational materials created for classroom and learning programs, including electronic media, such as syllabi, assignments, and tests, shall remain the property of the author or creator. Exceptions are: (1) those cases in which the production of such materials is a part of a sponsored program and 2) those cases in which substantial University resources were used in creating educational materials.

"Substantial University resources" includes but is not limited to provision of staff time, equipment, funds, release time from assigned duties or an allocation of resources not normally available to faculty. Academic year salaries, office, usual library resources, usual secretarial and administrative staff resources or usual computer equipment, among other things, are not regarded as constituting "substantial use of University resources."

The University makes no claim to copyright ownership for noncommissioned courseware initiated and completed by University-employed authors, but, for works within the scope of the author's University employment, will claim the royalty-free nonexclusive right to use such courseware in University programs.

15.02 ELECTRONIC COURSE MATERIALS

Any electronic course materials created or developed by faculty with the use of substantial University resources shall be considered the property of the Montana University System.

This policy applies to electronic course material whether or not it was, is or may be eligible for copyright or patent. However, faculty who develop electronic course material that is considered property of the University shall assist the University to secure and protect a patent or copyright on the material if such protection is sought by the University.

The mere communication or preservation of traditional classroom or course material in an electronic medium does not bring that material within the ambit of this policy. Rather, this policy is intended to cover material created for or designed to be used in conjunction with a course, or a part thereof, delivered by means other than personal, face-to-face interaction between the instructor and the student.

15.02.01 DIVISION OF INCOME

Generally, any net income derived from University owned electronic course materials shall be divided, 50 percent to the author(s) and 50 percent to the University. Net income, for the purposes of this policy, means gross income minus costs of development and promotion, realized from the sale or licensing of the electronic course material.

15.02.02 VARIANCE BY CONTRACT

The President may approve a contract that either reduces the University's ownership rights or reduces the University's share of net income if, in the President's judgment, the contract is in the best interests of the University. If the University's ownership rights are reduced or the University's share of net income is reduced to below 50%, the President shall inform the commissioner of the contract and shall indicate the reason for approving it.

15.02.03 RELINQUISHMENT OF UNIVERSITY RIGHTS

The University may for fair value and upon the approval of the President, relinquish its rights to electronic course material to the author(s) or any other person or entity. Such a right may be relinquished for no consideration only if the President concludes that there is not a likelihood of the campus benefiting from the retention of the right in question.

Any agreement relinquishing such rights shall retain for the University a perpetual, royalty free right to use, reproduce, and revise the material without restriction for the University's own educational or research purposes, unless the President concludes that retention of such rights is not in the campus' best interests and documents that conclusion in writing.

15.02.04 LIMITATION ON USE OUTSIDE THE UNIVERSITY

Faculty who create or develop the electronic course material subject to Section 15.02 may not use the material in conjunction with teaching conducted on behalf of any entity other than for departments of the Montana University System unless prior permission is granted in writing by the President or the Commissioner of Higher Education, which permission shall not be unreasonably withheld.

This limitation applies to the specific electronic format of the course and does not limit the faculty's right to use facts, theories, opinions or other items of substantive course content in another setting.

15.03 COPYRIGHT

(A) Works which are produced by a faculty member in connection with an approved and sponsored research project are treated in accordance with the agreement negotiated with the sponsor. In the absence of such agreement or to the extent such an agreement does not fully address ownership of works produced, such works shall be treated in accordance with 15.03 (A) or (B).

(B) When a faculty member is:

1. assigned work or responsibilities for the specific purpose of developing computer programs, visual aids, manuals, public relations material, printed or recorded copyrightable works, or
2. assigned work or responsibilities, or uses University facilities, equipment, and/or assigned time, for the purposes of developing computer programs, or other electronic/digital copyrightable works,

the works produced pursuant thereto and all royalties therefrom shall be the property of the University. Written assignment of the copyright shall be indicated either on the individual employment contract or in a separate document countersigned by the employee. Should the University and the faculty member agree to a division of royalties, such division must be included in the contract or in a separate document countersigned by the faculty member. If the campus does not wish to copyright the work, the employee may obtain a written release from the President and may then copyright the work in his/her own name. Upon written request for release by the faculty member, the campus will respond within thirty (30) days.

(C) When a faculty member develops copyrightable works other than those defined in paragraphs A or B above, he/she shall have sole right of ownership and disposition of such works. When such works are produced, developed or authored through the use or with the aid of campus facilities, personnel or other resources, the campus must be reimbursed for the fair market value of the use of any such facilities, personnel or resources, except those considered part of the normal academic environment including library facilities. Manuscripts or works of art

designed for publication in media where no remuneration is given the author(s) are exempt from this reimbursement requirement.

15.04 PATENTS

All employees in the bargaining unit shall adhere to the following procedures with respect to patentable inventions or discoveries. The purpose of these procedures is to define the relationships among the inventor, the University and outside sponsors of research. This policy shall not include copyrights.

15.04.01 DEFINITIONS

- (A) "University Patent Management Officer" means the person, regardless of name or title, designated by the University President to carry out the duties created by this policy.
- (B) "System invention committee" means the ad hoc committee selected by the Commissioner as needed to carry out the duties created by this policy.

15.04.02 PROCEDURES

All patentable inventions made by employees in the bargaining unit in connection with their assigned duties and/or by the use of the University's facilities, shall be considered the property of the University under the following circumstances and to the following extent:

- (A) Wholly the property of the University if the person (or persons) responsible for the invention was employed by the University specifically for that purpose.
- (B) To the extent specified in the contract of employment or separate agreement between the University and employee relating to a specific work assignment.
- (C) To the extent recommended by the University Patent Management Officer and approved by the President if research or endeavors directly resulting in the discovery or development of the invention or marketable product involved use of University time, materials, property, or facilities. For the purposes of this paragraph, University time, materials, property or facilities includes time, material, property or facilities paid from funds administered by the University including funds from sponsored research and federal and state grants or contracts. Provision of normal academic environment, including library facilities, does not constitute grounds for equity by the University in a discovery or invention.

