CHAPTER 5: OTHER POLICIES PERTAINING TO RESEARCH, SCHOLARSHIP, AND CREATIVE ACTIVITY

5.1. INTRODUCTION

All tenured and tenure-track faculty members are required to engage in research, scholarship or creative efforts in the field of their specialty and to present the results of their endeavors in publications or other appropriate forms. The spirit of research permeates all genuine University teaching. (Note also pertinent provisions in Section 3.2.1, Academic and Professional Freedom)

5.2 RESEARCH OVERSIGHT

a. Vice President for Research. The Vice President for Research (VPR) serves as the senior research officer for Tulane University. The mission of the VPR is to enhance the level of scholarly accomplishment, intellectual environment and national reputation of Tulane University by fostering excellence in research, scholarship and creative endeavor. The objectives of the VPR are to provide leadership for advancing the research goals of the university, to expand the base of nationally competitive research activity in a manner compliant with government regulation, and to elevate the national visibility and reputation of Tulane University faculty for excellence in scholarly and creative accomplishment.

b. University Research Compliance Officer. On behalf of the VPR, the University Research Compliance Officer acts to oversee and ensure research compliance with regulations applicable to the use of human and animal subjects, biological safety, pre-award grants administration, export controls, and other regulations relative to the conduct of research. In this capacity, the University Research Compliance Officer ensures that all research conducted at the University adheres to the applicable federal and state regulations, as well as accreditation standards.

c. Sponsored Projects Administration. Sponsored Projects Administration assists faculty in identifying sponsors from which research support can be obtained; provides advice on the development of proposals; assists in preparing budgets; serves as the Authorized Organizational Representative for both paper and electronic proposal submissions; and develops and implements policies involving the financial and administrative aspects of sponsored projects.

Routing Proposals for Extramural Funding. Projects should be undertaken according to the concern and competence of the project director (Principal Investigator) and the judgment of peers. To assure that all extramurally funded projects are consistent with the University's mission and that all resource commitments required of the University are appropriate, proposals for extramural funding must be routed in accordance with the current policy using the Proposal Routing Form. The Proposal Routing Form contains assurances, as required by federal regulations, including debarment and project-specific conflicts of interest and must be signed by the Principal Investigator.
Investigator’s Manual. Sponsored Projects Administration has prepared an Investigator’s Manual to guide investigators in managing their awards and identifying special issues related to sponsored research. When Tulane University accepts a sponsored project it assumes certain obligations imposed by the sponsor, or by government regulation, such as the fiscal management and accountability of research awards, and the ethical treatment of research subjects. The Investigator’s Manual provides information for administering awarded sponsored projects in accordance with both the practices and policies of Tulane and the regulations of the sponsoring organizations.

d. Human Research Protection Office. The Tulane University Human Research Protection Office is charged with protecting the rights and welfare of human research participants through its Human Research Protection Program. The Human Research Protection Office administers and facilitates the Institutional Review Boards (IRB) to ensure that Tulane University is compliant in its efforts to protect the safety and well-being of human research participants according to federal guidelines and regulations. The Office assists investigators with IRB processes designed to guarantee that all research activities are compliant with regulation and responsive to good research practices.

Institutional Review Boards (IRB). The Tulane University Biomedical IRB and Social/Behavioral IRB are charged with a two-fold mission:

- To ascertain and certify that all research studies reviewed by the IRB conform to the regulations and policies set forth by the U.S. Department of Health and Human Services (DHHS) and/or U.S. Food and Drug Administration (FDA) regarding the health, welfare, safety, rights, and privileges of human research subjects.
- To assist investigators in conducting research that complies with ethical standards and principles set forth by the DHHS and/or FDA in a way that permits successful completion of research involving human subjects.

e. Institutional Animal Care and Use Committee (IACUC). The charge of the IACUC, mandated by Office of Laboratory Animal Welfare of the National Institutes of Health and by the U.S. Department of Agriculture, is to ensure the humane care and use of animals in research in a manner compliant with government guidelines and regulations. In compliance with federal law, an IACUC has been established for each Tulane University campus. Guided by the goal of assuring humane care and use of animals used in research, Committees review new and continuing animal use protocols, inspect facilities and laboratories, and monitor veterinary care, training and occupational health and safety programs at Tulane University. The IACUC provides assistance to investigators with the planning and conducting of animal experiments in accordance with the highest scientific, humane and ethical principles.

f. Office of Biosafety. The Office of Biosafety is charged with ensuring the safety of personnel and facilities engaged in research involving biological materials at Tulane University. The objective of the Office of Biosafety is to minimize the health risk to
those involved in research utilizing recombinant DNA, infectious agents, and biological toxins, and in turn to protect the greater Tulane University community, the general public, and the environment. The Office of Biosafety, in cooperation with the Institutional Biosafety Committee, is charged with oversight of regulatory compliance at Tulane University regarding the use and storage of hazardous biological materials. The office assists Principal Investigators in registering their research with the Institutional Biosafety Committee, in developing safe research protocols, and by facilitating the acquisition of all required regulatory approvals and permits.

g. Office of Technology Transfer & Intellectual Property Development The Office of Technology Transfer & Intellectual Property Development seeks to translate research and knowledge from the laboratory and classroom into technologies that benefit the public, to provide superior services to the university, its faculty and students that enable all aspects of the research mission and further technology development, and to strengthen the regional economy of southeast Louisiana through creative use of the university's intellectual property.

5.3 The Committee on Research

a. Function The Committee on Research is composed of six faculty members chosen by the Senate Committee on Committees and is chaired by the Vice President for Research. Its function is to promote an active research environment and to provide guidance in the conduct of research through enlightened research administration policies. The Committee on Research performs some functions through a subcommittee as follows.

b. Research Fellowships Subcommittee of the Committee on Research

The Subcommittee on Research Fellowships conducts an annual, merit-based competition to award research fellowships to faculty. It also conducts regular competitions to award funds in support of international travel in conjunction with faculty professional development activities. Members are appointed by the Committee on Committees.

5.4 Restrictions on Publications

The primary mission of the University is the growth and transmission of knowledge. Toward this end, the right of faculty members to pursue their chosen path of inquiry and to disseminate the results freely is aggressively protected. In turn, faculty members are strongly encouraged to make the results of their research freely available to students, colleagues, and the public. It is realized that undertaking certain types of research may require entering into nondisclosure agreements. However, faculty are urged to avoid involvement in projects, especially classified projects, that restrict academic communication. Generally, the University will not approve grants or contracts that restrict publication of research results, except for a brief period of time to obtain a copyright or patent, or where a decisive case is made that the proposed contractual restrictions will promote the discovery and transmission of knowledge to a significantly greater extent than the absence of such restrictions. Exceptional cases will be referred to the Committee on Research.
for a review. The Committee on Research has executive authority on the question of restrictions on publication.

5.5 **Intellectual Property Policy and Procedures**

5.5.1. **Introduction**

The creativity of human beings is manifested in fields as diverse as science and technology, literature and the humanities, and the fine and applied arts. Intellectual property comprises the legal vehicles that make possible the ownership and control of some of the fruits of this creativity, providing an incentive both to be creative and to make such fruits public. As a result of changes in the laws governing intellectual property and in the conditions governing federal grants and contracts, and of increased cooperation in research and development between universities and business, the volume of intellectual property being created in universities is increasing significantly. This increase has made apparent the complexity of the issues related to the ownership, control and use of such property. This policy is designed to achieve the following objectives:

- Encourage the creative endeavors of all members of the Tulane University community;
- Safeguard the rights and interests of all relevant parties (including the University itself) in the creative products of those associated with the University;
- Facilitate the dissemination and use of the findings of academic research so as to benefit the public at the earliest possible time;
- Provide machinery by which the significance of the findings of academic research may be determined and, when appropriate, their public use facilitated;
- Assist in the negotiation and preparation of contracts with outside sponsors, collaborators and licensees, and support the fulfillment of the terms of those contracts;
- Provide for the equitable distribution of benefits resulting from intellectual property among the various parties with interests in it.

5.5.2. **Definitions**

Throughout this policy, words and phrases shall be deemed to have their customary meanings. Notwithstanding this, and by way of illustration only, the following list of definitions is provided. This list is not intended to be exhaustive.

**COPYRIGHT**: is the set of exclusive legal rights, as defined by law, that subsist in relation to an original work of authorship.
**EMPLOYEES:** means all full-time and part-time employees of Tulane University, whether faculty members, staff or students.

**FACULTY:** means all employees who meet the definition of "faculty members" contained in the most recent version of Tulane University's Faculty Handbook.

**INTELLECTUAL PROPERTY:** means property in intangibles that are developed or chiefly guided by the intellect of their creators. It includes, but is not limited to, patents, trade secrets, copyrights, mask work rights, trademarks, and rights in tangible research materials.

**MASK WORK RIGHTS:** are the exclusive legal rights, as defined by law, that subsist in relation to a mask work fixed in a semiconductor chip product.

**PATENT:** means a patent issued by the United States Government or by any foreign government securing to an inventor for a limited time a set of exclusive legal rights in relation to his invention; it includes applications for patents, divisionals, reissued patents, continuations, and continuations-in-part of patents and applications therefore.

**STAFF:** means all employees of Tulane University who are not faculty members or students.

**STUDENTS:** means all persons enrolled in a course of study, full-time or part-time, in any division of Tulane University, its schools or colleges. A "COVERED STUDENT" means a student to whom this policy applies, as defined by Section 5.5.3.b below

**TANGIBLE RESEARCH MATERIALS:** means tangible items produced in the course of research projects (such as a cell line or a radioimmunoassay), but not any information embodied in such items. It does not include tangible items that embody information as to which the University has no ownership rights, or as to which it waives and releases its ownership rights under Section 5.5.5.02.

**TRADE SECRETS:** means information, whether patentable or not, and including a formula, pattern, compilation, program, device, method, technique, process or know-how that is protected by law.

**UNIVERSITY:** The Administrators of the Tulane Educational Fund is the corporate entity of Tulane University. "University" shall refer to Tulane University, its component divisions, centers and institutes, or its officers.

**UNIVERSITY FACILITIES:** means any facility including funding, equipment, and material, available to a person as a direct result of that person's affiliation with the University, which would not be available to a non-University person on the same basis.

**UNIVERSITY OFFICIAL:** means any officer of the University who is designated by the President to perform any task in relation to this policy on behalf of the University.
5.5.3 Applicability

This policy applies to:

a. all University employees, whether faculty members, staff or students;

b. all graduate students (i.e., post-baccalaureate) enrolled at the University, in respect only of their activities as such and who are not covered by the Tulane University Policy on Student Intellectual Property (See XXX);

c. all Residents and Fellows of the University;

d. any person, other than an employee, a student, a Resident, or a Fellow of the University, who is aided by University facilities or staff, or by funds administered by the University, subject always to Section 5.5.11., below; and

e. any person, other than an employee, a student, a Resident, or a Fellow of the University, who is working at the University by virtue of a grant form, or a contract with an outside body, whether governmental or private, subject always to 5.5.11., below.

Upon prior written agreement with the University, this policy may also be applied to persons who do not fall into any of the above categories.

5.5.3.01 Condition of Employment, Enrollment and Support

This policy, as amended from time to time, shall become a part of the conditions of employment of every employee, and of the conditions of enrollment and attendance of every covered student, whether such employee or student was employed or enrolled, as the case may be, before or after its adoption.

5.5.3.02 Existing Intellectual Property

This policy shall be applied only to intellectual property coming into existence on or after the date of its adoption. Intellectual property coming into existence prior to the adoption of the revision on XXXXX shall however continue (a) to be subject to any definition of "net income" previously applicable to it, and (b) to be governed by any applicable agreements in force among the University, its personnel, the external sponsors of its research programs, or any two or more of them. In any such case, however, the persons concerned may avail themselves of the benefits of this policy by notification to the Senior Vice President for Academic Affairs and Provost, or the respective designee, as appropriate.