Under all other circumstances individual employees are free to secure, under the patent laws of the United States, the exclusive right to their inventions if not owned by the University.

15.04.03 INVENTORS' RIGHTS AND DUTIES

Employees in the bargaining unit retain the right and responsibility for recognizing in their work inventions that may reasonably be marketable; and in every case, complete freedom of publication in both time and scope shall be maintained, unless agreements with outside sponsors provide otherwise as indicated below. Investigators will participate in work under such outside agreements only after they have informed themselves of such provisions and have accepted these provisions.

Any employee to whom the conditions set forth in Section 15.04.02 above applies who, either alone or in association with others, makes an invention shall promptly disclose the invention in writing to the University Patent Management Officer in a format acceptable to the University. And as to any such invention that vests with the University, the employee shall promptly execute all contracts,

agreements, waivers or other legal documents necessary to vest all rights to the invention in the University and to facilitate protection, licensing and development of the invention. .

With the exception of those inventions developed under agreements with outside sponsors, the patent management officer or committee shall inform the inventor(s) in writing whether it plans to secure the patent or release the discovery to the inventor(s) within eighteen (18) months of submission of an invention disclosure. In the case of the release of the invention or in case of failure by the patent management officer to communicate in writing within eighteen (18) months, the inventor(s) is free to secure the patent, pay all fees, and receive all benefits therefrom.

15.04.04 SUBMISSION TO PATENT MANAGEMENT OFFICER

- (A) Invention Outside the University. If an invention is made and/or developed without University support of a significant degree, all rights remain with the inventor. Such inventions may be voluntarily submitted for consideration by the University, but the inventor is under no obligation to do so. Provision of a salary or desk to an inventor by the University does not, in itself, constitute significant support. However, any invention by an employee related to an area in which he or she participates in research under University auspices must be reported to the University so that the question of whether the University has provided sufficient support can be decided by the patent management officer. This decision may be appealed to the system invention committee.
- (B) Invention With University support.
If an invention is made and/or developed with University support of a significant degree in time, money, materials, or facilities, the inventor must submit a full disclosure of the invention to the Patent Management Officer. Additionally, a copy of any manuscript submitted for publication shall simultaneously be submitted to the patent management officer, if the author considers that it may contain marketable inventions. The patent management officer may advise, but not require, deferral of publication in order to protect the patent rights of the University and the inventor.

15.04.05 PROSECUTION OF PATENTS

- (A) Time Limits
If the University deems that a patent should be prosecuted, the prosecution shall be carried out diligently and without expense of any kind to the inventor. The parties to this agreement recognize the need to file the patent application and develop the patent as fast as possible. The time limits expressed herein represent the maximum time allowed, but every effort should be made to complete the process faster than the time limits specified.
- (B) The inventor must assign to the University any interest in the patent equivalent to the property interest which the Patent Management Officer determines to belong to the University. The preliminary patent search must be started within nine (9) months from the date the matter is presented to the University or the University forfeits all right to the invention. If no patent application is filed within a total elapsed time of eighteen (18) months following disclosure, all patent rights revert to the inventor(s) unless other agreement is executed between the inventor(s) and the unit.
- (C) Options Available to the University.
The inventor has an obligation to offer the University the opportunity to develop the invention for commercial use if the invention was made under University auspices. The University may:

1. Elect to acquire title to the invention by assignment and in this case will undertake (unless inappropriate) the timely filing of patent applications, patent prosecution development, and marketing of the invention and shall bear all related costs. If the University desires to accept such an assignment after competent peer review, the inventor shall be obligated to make such an assignment. The inventor shall, in this instance, receive on an annual basis, 50 percent of all net income, defined as gross royalties or other payments, including any recovery of damages obtained by the University, but less external costs incurred by the University in obtaining and protecting the patent rights and less any direct costs of development; or
2. Cause the invention to be assigned to some patent management organization, such as research corporation or the University's research foundation if one exists. The domestic patent rights, foreign patent rights, or both, may be assigned to the patent management organization. The inventor shall receive on an annual basis 50 percent of all net royalties and other income received by the University from the patent management organization; or
3. Decline to accept any rights to the invention by assignment or otherwise, in which case all rights
4. Revert to the inventor, unless otherwise specified in a sponsored research agreement. If a dispute arises concerning the origin of an invention or patentable discovery or any aspect of patent policy, the dispute shall be presented to the MUS invention committee for final disposition.

(D) Invention Developed Under Agreement with Outside Sponsor.

If the invention was made or developed under an agreement with an outside sponsor, the rights with respect to the invention shall be governed by provisions of that agreement. If not provided otherwise by the sponsoring agreement, the inventor's share of royalty or other income received from an outside sponsor shall be limited to the share he/she would have received had the University supported the research entirely. If the sponsor determines that invention rights are left with the department, the University may elect to pursue one of the three options listed in Section 15.04.0215.04.05 unless state or federal law requires otherwise.

15.04.06 DISTRIBUTION OF UNIVERSITY-RETAINED INVENTION-RELATED INCOME

In order to provide invention incentive and capability to University personnel, the University's share of invention income will be distributed as follows:

Of the University-retained share of net royalty or other income for any given invention, defined as gross receipts, less external expenditures for that invention and less the inventor's personal share two-thirds of the first \$30,000 per year, one-half of the next \$30,000 per year and one-third of the remainder will be designated through the University budget or financial office to support the work of the inventor while employed by the University and/or to promote discoveries at the University.

The rest will be distributed to a designated fund and will be used to support and expand research at the University. Such distribution to support the inventor's work, derived from any given invention, will terminate after eight (8) years from the first sale of products embodying that invention, and any earned monies after this date will go to a designated fund.

15.04.07 DEVELOPMENT OF INVENTIONS

If the inventor becomes dissatisfied with the development of the invention as carried out by the University, or with the University's delay in reaching a decision, an appeal may be made to the system invention committee, in which the inventor may urge specific changes in the proposed course of action undertaken by the unit, or if the University has been assigned rights to the invention, may

ask that the invention rights be reassigned to a patent management organization such as research corporation or all rights be reserved to the inventor.

If after a period of three (3) years from the acquisition of the issued patent by the University the invention has not been marketed, all rights revert to the inventor, unless an agreement with any outside sponsor precludes such reversion.

ARTICLE 16: CONSULTING

Consulting is any additional activity beyond duties assigned by the institution, professional in nature and based in the appropriate discipline, for which the individual receives additional personal remuneration during the contract year. Remuneration for consulting is paid by agencies or individuals outside the University and the funds upon which consulting payments are drawn are not controlled by the University.

Faculty members are encouraged to write for scientific and technical periodicals, to write books in their professional fields, and to engage in other creative and professional activities as part of their duties. Such scholarly writing will not be considered consulting and will not be subject to this policy unless such activity interferes with the assigned duties of the faculty member.

Faculty may engage in private consulting activities in a manner consistent with the following policies and procedures. All consulting assignments are also subject to the conflict of interest policies.

16.01 NOTIFICATION

In all private consulting engagements, the faculty shall notify the client in writing that:

- (A) the faculty member is acting as a private consultant and not as an employee of the University,
- (B) the University is not a party to the contract nor responsible for the performance thereof, and
- (C) the University is not liable in any way for property of the client utilized for test, observation, or otherwise in connection with the consulting engagement, nor for consequent damages.

Faculty shall use the form provided by the Office of the Vice President for Research, Technology Transfer and Creative Activities for this purpose

16.02 COMPETITIVE BIDS

Faculty under contract to the University may submit competitive bids as private consultants if:

- (A) the project does not require substantial use of University resources;
- (B) the project will not interfere with the assigned duties/time commitments of the faculty or staff member;
- (C) the project does not interfere with any contractual obligations of the University; and
- (D) the project will not create an actual or apparent conflict of interest.

Faculty under contract with the University who wish to submit a bid in connection with his or her private consulting activities must obtain approval from the department head before submitting the bid.

16.03 APPROVAL OF CONSULTING/AVOIDING CONFLICTS OF INTEREST

In no case will consulting activities detract from the performance of the faculty member's regularly assigned duties. Faculty consulting activities that will result in more than a one-day absence from the faculty member's usual work schedule or which will average more than one work day per week during the employee's contract period must be approved in writing in advance by the department head and college dean. Faculty members will use annual leave or leave without pay for consulting activities that take them away from the University or their University assignments for more than an average of one work day per week during the contract period.

Consulting activities that create an actual or apparent conflict of interest with the faculty member's University duties must be disclosed in writing to the department head and college dean. The faculty or staff member may accept the consulting assignment only if the dean determines that adequate safeguards are implemented to eliminate or appropriately reduce the effect of the conflict of interest.

All consulting assignments shall be reported to the department head annually using the procedures established by the University.

16.04 CONSULTING BY ACADEMIC YEAR/PART-TIME EMPLOYEES

Faculty on academic-year contracts and part-time faculty may engage in private consulting activities during the hours and periods they are not under contract to the University. Any use of University facilities, equipment or personnel must conform to Section 16.07.

16.05 CONSULTING DURING LEAVE PERIODS

The University encourages faculty members to take annual leave for rest and recuperation. However, compensated consulting activities conducted during annual leave periods should conform to the policies in this section.

16.06 CONSULTING ACTIVITIES IN FACULTY REVIEWS

Any department and/or college may adopt standards for faculty review that consider favorably the consulting activities of a faculty member. Consulting activities may be included in dossiers submitted for annual review, retention, tenure and promotion if authorized by the department and/or college standards and such activities were conducted in accordance with the requirements of this section

16.07 USE OF UNIVERSITY RESOURCES

- (A) Employees may use facilities and equipment of the University in consulting work if such use does not interfere with classes or other University activities and the University is fully compensated for the full costs of such use. Written approval of the department head is required and the dean will be informed. An employee shall not make substantial and regular use of University resources for his or her private business purposes.
- (B) An employee acting as a consultant may not use University employees or students in consulting assignments without the written approval of the department head, who shall report such arrangements to the college dean. The consultant's use of University employees may not conflict with the employee's scheduled working hours and assignments. The faculty member is responsible for the payment of any persons used in consulting assignments and compliance with all state and federal employment laws.

- (C) Any employee who uses University resources in private consulting work must enter into a written "use agreement" with the University that must be approved by Legal Counsel. This agreement shall set forth the terms, conditions and full payment for the use of any University resources, prior to use.
- (D) Employees acting as private consultants may not authorize other persons to use University resources without the written permission of the dean and the execution of an appropriate facility use agreement that provides for appropriate insurance protection for the University.

16.08 PROHIBITED ACTIVITIES

Faculty engaged in consulting must comply with the following:

No University stationery or forms may be used in connection with private consulting work or professional practice. The employee shall use his or her home or other off-campus address and telephone number on correspondence and advertising. The name of the University shall not be used in advertising or otherwise without the written consent of the President or designee.