5.5.4. Intellectual Property in General

In general, and without prejudice to any of the specific provisions contained herein, the University, and every person to whom this policy applies, agree that all intellectual property that
is created by an employee within the scope of his or her employment, or by a covered student or a Resident or a Fellow within the scope of his or her activities as such, or by any other person who is aided by University facilities or staff, or by funds administered by the University, or is working at the University by virtue of a grant from, or a contract with, an outside body, whether governmental or private (subject always to 5.5.11, below), shall be the property of the University. A condition of employment, enrollment, and attendance or support shall be that the ownership rights in every such intellectual property shall, where necessary, be assigned by the individual creator to the University in consideration of the University agreeing to share the net income actually received from such property in accordance with 5.5.9, below, and to deal with such property in accordance with 5.5.10, below. This assignment shall be made in a manner determined by the University in accordance with this policy. The University shall have no ownership rights in respect of intellectual property that does not fall within the definition given above; however, the creator may, if he or she so desires, offer such intellectual property to the University. If accepted, it shall be treated in the same way, and be subject to the same procedures, as intellectual property owned by the University, unless otherwise agreed upon.

Every person to whom this policy applies shall disclose to the University, in accordance with the procedures set out in 5.5.10.01, below, any intellectual property created by him or her.

5.5.5 Patents

The area of scientific and technological inventions and discoveries presents, in an especially acute form, many of the difficulties that arise in connection with creative works of all kinds produced by members of the Tulane University community. The disproportionate expenditure of common University resources on the research leading to inventions and discoveries, the potential for their significant commercial exploitation, and the frequent involvement of outside governmental and private sponsors who wish to impose conditions to safeguard their own interests, are such that the University has an important interest, academic as well as economic, in coordinated the activities of faculty members and other employees in this area. In recognition of this interest, and of the interests of those conducting scientific research as well as of those who are their departmental colleagues, the University, and every person to whom this policy applies, agrees that the ownership rights to inventions and discoveries shall be dealt with in the manner described below.

5.5.5.01 Ownership Rights

Every invention or discovery or part thereof that is made by an employee within the scope of his or her employment, or by a covered student or a Resident or a Fellow with the scope of his or her activities as such, or by any other person who is aided by University facilities or staff, or by funds administered by the University, or is working at the University by virtue of a grant from, or a contract with, an outside body, whether governmental or private (subject always to 5.5.11, below) shall be the property of the University. A condition of employment, enrollment, and attendance or support shall be that the ownership rights in every such invention or discovery shall be assigned by the individual inventor or discoverer to the University in consideration of the University agreeing to share the net income actually received from such invention or discovery in
accordance with \textbf{5.5.9}, below, and to deal with such invention or discovery in accordance with \textbf{5.5.10} below. This assignment shall be made in a manner determined by the University in accordance with this policy. The University shall have no ownership rights in respect of an invention or discovery that does not fall within the definition given above; however, the inventor or discoverer may, if he or she so desires, offer such an invention or discovery to the University. If accepted, it shall be treated in the same way, and be subject to the same procedures, as an invention or discovery owned by the University, unless otherwise agreed upon.

\textbf{5.5.5.02 Waiver and Release of Ownership Rights}

The University, where it is free to do so and after consultation with the individual inventor or discoverer, may in its discretion and upon such terms as it deems fit, cause its ownership rights in an invention or discovery to be waived and released to the inventor or discoverer, subject always to its retention of income rights as set out in \textbf{5.5.9.02} below. The University shall, in such a case, execute all documents necessary to enable the individual concerned to undertake protective measures and to make arrangements for the development and commercial exploitation of the invention or discovery.

\textbf{5.5.5.03 Disclosure}

Every person to whom this policy applies shall disclose to the University, in accordance with the procedures set out in \textbf{5.5.10.01}, below, every invention or discovery made by him or her.

\textbf{5.5.6 Copyrights}

Creative works that are protectable by copyright belong, under the general law, to an employer if they are created by an employee within the scope of his or her employment. In common with universities generally, however, Tulane has never sought to assert its ownership rights in respect of books and articles written by faculty members. This waiver of rights rests predominantly upon the view that scholars should have unfettered freedom to communicate with others and to convey information to them, whether in the form of research findings, ideas, opinions, advice, or instruction, for any purpose of their choosing.

In recent years, the kinds of work that are copyrightable, as well as the number of media in which any copyrightable work can be created, have increased greatly, so as to include, for example, all kinds of video and audio tapes, microfilms, and computer programs. In many cases, a work created in a new medium is the same, in all essentials, as a book or article of the traditional kind, in that its primary concern is communication with others, and appropriately, such a work should be treated in the same way as books and articles have always been treated.

But in many other cases, a copyrightable work in a new medium is not primarily concerned with the communication of the information in that work, but is instead primarily utilitarian or functional, such as a computer program that controls the operation of an industrial or commercial process. With respect to this latter kind of work, the considerations that have historically
justified the University's refusal to assert its ownership rights do not exist. Such a work is much more closely akin to a scientific or technological invention or discovery, and shall be dealt with by this policy in an analogous manner.

5.5.6.01 Ownership Rights

Every copyrightable work or part thereof that is created by an employee within the scope of his or her employment, or by a covered student or a Resident or a Fellow within the scope of his or her activities as such, or by any other person who is aided by University facilities or staff, or by funds administered by the University, or is working at the University by virtue of a grant from, or a contract with, an outside body, whether governmental or private (subject always to 5.5.11, below), shall be the property of the University. A condition of employment, enrollment, attendance or support shall be that the ownership rights in every such work shall, where necessary, be assigned by the individual creator to the University in consideration of the University agreeing to share the net income actually received from such work in accordance with 5.5.9, below, and to deal with such work in accordance with 5.5.10, below. This assignment shall be made in a manner determined by the University in accordance with this policy. The University shall have no ownership rights in respect of a copyrightable work that does not fall within the definition given above; however, the individual creator may, if he or she so desires, offer such a work to the University. If accepted, it shall be treated in the same way, and be subject to the same procedures, as a work owned by the University, unless otherwise agreed upon.

5.5.6.02 Waiver and Release of Ownership Rights

a. The University shall, in all cases where it is free to do so, unconditionally waive and release its ownership rights in respect of any copyrightable work that is concerned primarily with the communication of the scholarly or artistic information in that work, or that is a musical composition or a work of fine art, provided the creation of such copyrightable work does not involve the extraordinary use of University resources or facilities. In cases where this proviso is applicable, the University may, by separate and explicit agreement with the author of the work, retain some or all of its rights in relation to such work, subject to such conditions as may be agreed with the author.

b. The University may, where it is free to do so and after consultation with the individual creator, entirely in its discretion and upon such terms as it deems fit, cause its ownership rights in respect of any other kind of copyrightable work to be waived and released to the individual creator, subject always to its retention of income rights, as set out in 5.5.9.02, below. In particular, the University may, as a condition of the release of its ownership rights, require the grant to it of a non-exclusive, royalty-free license to use the work in connection with its research and teaching activities.

c. The University shall, in every case in which it waives and releases its ownership rights in a copyrightable work, execute all documents necessary to enable the
individual creator to undertake protective measures and to make arrangements for the development and exploitation of the work.

5.5.6.03 Disclosure

Every person to whom this policy applies shall disclose to the University, in accordance with the procedures set out in 5.5.10.01 below, every work created by him or her (except works that are books, articles, musical compositions, or works of fine art and do not involve the extraordinary use of University resources or facilities), whatever its subject matter and whatever the medium in which it has been created.

5.5.7 Tangible Research Materials

All tangible research materials that are produced in the course of research carried on at, by, or with the support of the University, shall (subject always to 5.5.11, below) be the property of the University. All such tangible research materials shall be disclosed to the University in a manner analogous to the procedure set out in 5.5.10.01, below.

5.5.8. Trademarks

Trademarks, service marks, trade names or other identifiers relating to the University, its activities and its products, and whether registered or unregistered, shall be the exclusive property of the University. No steps may be taken to secure any of them to any other person, whether by use or registration, without the approval of a University officer.

5.5.9 Distribution of Income from Intellectual Property

The income derived from all intellectual property created by persons to whom this policy applies shall be distributed in the manner set out below. This distribution gives due recognition to the creative contributions of the individuals concerned, to the claims of their closest academic colleagues, and to the interests of the wider University community by which they have been nurtured and supported.

5.5.9.01 Intellectual Property Retained by the University

a. In every case in which the University does not waive and release its ownership rights to intellectual property, it shall share the net income actually received by it from such property equally with the individual creator of that property. The creator, or the estate of the creator, shall continue to be entitled to this one-half share, notwithstanding his or her death or the termination of his or her employment at Tulane.

b. Net income from a particular intellectual property is defined as gross proceeds from that intellectual property less allowable deductions.
Gross proceeds from intellectual property means gross royalties, licensing fees or similar payments actually received from the sale, assignment, licensing or other exploitation of the intellectual property concerned, including equity participation in a company, but excluding research funding specifically earmarked for the furtherance of research activities or research programs at the University.

Allowable deductions comprise: 1) all direct expenditures made for the purpose of protecting or exploiting that property and 2) 15% of remaining gross proceeds from intellectual property, after deduction of 1), above, for the support of the Office of Technology Transfer and Intellectual Property Development.

c. The allowable deduction for the support of the Office of Technology Transfer and Intellectual Property Development shall be used for the following purposes, in order of priority:

i. to pay for any current and accumulated liabilities incurred on behalf of the Office of Technology Transfer and Intellectual Property Development;

ii. to pay the annual operating expenses of the Office of Technology Transfer; and Intellectual Property Development and

iii. to support a seed research fund under the direction of the Committee on Research.

d. The University's one-half share shall be directed to the Senior Vice President for Academic Affairs and Provost and the distribution shall be dedicated in the manner set out below.

i. Seventy percent of each distribution shall be retained by the Senior Vice President for Academic Affairs and Provost, who shall distribute not less than one-third of this amount to such appropriate sub-unit as is established under any decentralized management center, unrestricted as to use. Any amount not distributed to an appropriate sub-unit shall be retained by the Senior Vice President for Academic Affairs and Provost, unrestricted as to use.

ii. The balance (thirty percent) of each distribution shall be made available to the department, section, or research activities of the individual creator or creators appointed and/or employed, according to their particular needs and circumstances as determined by the Senior Vice President for Academic Affairs and Provost or his designee, in consultation with the individual creator(s) and the appropriate dean(s) or director(s).

5.5.9.02 Intellectual Property Not Retained by the University

In every case in which the University is free to, and does, waive and release its ownership rights to intellectual property, the individual creator shall be its owner and may take appropriate
measures for its protection or exploitation. The University shall execute all documents necessary to enable the creator to proceed. Where the University is obliged to waive and release its rights unconditionally, in accordance with 5.5.6.02(a) above, it shall not be entitled to any share of the income derived from the released intellectual property. But where the University waives and releases its rights as a matter of discretion, in accordance with 5.5.02 or 5.5.6.02(b) above, it shall be entitled to a share of the income derived from the released property as follows, unless some other distribution is agreed with the individual creator:

a. The University shall not be entitled to any share of the first $10,000 of net income (as defined in 5.5.9.01 above) derived from the creator’s share of the released property.

b. The University shall be entitled to fifteen percent of all net income in excess of $10,000 derived from the creator’s share of the released property.

The University’s share of the net income from released intellectual property shall be distributed in the same way as its share of the net income from intellectual property that has not been released, as set out in 5.5.9.01(d) above. Each such distribution shall be unrestricted as to use.