Faculty engaged in private consulting or professional practice may not, assign, commit, contract away or otherwise affect University rights, including rights to intellectual property, without the express written consent of the Office of Vice President for Research. Private consulting arrangements and commitments shall not bind, commit or attempt to affect the rights of any University faculty, students or staff without their express written permission, with copies given to the department head. Any attempt by faculty to assign, commit, contract away or otherwise affect University rights in violation of this policy shall be null and void. Faculty members performing consulting services shall inform their consulting sponsors of this policy at or prior to the time they enter into their consulting arrangements.

Consulting arrangements with non-University sponsors may not be used to circumvent University Grants and Contracts activities. Consulting assignments that will require substantial use of University facilities, personnel, or other resources, must be arranged through the Office of Sponsored Programs unless that office, upon being fully informed, determines that the assignment does not constitute appropriate grants and contracts activity.

ARTICLE 17: FACULTY LEAVES

17.01 SABBATICAL

A sabbatical assignment is a change of duties, which neither diminishes nor increases the extent of the person's employment with the University. The recipient remains employed by the University during the entire term of the sabbatical to the same extent employed while on regular assignment, regardless of the compensation agreed upon for the term of the sabbatical.

17.01.01 ELIGIBILITY

Any faculty member of the bargaining unit who has seven or more years of service at Montana State University without a sabbatical shall be eligible for sabbatical assignment. Service while on sabbatical shall be creditable service for all purposes to the same extent as a person's service while on regular assignment.

Time spent on leave from Montana State University does not earn service time toward eligibility for sabbatical assignment. The seven years of service required for sabbatical assignment eligibility must be completed by the time the leave is started, not necessarily by the time the application is filed.

17.01.02 LIMITATIONS AND CONDITIONS

Sabbaticals are subject to the followings limitations and conditions:

- (A) Sabbaticals are subject to budget limitations.
- (B) Satisfactory programs or projects for sabbatical periods include research, travel, related work in other institutions or private or business organizations, or other activities which the Department Head, Dean, Provost, and President agree will improve the staff member professionally, or which directly or indirectly benefit the campus and the state.
- (C) Sabbatical assignments shall normally be for a period of not less than one semester or more than an academic year for persons on academic year appointments and not less than one-half or more than one fiscal year for persons on fiscal year appointments; however, a person may request a shorter assignment.
- (D) Compensation from campus funds may not exceed 100% of the base salary for a semester sabbatical and 75% of the base salary for employees on an academic or fiscal year appointment. Special compensation arrangements involving funds from other than campus sources must be agreed upon and approved in keeping with the following conditions:
 - 1. Compensation paid during a sabbatical assignment may differ from that paid for regular assignment because it may involve funding from sources other than regular campus funds such as fellowships, assistantships, or other sources of limited income including funds available from grants or contracts administered by the campus.
 - 2. All compensation must be received through the campus and no person may be additionally compensated for the time on sabbatical assignment by income from other employment during the same period, except in exceptional circumstances as approved in advance by the Provost.
 - 3. Funds from other sources may be used to supplement campus funds to increase the compensation up to, but not in excess of, that amount which the individual could have earned during the same period.
 - 4. Compensation in excess of that which could have been earned on regular assignment may be approved by the Provost only if all campus funds have been replaced by funds from other sources.
 - 5. Programs or projects which necessarily involve employment by an employer other than the campus do not qualify for sabbatical assignment but may be approved as leave without pay.
- (E) A recipient of a sabbatical assignment will be expected to return to campus for a period equal to the length of the sabbatical assignment or to repay money received from the campus while on leave.
- (F) Persons on sabbatical assignment will continue to be eligible for employee benefits.

17.01.03 PROCEDURES

A reminder regarding sabbatical assignments shall be sent to faculty members from the Provost no later than September 1 of each year. Applications for sabbatical assignment must be submitted to the Provost by October 31 and shall include an endorsement from the Department Head and Dean. The Provost will forward all applications to the Faculty Affairs Committee. The Faculty Affairs Committee will recommend a priority list for sabbatical assignments to the Provost. The Provost will make the final selection of faculty who receive sabbaticals, taking into account the quality of the proposal, the programmatic and financial impact to the department of granting the sabbatical.

Specific criteria for assigning priority rankings for sabbatical applications include Scholarly Merit, Planning and Organization, Scholarly Integration, and Broader Impacts of the project. Additional credit is given to applicants based on years of service at MSU, meritorious performance in teaching, research and creativity, and service, and academic rank. A detailed description of the criteria for review of applications for sabbatical assignment and their relative weights is listed in the "Application for Sabbatical Assignment" available from the Office of the Provost.

The Provost shall notify the faculty member of the final decision no later than March 1.

For sabbatical assignment to be granted, an eligible faculty member must formally request assignment. The application for sabbatical assignment shall include:

- (A) A definitive detailed plan for the scholarly or professional use of the sabbatical;
- (B) Anticipated future values of completion of the program for the applicant, for the students, for the department, and for the campus;
- (C) A complete vita including a record of all professional activities;
- (D) A listing of the specific whole semester(s) or portion of fiscal year for which assignment is requested;
- (E) A description of any fellowship, grant or other arrangement which would aid in financing or otherwise supporting the proposed project;
- (F) The applicant's signed agreement to return to full-time service with Montana State University for a period equal to the length of the sabbatical following expiration of the assignment or to refund the compensation paid by the University during such assignment unless this obligation is specifically waived by the President; and
- (G) The faculty member applying for the sabbatical and their department head should identify the applicant's courses that would need coverage during their sabbatical and a plan to cover these courses.