5.5.10. Procedures and Administration of Policy

The Senior Vice President for Academic Affairs and Provost or his or her designee shall be responsible for the implementation and administration of this policy. In cooperation with the General Counsel and the Office of Academic Affairs, these offices shall develop, disseminate and implement policies and procedures relating to intellectual property. In addition, they shall, in relation to intellectual property owned and retained by the University, and may, in relation to other intellectual property:

a. Assist in the identification of protectable intellectual property.

b. Coordinate the process of seeking appropriate protection of intellectual property, and assist faculty and staff in this regard.

c. Respect the interests of the individual creator of intellectual property, and insure that he or she shall be a working partner in the process of obtaining protection, and carrying out the exploitation or development of the intellectual property.

5.5.10.01 Disclosure Procedures

a. Every person to whom this policy applies shall (as required by 5.5.5.03 and 5.5.6.03 above) report promptly to the Office of Technology Transfer and Intellectual Property Development any invention, discovery or other creative work made by him or her that is subject to the obligation of disclosure. This disclosure shall be made on confidential disclosure forms, which are available upon request. If additional information is required, the Office of Technology Transfer and Intellectual Property Development shall so notify the individual creator, and shall specify the type of
information it requires. Upon the receipt of sufficient information, or upon the expiration of ninety (90) days from the date of an inquiry as to sufficiency by the creator to which there has been no response by the Office of Technology Transfer and Intellectual Property Development, whichever is earlier, the disclosure shall be deemed complete.

b. The Office of Technology Transfer and Intellectual Property Development shall notify the individual creator whether it wishes to retain the intellectual property in the disclosure or whether the University is obliged (under 5.5.6.02(a), above) or voluntarily wishes (under 5.5.5.02 and 5.5.6.02(b), above), to waive and release its ownership rights. Such notification may be demanded by the individual creator at any time after the receipt of a complete disclosure, and if so demanded, shall be given no later than ninety (90) days after the making of the demand.

5.5.10.02 Procedures for the Protection, Development and Exploitation of Intellectual Property

The University shall, in respect of intellectual property owned and retained by it, take all appropriate and reasonable measures to protect the property and exploit or otherwise develop it, and shall, upon request provide the individual creator with a written report describing the measures it has taken. In the event that the University decides subsequently not to take such measures, and to abandon the property, it shall notify the individual creator promptly of its decision. In respect of intellectual property not owned by the University, or owned by it but not retained by it, or owned and retained but subsequently abandoned by it, the University may assist the individual creator in taking, at his or her own expense, the measures necessary for the protection, exploitation and development of the property.

5.5.10.03 Resolution of Disputes

Any disputes arising under this policy, between the University and any person to whom this policy applies, shall in the first instance be referred to, and considered by, the Senior Vice President for Academic Affairs and Provost or his or her designee. If the dispute is not resolved thereby, it shall be referred to, and considered by, the University Senate Committee on Research, which may appoint a specific subcommittee to resolve the dispute.

5.5.11. Agreements with Outside Bodies

Nothing in this policy shall affect the validity or operation of any grant or sponsored research and/or publication agreement between an outside body (whether governmental or private) on the one hand, and the University, or any person to whom this policy applies, on the other. In particular, this policy shall not in any way affect any provisions in such a grant or agreement relating to the ownership, control, and administration of intellectual property resulting from the performance of the grant or agreement.
5.6 Research Misconduct

5.6.1 Introduction/Purpose*

It is the responsibility of all researchers to conduct their professional activities according to high standards of scholarship. Their responsibility to the community at large demands that they be honestly and sincerely devoted to the ideals of discovery and dissemination of truth and knowledge. Research misconduct undermines the academic enterprise. Institutions engaged in research have a responsibility, not only to provide an environment that promotes integrity, but also to establish and enforce policies and procedures that deal effectively and expeditiously with allegations or evidence of misconduct.

In dealing with the problem of research misconduct, it is important not to create an atmosphere that might discourage openness and creativity. Good and innovative research cannot flourish in an atmosphere of oppressive regulation. Moreover, it is particularly important to distinguish fraud from the honest error and the ambiguities of interpretation that are inherent in the scientific process and are normally corrected by further research.

This policy applies to all employees, students or other persons within the organizational control of Tulane University at the time of the performance of the research in question. The primary goal of this policy is to assure professional and humane handling of allegations regarding research misconduct.

The federal Office of Science and Technology Policy (OSTP) issued a final federal research misconduct policy on December 6, 2000. That policy consists of a definition of research misconduct and basic guidelines to help federal agencies and federally-funded research institutions respond to allegations of research misconduct. This policy incorporates the definitions and guidelines of the OSTP research misconduct policy.

This policy is not designed to fully implement the National Science Foundation (NSF) or federal Public Health Service (PHS) research misconduct regulations as contained in 45 CFR Part 689 and 42 CFR Part 93, respectively. The Vice President for Research (VPR) administers separate policies and procedures which fully implement the NSF and PHS research misconduct regulations. The VPR policies will be followed whenever an allegation arises which involves research sponsored by NSF or PHS. These policies may be found on the University Research Compliance officer’s website located at http://tulane.edu/asvpr/research-compliance.cfm.

If there is conflict between the policy provisions contained herein and the policy of the federal funding agency for the research in question, the policy of the federal funding agency will be followed. If more than one federal agency policy is applicable, each agency will be kept apprised of the status of the investigation as required by the agency. If a conflict exists between federal agency provisions, the most restrictive applicable policy provision will be followed.

The procedures defined in this policy involve four stages:
a. An inquiry to determine which allegations or related issues warrant further investigation;

b. If warranted after such inquiry, an investigation to collect and thoroughly examine evidence;

c. A formal finding; and

d. Appropriate disposition of the matter.

This policy is not intended to override or supplant, but rather to be consistent with existing Tulane policies for employment and academic conduct. (See Chapter 8, Faculty Code of Conduct, Corrective Actions, and Dismissals) In cases involving students alone, the Unified Code of Graduate Student Academic Conduct, http://tulane.edu/ogps/upload/Unified-Code-of-GS-Academic-Conduct-11-14-07.pdf or appropriate school code will be followed unless it involves research covered by a separate sponsor-required misconduct policy. If a case involves both students and faculty or staff, all parties will be investigated under this policy (or the appropriate, sponsor-required misconduct policy). With regard to the institutional review process for dealing with allegations of misconduct, Tulane is committed to:

• Ensuring that the process used to resolve allegations of misconduct not damage the research process.
• Investigating and resolving all charges. All respondents to allegations of research misconduct must cooperate with the division, Dean, or chief administrator undertaking inquiries or investigations into allegations of research misconduct. Even if the respondent leaves Tulane before the case is resolved, Tulane shall continue examination of the allegations and reach a conclusion. Further, Tulane shall cooperate with the processes of other involved institutions to resolve such problems.
• Treating all parties with justice and fairness and being sensitive to their reputations and vulnerabilities. The Dean shall provide confidentiality for the individual who comes forward with an allegation of misconduct and shall take appropriate steps to protect the complainant against retaliation. Any individuals engaging in acts of malice or of retaliation shall be disciplined in accordance with appropriate institutional policies. The Dean shall work to assure that allegations of research misconduct have been brought in good faith and are not motivated by malicious intent.
• Preserving the highest attainable degree of confidentiality compatible with an effective and efficient response. Strict confidentiality shall be maintained of all information gathered in an inquiry or investigation. This may include seeking assurances of the confidential treatment of such information prior to notifying sponsors of research. If confidentiality is breached, the Dean responsible for the inquiry or investigation shall take reasonable steps to minimize damage to reputations that may result from inaccurate reports.
• Maintaining the integrity of the process by painstaking avoidance of real or apparent conflict of interest. The Dean in charge of each stage of the process shall be responsible for assuring no real or apparent conflict of interest, bearing on the case in
question, is possessed by individuals chosen to assist in the inquiry and investigative process.

- Resolving charges in as expeditious a manner as possible.
- Documenting the pertinent facts and actions at each stage of the process.
- After resolving allegations, discharging its responsibilities both internally – to all involved individuals – and externally – to the public, the sponsors of research, the scientific literature, and the scientific community, to the extent that it is appropriate and allowable. When allegations are not confirmed, the University shall undertake diligent efforts to restore the reputations of persons alleged to have engaged in this conduct, as well as to protect the positions and reputations of those who, in good faith, made such allegations.

5.6.2. Definition of Research Misconduct

Research misconduct is a form of misconduct involving fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic research community for proposing, conducting or reporting research. It does not include honest error or honest differences in interpretation or judgments of data.

Furthermore, when allegations are made, difficulties can often arise in determining where – along the spectrum from error to fraud – a particular case will lie. The definition of research misconduct covered by this policy is as follows:

- a. Falsification of data – ranging from fabrication to deceptive selective reporting, including the purposeful omission of conflicting data with the intent to falsify results;

- b. Plagiarism – representation of another's work as one's own;

- c. Violation of Federal Regulations – material failure to comply with federal requirements that uniquely relate to the conduct of research.

5.6.3. Process for Handling Allegations of Research Misconduct

a. Initiation of an Inquiry

All allegations of research misconduct should be reported to the Dean or chief administrator of the division in which the respondent researcher resides. The Dean shall take immediate and appropriate action as soon as misconduct has been alleged or is suspected. The Dean shall take interim administrative actions, as appropriate, to protect Federal funds and ensure that the purposes of the Federal financial assistance are carried out. Pursuit of the allegations should include discussion with the individual or individuals who made the allegation as well as with the researcher whose practices have been questioned. The researcher should be informed at the outset of the potential seriousness of the allegation and that he/she may wish to seek the advice of outside counsel.
If the Dean determines that the allegation is properly addressed through these policies and procedures designed to deal with research misconduct, inquiry procedures shall be discussed with the individual who has raised questions about the integrity of a research project. If this individual chooses not to make a formal allegation, but the Dean believes there is sufficient cause to warrant an inquiry, the matter shall be pursued under these policies and procedures.

b. Inquiry

1. **Structure** - The Dean or chief administrator of the division in which the respondent researcher resides is the official responsible for conducting inquiries into allegations of research misconduct. The Dean may appoint a small ad hoc committee to provide advice relevant to the inquiry stage. If the Dean elects to appoint such an ad hoc committee, the Dean shall appoint a chair of the ad hoc committee. Such a committee shall include individuals who have the necessary expertise to evaluate the evidence and issues related to the allegation, interview the principals and key witnesses, and conduct the inquiry. It is the responsibility of the Dean to insure that the inquiry is conducted in a fair and just manner. The Dean may delegate the responsibility for collecting part or all of the information to a member of his/her staff.

2. **Purpose** - The purpose of the inquiry will be, expeditiously, to gather and review factual information to determine if reasonable cause for investigation of the charge exists. The inquiry stage is not considered to be a formal hearing, but is designed to separate allegations deserving of further investigation from frivolous, unjustified, or clearly mistaken allegations.

3. **Process** - Upon initiation of an inquiry, the Dean is responsible for notifying the respondent within a reasonable time of the charges and the process that will follow. The Dean shall be responsible for disseminating information on the inquiry to appropriate individuals to include the Senior Vice President for Academic Affairs and Provost, the Office of the General Counsel, and the Vice President for Research. Notification should be made in writing and copies filed in the Dean's office. The safety and security of all documents must be assured. An inquiry conducted pursuant to this policy, but not otherwise subject to federal regulations or a separate sponsor required policy, must be completed within 60 days of the initial written notification of the respondent. If it is anticipated that the established deadline cannot be met, a report providing the reasons for the delay and progress to date should be submitted, for the record, and to the respondent and appropriately involved individuals.