The Department Head shall develop a clear written understanding with the faculty member who is going on sabbatical assignment concerning what is expected of them while on that assignment (e.g., manuscripts, progress reports). This plan will be approved by the Dean and Provost prior to approving the sabbatical.

17.02 FACULTY MODIFIED DUTIES

To minimize variations in classroom staffing and consistent with the goals of achieving faculty diversity, professional career development and career advancement, the University shall coordinate a Faculty Modified Duties (FMD) policy for eligible faculty. FMD is NOT defined as an employee benefit or leave as defined under the Family Medical Leave Act (FMLA). Furthermore, modification of duties under this policy does not preclude availability or use of other defined benefits nor modification of duties mutually arranged by faculty and the Department Head without opting for FMD.

Regarding implementation and ongoing application of FMD: Faculty wishing to exercise this provision must submit an application form to the Dean for determination of eligibility.

17.02.01 ELIGIBILITY FOR FMD

All full-time tenure-track/tenured faculty shall be eligible provided that they are:

- (A) the primary care giver due to the birth, adoption, or foster care placement of a child under six years old. A primary care giver shall be either parent, the legal guardian, a live-in partner or a spouse by marriage.
- (B) the primary care giver of an invalid or disabled primary family member including a spouse, parent, live-in partner or child who requires constant care by the primary care giver.

17.02.02 MODIFICATION OF FACULTY DUTIES

Faculty Modified Duty is based on the current, common practice of faculty duty modification as applied to teaching, scholarly activity or service. That practice and the FMD option are derived from the authority of the department head and dean to fairly assign teaching and other duties consistent with the provisions of the individual employee contract.

The FMD option shall allow eligible faculty up to one semester of modified duties in any academic year whereby elimination or reduction of any duty in exchange for enhancement of another duty constitutes an FMD accommodation. The dean shall arrange the terms of an FMD accommodation in consultation with the department head and faculty member. Consistent with all other provisions of the CBA, no faculty shall experience reprisal for exercising the FMD option.

The faculty modified duties agreed upon in each case is subject to the review and final approval of the Provost.

Where and when possible, FMD will be applied in any department so that the arrangement:

- (A) Allows an option for tenure clock extension if appropriate (Section 9.05.03);
- (B) Allows an option for exemption or deferral from faculty evaluation.

17.03 SICK LEAVE

"Sick leave" means a leave of absence with pay for:

- (A) a sickness suffered by an employee or a member of the employee's immediate family; or
- (B) the time that an employee is unable to perform job duties because of:
 1. a physical or mental illness, injury, or disability;
 2. maternity or pregnancy-related disability or treatment, including prenatal care, birth, or medical care for the employee or the employee's child;
 3. parental leave as provided in Sec. 2-18-606, MCA;
 4. quarantine resulting from exposure to a contagious disease;
 5. examination or treatment by a licensed health care provider;
 6. short-term attendance, in an agency's discretion, to care for a relative or household member not covered by subsection (a) until other care can reasonably be obtained;
 7. necessary care for a spouse, child, or parent with a serious health condition, as defined in the Family and Medical Leave Act of 1993; or
 8. death or funeral attendance of an immediate family member or, at the University's discretion, another person. [Sec. 2-18-601, MCA]

17.03.01 SICK LEAVE CREDITS

Each faculty member shall earn sick leave credits from the first full pay period of employment in a manner consistent with the state employee sick leave statutes.

A faculty member may not accrue sick leave credits during a leave of absence without pay. Faculty members are not entitled to be paid for sick leave until they have been continuously employed for ninety (90) days. Upon completion of the qualifying period, the faculty member is entitled to the sick leave credits earned.

17.03.02 SICK LEAVE DONATIONS

Sick leave donations shall be administered in accordance with University policy on sick leave fund and sick leave grants, viewable at:

<http://www2.montana.edu/policy/personnel/per1000.html#1045.00>.

17.03.03 LUMP-SUM PAYMENT ON TERMINATION

Except as otherwise provided in Sec. 2-18-1311 (VEBA), a faculty member who terminates employment with the University is entitled to a lump-sum payment equal to one-fourth (1/4) of the pay attributed to the accumulated sick leave. The pay attributed to the accumulated sick leave shall be computed on the basis of the faculty member's salary at the time of termination. Accrual of sick leave credits for calculating the lump-sum payment provided for in this subsection begins July 1, 1971.

A faculty member who receives a lump-sum payment and who is again employed by the University shall not be credited with any sick leave for which compensation has previously been given.

17.03.04 REPORTING SICK LEAVE

It is the responsibility of the faculty member to ensure proper reporting of the use of sick leave for record keeping purposes. Any occurrence that necessitates a leave of absence as specified in Section 17.03 shall be reported by the faculty member to the Human Resource Office each month.

Abuse of sick leave is cause for disciplinary action under the provisions of 2-18-618, M.C.A. Abuse of sick leave occurs when a faculty member misrepresents the actual reason for charging an absence to sick leave, when a faculty member uses sick leave for unauthorized purposes, or when a faculty member neglects to report sick leave.

A faculty member who needs to take sick leave shall inform the appropriate immediate supervisor as soon as possible.

17.03.05 OTHER SICK LEAVE REQUIREMENTS

Sick leave charges in excess of earned sick leave credits may be charged to leave without pay.

Any holidays that fall during a period that a faculty member is on sick leave will be charged as a holiday and not taken off the total accumulated sick leave.

Faculty cannot be required to take sick leave unless they are on leave under one of the sick leave provisions of this agreement.