4. **Findings** - The inquiry phase will be completed when the Dean determines whether or not reasonable cause for investigation exists. A report shall be written that summarizes the process (including the evidence reviewed and interviews conducted) and state the conclusion of the inquiry. The respondent shall be given a copy of the written report and shall be informed by the Dean as to whether or
not there will be further investigation. Comments on the report by the respondent may be made part of the record of the inquiry. Any comments by the respondent are due within five (5) calendar days of being provided the written report. The complainant shall be given the report, along with the respondent's comments. The report shall be forwarded promptly to the Senior Vice President for Academic Affairs and Provost. The Senior Vice President for Academic Affairs and Provost will work with the Vice President for Research to notify sponsoring agencies as required by applicable statutes and/or contractual agreements.

c. Investigation

1. **Purpose** - When a Dean finds that investigation is warranted, the purpose of the investigation shall be to explore further the allegations and determine where misconduct has been committed. The investigation should focus on accusations of misconduct as defined previously and examine the factual materials of each case. The institution’s decision to initiate an investigation must be reported to the appropriate oversight officials, if federally required to do so. At a minimum, the notification should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation as it related to the funding entity’s definition of scientific misconduct, and identifying information for the pending or awarded grant. In the course of the investigation, broadening the scope of the investigation beyond the initial allegations may occur, if additional information emerges that justifies such action. The respondent shall be informed when significant new directions in the investigation are undertaken and shall be given adequate time to prepare a defense, if new developments so require. At any time during an investigation, The Dean shall take interim administrative actions, as appropriate, to protect the external funds and ensure that the purposes of the external financial assistance are carried out.

2. **Structure** - When a Dean finds that an investigation is warranted, the Dean will immediately notify the Senior Vice President for Academic Affairs and Provost and the Vice President for Research of his/her decision to initiate it. The Grievance Committee of the school in which the respondent researcher has his/her primary appointment shall be responsible for investigation of research misconduct allegations. The Dean will refer the matter to the Grievance Committee within thirty (30) days of determining that an investigation is warranted. Necessary and appropriate expertise shall be secured to carry out a thorough and authoritative evaluation by the committee. If additional technical expertise is needed, the Grievance Committee, in consultation with the Dean, shall appoint one to three additional members from the University community to provide such expertise. Outside researchers may be consulted as expert witnesses, but may not serve as members of the Grievance Committee. The Dean will also take precautions against real or apparent conflicts of interest on the part of members of the Grievance Committee. Such conflicts of interest may include: administrative dependency, close personal relationships, collaborative relationships, financial
interest, and/or scientific bias. The committee members will be expected to state in writing that they have no conflicts of interest. Any member of the Grievance Committee with a real or apparent conflict of interest shall recuse him/herself from the committee for the particular investigation. If the Chair of the Grievance Committee recuses him/herself from the committee for purposes of the investigation, the Dean, in consultation with the Provost and the Vice President for Research, shall appoint an ad hoc Chair of the Grievance Committee for the investigation.

3.

4. **Process** - Upon receipt of the inquiry findings that an investigation is warranted, and within 30 days of completion of an inquiry, the school Grievance Committee shall initiate a formal investigation and so notify the Dean, the Senior Vice President for Academic Affairs and Provost, Vice President for Research, the Office of the General Counsel, the complainant and the respondent. The researcher concerned, upon written request made within 10 working days following delivery of such notification, shall have the right to be heard by the school Grievance Committee. If a researcher does not request a hearing or deny the charges within said 10-working day period, the school Grievance Committee must make recommendations for a disposition of the case on the basis of the evidence that it gathers. The accused is required to cooperate with the investigation and failure to cooperate may be taken into consideration by the committee. Members of the Grievance Committee must remove themselves from the case, if they deem themselves disqualified for reasons of bias or personal interest. Any members removed for this reason shall be replaced by the Chair of the Grievance Committee. The Office of the General Counsel shall be used in an advisory role throughout the process.

As soon as practicable, in any event no later than 10 days from the deadline for the respondent's request for a hearing, the Dean shall serve on the respondent a copy of the statement of charges and, if a hearing is requested by the respondent or determined to be necessary by the committee, written notice of the place and day of the hearing by the Grievance Committee. The hearing shall be fixed for a date not sooner than 20 working days nor later than 40 working days after delivery of the notice. The respondent may waive a hearing or may respond to the charges in writing at any time before the hearing. The respondent may also waive a hearing, but deny the charges or assert that the charges do not support a finding of research misconduct. In any such event, the school Grievance Committee shall investigate and evaluate all available evidence and make its findings and recommendations upon the evidence in the record before it. Normally, evidence will include, but not necessarily be limited to, relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, interviews should be conducted of all individuals involved either in making the allegation or against whom the allegation is made, as well as other individuals who might have information regarding key aspects of the allegations; complete summaries of these interviews should be prepared, provided
to the interviewed party for comment or revision, and included as part of the investigatory file.

Hearings shall be private, unless the Grievance Committee, the Dean and the respondent all agree that the hearing shall be public. During the proceedings, the respondent and the complainant shall have the right to have legal counsel present for the purpose of observation and advice, but outside counsel shall not be allowed to address the committee directly. Whenever an outside counsel is present, General Counsel must also be present. A verbatim record of the hearing(s) shall be made available to the respondent without cost.

The burden of proof rests with the University and should be based upon a preponderance of the evidence. The Grievance Committee shall grant adjournments of reasonable periods of time, not to exceed 10 days, to enable either party to investigate evidence about which a valid claim of surprise is made. The respondent shall be afforded an opportunity to present necessary witnesses in his/her defense and documentary of other evidence and the University shall, so far as this is possible, secure the cooperation of such witnesses and make available necessary documents and other evidence within the control of the University. The respondent, members of the Grievance Committee, and the Dean shall have the right to confront and cross-examine all witnesses. Where a witness cannot or will not appear, but the committee determines that the interest of justice requires admission of a statement, the committee shall identify the witness, and disclose the statement. The Grievance Committee shall not be bound by strict rules of legal evidence and may admit any evidence which is of probative value in determining the issues involved. Every possible effort shall be made to obtain the most reliable evidence available.