The department head, dean or Provost may require medical certification to confirm the appropriate use of sick leave, including the need to care for an ill or injured immediate family member. A licensed physician, or another licensed health care provider competent to treat and diagnose the particular

illness or condition, must provide medical certification. All required medical certifications or examinations must be job-related and consistent with business necessity.

Faculty members are eligible to use accumulated sick leave or, if sick leave is exhausted, unpaid leave to tend to the medical needs of an immediate family member in accordance with University policy and the Family Medical Leave Act. Faculty members who accumulate annual leave credits are eligible to use annual leave for the aforementioned family medical purposes. In addition, any faculty member may request leave without pay for family medical purposes.

17.04 MILITARY LEAVE

Eligible faculty members are entitled to the benefits and protections of military leave in accordance with state and federal laws governing military leave for public employees.

A period of absence from employment occurring either during a war involving the United States or in any other national emergency and for ninety (90) days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating annual leave credits under this section:

- (A) having been ordered on active duty with the armed forces of the United States;
- (B) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or
- (C) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the Employer.

17.05 PUBLIC SERVICE LEAVE

In accordance with 39-2-104, MCA, faculty members who are elected or appointed to a public office in the city, county, or state shall be eligible for leaves of absence, not to exceed one hundred eighty (180) days per year, while they are performing public service. Employees, upon complying with the requirements below, shall be restored to their positions, with the same seniority, status, compensation, hours, locality, and benefits as existed immediately prior to their leaves of absence for public service:

- (A) An employee granted a leave of absence shall make arrangements to return to work within ten (10) days following the completion of the service for which the leave was granted unless the employee is unable to do so because of illness or disabling injury certified to by a licensed physician.
- (B) Unemployment benefits paid to a person by application of this section may not be charged against an Employer under the unemployment insurance law.

17.06 JURY DUTY AND WITNESS LEAVE

- (A) In accordance with Section 2-18-619, MCA, a faculty member who is under proper summons as a juror shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate University accounting office. Juror fees must be applied against the amount due the employee from the Employer. However, if an employee elects to use annual leave to serve on a jury, the employee may not be required to remit the juror fees to the Employer. An employee is not required to remit to the Employer any expense or mileage allowance paid by the court.

- (B) An employee subpoenaed to serve as a witness shall collect all fees and allowances payable as a result of the service and forward the fees to the appropriate University accounting office. Witness fees must be applied against the amount due the employee from the Employer. However, if an employee elects to use annual leave to serve as a witness, the employee may not be required to remit the witness fees to the Employer. An employee is not required to remit to the Employer any expense or mileage allowances paid by the court.
- (C) Employers may request the court to excuse their employees from jury duty if they are needed for the proper operation of a unit of state or local government.

17.07 PAID LEAVE FOR DISASTER RELIEF VOLUNTEER SERVICE

The University may grant up to fifteen (15) days in a calendar year of a paid leave of absence for a faculty member to participate in specialized disaster relief services for the American Red Cross if:

- (A) the employee is a certified American Red Cross disaster relief volunteer; and
- (B) the American Red Cross has requested the employee's services.

Leave time granted pursuant to this section:

- (A) must be paid at the regular rate of compensation, including regular group, retirement, or leave accrual benefits, for the regular work hours during which the employee is absent from the employee's regular duties;
- (B) commences upon approval of the employee's employing agency; and
- (C) may not be charged against any other leave to which the employee is entitled.

17.08 ANNUAL LEAVE

Faculty members who hold academic rank and are appointed on fiscal year [FY] contracts may accumulate annual leave at the rate of 1 $\frac{3}{4}$ days per month (21 days per year) of actual employment, but are not entitled to any annual leave with pay until they have been continuously employed for six (6) calendar months. Faculty members with academic rank who are appointed on academic year [AY] contracts shall accrue no annual leave.

Annual leave for eligible faculty members on fiscal year (12-month) employment contracts is to be taken at the mutual convenience of the department and the employee and should be arranged in advance with the department head.

Annual leave may be accumulated as of the last day of any calendar year to a total not to exceed forty two (42) days. Unused annual leave may be compensated upon termination, not to exceed forty two (42) days. If a faculty member's status is changed from a fiscal year [FY] contract to an academic year [AY] contract, the faculty member may elect to receive compensation for unused accrued annual leave at the time of the change of status or carry the accumulation.

17.09 LEAVES OF ABSENCE WITHOUT PAY

Faculty members are eligible for a leave of absence without pay after two (2) years of continuous service. Requests for leave without pay must be approved in accordance with the provisions below. All approvals of leave requests shall take into account the needs of the University or the system, as appropriate. The provisions are as follows:

- (A) Leaves without pay shall not be deemed earned leave time, nor be deemed or become a vested right.
- (B) Leaves without pay shall normally not exceed two (2) years in duration.
- (C) The President or designee has authority to approve leaves of absence without pay for faculty members.
- (D) Employees who are on an approved leave of absence without pay may continue to be covered by the Employer's group insurance for up to two (2) years provided they pay the amount of the Employer's contribution plus any required employee contribution. Payment must be made to the business office prior to the close of the payroll date in order for the coverage to be effective.

17.10 DISABILITY

Employment matters involving disability will be administered in accordance with the Americans with Disabilities Act and the Family Medical Leave Act.

17.11 MAINTENANCE OF RIGHTS

A faculty member returning from approved leave shall return to the same position and compensated leave time shall be regarded as regular employment time. Upon returning from approved paid leave, the faculty member will receive any cost of living increase in salary or benefits that was awarded to department faculty during the time of leave.

ARTICLE 18: SANCTIONS, SUSPENSIONS, AND TERMINATIONS

18.01 SANCTIONS

Any employee in the bargaining unit may be subject to disciplinary sanctions. Warning letters and formal reprimands may become part of the faculty member's personnel file and may be used in conjunction with subsequent personnel considerations for three (3) years following the date of the sanction. After three (3) years, the letters and reprimands and all references thereto shall be removed from the employee's personnel files unless there are additional documented violations within the three-year period.

Warning letters and formal reprimands that are applicable to pending legal or quasi-legal proceedings may be retained in the personnel file for longer than three (3) years, but must be removed upon the conclusion of the legal or quasi-legal proceeding if no documented proven pattern exists as described above.

18.02 CAUSES FOR DISCIPLINE OR DISCHARGE

The Employer may discipline or discharge employees for just cause and with due process, which includes but is not limited to the following:

- (A) conviction of a felony or of a crime involving moral turpitude during the period of employment at the institution or the willful concealment of such crime in making application for employment;
- (B) conviction of theft of University property or property in the custody of the University;

- (C) fraud or deliberate misrepresentation of professional preparation, accomplishment or experience in connection with initial hiring or in the submission of materials for evaluation for promotion, tenure or salary adjustment purposes;
- (D) plagiarism in professional papers or reports, or deliberate falsification of University records;
- (E) deliberate failure by the faculty member engaged in private consulting to inform his/her client that the faculty member is acting as a private consultant and not as a representative of the University;
- (F) exploiting or abusing students or employees, including sexual harassment;
- (G) failure to carry out the responsibilities of a faculty member;
- (H) violation of policies;
- (I) abuse of sick leave;
- (J) unreasonably endangering the welfare or unethical exploitation of students, employees, or campus visitors; and
- (K) gross insubordination.

18.03 RETRENCHMENT

Retrenchment is the termination of tenured faculty members for financial exigency or programmatic reasons. The procedures for retrenchment for financial exigency are included in BOR Policy 710.2.1.

The ad hoc committee to be appointed under BOR 710.2.1 shall consist of nine faculty members (three appointed by the President, three appointed by AFMSU, three appointed by the Faculty Senate) and one student appointed by the President of ASMSU.

ARTICLE 19: GRIEVANCE AND ARBITRATION

19.01 DEFINITION

A grievance is any dispute regarding the misapplication and/or misrepresentation or violation of a provision of this agreement by the University administration alleged by a bargaining unit member and/or group of bargaining unit members and/or by the AFMSU on its own behalf.

19.02 GRIEVANCE PROCEDURE

The Commissioner, the University administration and the Association agree that they will use their best efforts to encourage the informal and prompt settlement of grievances that may arise among the Association, its members, the University administration and/or the Commissioner. The orderly process hereinafter set forth will be the method used for the resolution of all grievances. However, faculty members who file complaints alleging unlawful discrimination or other unlawful conduct under administrative, state or federal complaint procedures may not also utilize this method to resolve grievances over the same matter(s) and the University administration and Commissioner shall be under no obligation to process any such grievances that may be filed.

The University administration and the Association shall each appoint one official grievance officer and shall notify the other party of the appointment within one (1) month of the date of final ratification of the Agreement.

19.02.01 INFORMAL PROCEDURE

Any faculty member may present and discuss his/her grievance with the University administration with or without a representative of the Association. Similarly, a representative of the Association may present and discuss a grievance with the University administration on behalf of any faculty member or group of faculty members. Any settlement, withdrawal or disposition of a grievance at this informal stage shall not constitute a binding precedent in the settlement of similar grievances.

19.02.02 FORMAL PROCEDURE

A grievance must be filed by a faculty member or the Association within thirty (30) days from the date the grievable event was determined. Any grievance not processed in accordance with the time limit specified herein shall for the purposes of this Agreement be deemed null and without further recourse.

- (A) Step One. The grievance must be stated in writing setting forth the specific complaint including the sections of this Agreement allegedly violated and the remedy requested. All grievances shall be filed with the designated Grievance Officers. Within twenty (20) days of the receipt of the grievance, both grievance officers shall meet jointly with the grievant and, if they wish, a representative of their choosing for the purpose of discussing the grievance. The Administration grievance officer shall within twenty (20) days after the grievance meeting issue a decision with reasons in writing to the grievant and the Association.
- (B) Step Two. If the grievance has not been settled at Step One, the grievant or the Association may submit the grievance in writing to the President together with a copy of the decision of the grievance officer no later than ten (10) days after receipt of the written decision of the grievance officer or the expiration of the time limits for making such decision,. The President shall issue a decision with reasons in writing to the grievant and the Association within twenty (20) days after the receipt of the grievance.
- (C) Step Three. If the grievance has not been settled at Step Two, the grievant or the Association may submit the grievance in writing to the Commissioner together with a copy of the decision of the President no later than ten (10) days after the receipt of the written decision of the President, The Commissioner or his/her designee shall issue a decision with reasons in writing to the grievant and the Association within twenty (20) days after the receipt of the grievance.
- (D) Step Four. If the grievance has not been settled at Step Three, , the Association may request arbitration by giving written notice to that effect to the Commissioner no later than ten (10) days after the receipt of the written decision of the Commissioner. Upon receipt of the request for arbitration, the Federal Mediation and Conciliation Service shall be requested to provide a list of five names. The Association's representative and the Commissioner or his/her designee shall alternately strike the name of an arbitrator until one name remains; that person shall be designated the arbitrator. The determination of which party shall strike the first name shall be made by agreement of the parties, or if no agreement is reached, by the flip of a coin. The parties may select a person to serve as arbitrator in a different manner if mutually agreed upon.