Investigations should be completed within a reasonable time period, or within any time period required by the funding source. A reasonable time is defined as within 180 days from the initial meeting of the investigation committee, unless the reasons for delay are documented and approved by the VPR. This includes conducting the investigation, preparing the report of findings, making the draft report available to the subject of the investigation for comment, and submitting the report to the Senior Vice President for Academic Affairs and Provost for approval. It is recognized that the ability to complete an investigation within the applicable period will depend heavily upon factors such as the volume and nature of research reviewed and the degree of cooperation being offered by the subject of the investigation.

A request for an extension of the time period for completing the investigation for externally-funded research shall follow the policies and/or regulations of the funding source. If no externally funded research is involved, then requests for extension should be made to the Senior Vice President for Academic Affairs and Provost.
Investigations into allegations of research misconduct may result in various outcomes including:

(a) A finding of misconduct;

(b) A finding of serious scientific wrongdoing short of fraud;

(c) A finding that no scientific misconduct was committed, but serious scientific errors were discovered;

(d) A finding that no fraud, misconduct or serious error was committed.

4. Findings - The Committee shall submit a draft of its findings and its recommendation concerning the nature and severity of the disciplinary action in writing to the respondent for comment and rebuttal. The respondent will be allowed five (5) calendar days to review and comment on the draft report. The respondent’s comments will be attached to the final report. The findings of the final report should take into account the respondent’s comments in addition to all the other evidence. As promptly as practicable following receipt of the respondent’s comments or expiration of the five day period set forth above, the Committee shall submit its findings and recommendation concerning the nature and severity of the disciplinary action in writing to the Senior Vice President for Academic Affairs and Provost who will be responsible for deciding what will be the outcome of the investigation, following the lapse of time necessary to allow an appeal, if one is filed. The Dean, Vice President for Research and respondent shall receive copies of the full report of the investigation. When there is more than one respondent, each shall receive all those parts that are pertinent to his/her role.

d. Appeal

If the Grievance Committee recommends the dismissal of a faculty member, the Senior Vice President for Academic Affairs and Provost will refer the case to the Senate Committee on Faculty Tenure, Freedom, and Responsibility for the initiation of dismissal proceedings as described herein. In all other cases, the respondent to the allegation of research misconduct may appeal the decision of the Grievance Committee to the Senate Committee on Faculty, Tenure, Freedom and Responsibility (FTFR), within 10 working days after a recommendation is rendered by the Grievance Committee. Appeals shall be restricted to the body of evidence already presented. To correct procedural errors or to consider the submission of new evidence, the case shall be remanded by the FTFR to the Grievance Committee. The two committees shall meet to discuss whatever differences may exist in their judgment of the case. If the disagreement cannot be resolved, separate recommendations shall be sent to the proper administrative officers. The Senate Committee on Faculty Tenure, Freedom and Responsibility shall complete its review and submit its recommendation within 40 days to the Senior Vice President for Academic Affairs and Provost, the Dean, the Vice President for Research, and the researcher(s) concerned.
e. Disposition

1. **Discipline** - In cases in which the researcher has been judged guilty by the Grievance Committee, the Senior Vice President for Academic Affairs and Provost shall be responsible for determining the nature and severity of the disciplinary action. If dismissal of the researcher is recommended, such recommendation shall use normal dismissal procedures as described herein or in the Tulane Staff Handbook. Examples of disciplinary actions that may be taken by the Senior Vice President for Academic Affairs and Provost as a result of a finding of research misconduct include the following:

   (a) Removal from the particular project;

   (b) Letter of reprimand;

   (c) Special monitoring of future work;

   (d) Suspension or exclusion of a graduate student;

   (e) Termination of employment of a staff member;

   (f) Referral to the Senate Committee on Faculty Tenure, Freedom, and Responsibility for dismissal proceedings against a faculty member (as outlined in Chapter 8).

2. **Notification of Concerned Parties and Sponsoring Agencies** - The Vice President for Research will promptly notify the federal agencies, sponsors, or other entities initially informed of the findings of the investigation. If the institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements of the applicable PHS regulations, the Vice President for Research will submit a report of the planned termination to the PHS Office of Research Integrity, including a description of the reasons for the proposed termination. Full details concerning PHS research misconduct sponsor notification procedures are contained in the Tulane PHS Policy. If the institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements of the applicable NSF regulations, the institution will provide such information to the NSF OIG as is necessary to demonstrate that the termination of the inquiry or investigation is justified. Full details concerning NSF research misconduct sponsor notification procedures are contained in the Tulane NSF policy. The Vice President for Research shall retain the findings of the investigation in a confidential and secure file. The report will include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct as well as a description of any sanctions imposed and administrative actions taken by the institution.

In addition to notifying concerned parties and sponsoring agencies, the Senior Vice President for Academic Affairs and Provost may also choose to notify:
(a) Co-authors, co-investigators, collaborators;

(b) Editors of journals in which fraudulent research was published;

(c) Professional licensing boards;

(d) Editors of journals or other publications, other institutions, sponsoring agencies, and funding sources with which the individual has been affiliated;

(e) Professional societies; and

(f) Where appropriate, criminal authorities.

3. **Record Retention** - After completion of a case and all ensuing related actions, the Vice President for Research will prepare a complete file, including the records of any inquiry or investigation and copies of all documents and other materials related to such inquiry or investigation. The Vice President will keep the file for a minimum of three years after completion of the case to permit later assessment of the case or for the retention period required by the funding entity, whichever is longer. Federally authorized personnel will be given access to the records upon request and as required by federal regulations.

* This policy statement is based on and draws heavily from the language of the report "Framework for Institutional Policies and Procedures to Deal with Fraud in Research," authored by the Association of American Universities and the National Association of State Universities and Land-Grant Colleges.