19.03 ARBITRATION

In no event shall the arbitrator have authority to add to, subtract from, modify or amend the provisions of the Agreement. The arbitrator shall not have any authority to order any remedy that directly or indirectly grants tenure. The arbitrator shall not have any authority to order any remedy that directly or indirectly awards a promotion, except where all faculty committees plus the Provost recommend promotion. The final decision or award of the arbitrator shall be made within thirty (30) days after the

closing of the hearing. Such decision or award shall be binding upon the Association, the Commissioner, the University administration and the affected faculty member(s). Each party will bear its own costs and the costs of the arbitration proceedings will be shared equally.

ARTICLE 20: STUDENT ACADEMIC GRIEVANCES

Students who disagree with an academic decision made by an instructor or administrator, including the assignment of grades or decisions about program or degree requirements or eligibility, may file a grievance under these procedures.

This procedure is intended to be used when specific actions of a faculty member have a specific adverse effect on the academic performance or academic record of a student. Student complaints about employment relations or other campus activities or policies extending beyond the immediate teaching/learning context are subject to other University policies. Student complaints alleging unlawful discrimination not intrinsically related to the academic process should be filed with the University EEO/AA Officer. Complaints regarding the general quality of a faculty member's teaching are to be addressed through the faculty evaluation process.

20.01 ACADEMIC DECISIONS REVIEWED

These procedures are available only to review allegedly unfair academic decisions and not mere differences of opinion regarding the professional judgment of the instructor in evaluating a student's work or making an academic decision. The academic decision, including the assignment of a grade, will be considered unfair if the decision is made:

- (A) on some basis other than performance in the course and/or compliance with course assignments and requirements;
- (B) by more exacting or demanding standards than were applied to other students in the same section;
- (C) by a substantial departure from the instructor's, department's, college's or University's announced standards as articulated in the course syllabus, catalog descriptions and/or other written materials.

20.02 PROCEDURES

A student who wishes to grieve an academic decision must proceed as follows:

20.02.01 INFORMAL MEETING

The student should attempt to resolve the matter directly with the instructor or administrator through a personal conference as soon as possible after the academic decision is known. If the matter cannot be resolved, the student and instructor should both sign a statement to that effect. If the nature of the issue prevents the student from discussing it with the instructor, the student may initiate an informal meeting with the Department Head. The Department Head will then be responsible for communicating with the instructor.

20.02.02 DEPARTMENT HEAD REVIEW

If the student and instructor cannot reach a mutually satisfactory resolution to the problem, the student may file a formal grievance. The grievance must be presented in writing to the instructor's

department head before the end of the term if possible but in no event later than the fifteenth (15) day of University instruction of the following term. The student must describe the grievance, the date(s) of occurrence, why the student believes the decision was unfair, and the precise relief sought by the student. The student must attach copies of all relevant documents.

The student shall send a copy of the grievance to the instructor. The instructor shall have ten (10) working days to respond to the student and department head after receipt of the grievance.

Once a student files a grievance, he or she will be assigned an incomplete grade ("I") until the matter is concluded.

The department head will receive and review all evidence, interview each party, if possible, and render a written decision with recommendations as to resolution within ten (10) working days of receipt of the instructor's response. If the grievance is not concluded within this time, the student may carry it forward to the Dean or Vice Provost for Graduate Education if the student is a graduate student for resolution, .

20.02.03 DEAN OR GRADUATE SCHOOL REVIEW

(A) For Undergraduate Students

Either party may appeal the department head's decision in writing to the instructor's College Dean, with copies to the instructor, student and the department head. Such appeal will be filed within five (5) working days of receipt of the department head's determination. The Dean will submit a written decision to the student, instructor, and the department head within ten (10) working days of receipt of the appeal. The decision of the Dean is the final decision of the University in grievances concerning grades for undergraduate students.

(B) For Graduate Students

Either party may appeal the department head's decision in writing to the Dean of the Graduate School, with copies to the instructor, student and the Department Head/Director. Such appeal will be filed within five (5) working days of receipt of the Department Head/Director's determination. The Dean of the Graduate School will discuss the appeal with the Dean of the student's academic college and will subsequently submit a written decision to the student, instructor, and the department head within ten (10) working days of receipt of the appeal. The decision of the Dean of the Graduate School is the final decision of the University in grievances concerning grades for graduate students.

20.02.04 PROVOST'S REVIEW

(A) For Undergraduate Students

Either party may appeal the Dean's decision, except decisions concerning grade grievances. Such appeal will be filed in writing and submitted to the Provost (or designee) within five (5) working days of receipt of the Dean's decision, with copies to the instructor, student and the Dean. The Provost will submit a written decision to the student, instructor, and the Dean within ten (10) working days of receipt of the appeal. The decision of the Provost is the final decision of the University.

(B) For Graduate Students

Either party may appeal the decision of the Dean of the Graduate School, except decisions concerning grade grievances. Any appeal will be filed in writing and submitted to the (or designee) within five (5) working days of receipt of the decision of the Dean of the Graduate School, with copies to the instructor, student and the Dean of the Graduate School. The

Provost will submit a written decision to the student, instructor, and the Dean of the Graduate School within ten (10) working days of receipt of the appeal. The decision of the Provost is the final decision of the University.

20.03 RESORTING TO OTHER PROCEDURES

If the student complainant(s) seeks resolution of a complaint in any non-University forum, whether administrative or judicial, the parties to a complaint under this section shall have no obligation to proceed further under the provisions of this section. It is understood, however, that the procedure under this section is the only appropriate University procedure for a student to dispute a decision solely involving academic assessment by a faculty member based upon the criteria listed above. A student may not file complaints concerning the same issue(s) in more than one University forum.