

ARTICLE 18*INVENTIONS AND WORKS*

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4 **18.1 University Authority and Responsibilities.** The University is authorized to
5 establish regulations and procedures regarding patents, copyrights, and trademarks
6 consistent with federal and state law. Such regulations and procedures shall be consistent
7 with the terms of this Article.

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9 **18.2 Definitions.** The following definitions shall apply in this this Article:

10 (a) A "Work" means, in accordance with Title 17 of the U.S. Code, any original
11 work of authorship that is or may be subject to copyright. Work includes but is not limited
12 to printed material (such as books, articles, memoranda, and texts), computer software or
13 databases, audio and visual material, circuit diagrams, architectural and engineering
14 drawings, lectures, compositions (e.g., written, musical, dramatic), motion pictures,
15 multimedia works, web pages, sound recordings, choreographic works, and pictorial or
16 graphic illustrations or displays, and any creative expression of a Trademark used in
17 connection with these items. Instructional Material is included in this definition.

18 b) "Instructional Material" shall include Works authored as part of or in
19 connection with University teaching. Examples include, but are not limited to, syllabi,
20 lecture notes, case examples, course packs, video lectures, power point presentations,
21 examinations, audio or video recordings, motion pictures, films, slides, photographic and
22 other similar visual materials, electronic and digital media, computer programs, programmed
23 instructional materials, web pages, materials created for on-line, mixed mode, distance or
24 distributed learning courses, three dimensional materials and exhibits, combinations of the
25 above, and similar instructional or testing materials.

26 (c) "Distance or Distributed Learning" means a course that is rarely or never
27 conducted with the employee and the students in the same general physical space.

28 (d) "Works for Hire" shall mean, as defined in Section 101 of the Copyright
29 Code,

30 (1) a Work that is prepared by an employee within the scope of his or her
31 employment;

32 (2) a Work specially commissioned for use by the University, for example, as a
33 contribution to a collective work, as part of a motion picture or other audio visual work, as
34 a translation, as a supplementary work, as a compilation, an instructional text, as a test or
35 material for test, as an atlas, etc., if the parties expressly agree in an executed writing that
36 the Work shall be considered a work for hire.

37 (e) An "Invention" means

38 (1) any discovery, process, composition of matter, article of manufacture, know-
39 how, design, model, technological development, biological material, strain, variety, culture
40 of any organism, or portion, modification, translation, computer software or databases, or
41 extension of these items which is or may be patentable or otherwise protected under Title
42 35 of the United States Code, or that is or may be protected as a Trade Secret, under the

43 Florida Trade Secrets Act, Ch. 688, Fla. Stat. or any similar act of another State, or the
44 Defend Trade Secrets Act, 18 U.S.C. §1836, as may be relevant,

45 (2) any novel variety of plant that is or may be patentable or otherwise protected
46 under the Plant Variety Protection Act (7 U.S.C. §2321 et seq.) ,

47 (3) any Trademark, and/or

48 (4) any directly related know-how used in connection with these items.

49 (f) “University Support” shall mean the use of University funds, personnel,
50 facilities, equipment, the University computer infrastructure, materials, **pecially created**
51 **software platforms such as “Materia,” or “Obojobo,” professional video production, or**
52 technological information, in the creation or making of a Work or Invention. University
53 Support includes such support provided by other public or private organizations when it is
54 arranged, administered, or controlled by the University, including but not limited to
55 research and investigations that sponsored by the University and/or that carried out by
56 public funds. It does not include the ordinary use of University resources, including the use
57 of desktop or University provided laptop computers, the University computer **resources,**
58 secretarial staff and supplies, one’s office and the University library.

60 **18.3 Rights to Copyrighted Works.**

61 (a) **Works owned by employees. The Work for Hire rule in the Copyright Act**
62 **gives the University ownership of the copyrights to works produced by its employees**
63 **within the scope of their employment. However, the University supports the long-standing**
64 **tradition within academia as to certain exceptions to the Work for Hire Doctrine, and**
65 **therefore treats teaching and research faculty as the copyright owners of Works as follows:**

66 (1) Works created as a result of independent efforts. “Independent
67 “Efforts” means that the ideas came from the employee; that the Work was made without
68 University support; and that the University is not responsible for any opinions expressed in
69 the Work.

70 (2) Works created as a result of Outside Activity. Works created from
71 approved Outside Activity in accordance with, Conflict of Interest or Commitment and
72 Outside Activity Article, are the property of the creator, subject to the following:

73 a. Any requirement that an employee waive potential University
74 rights to any Work that arises during the course of such outside activity shall not be
75 entered into unless specifically approved by the University’s representative, in writing,
76 prior to the start of such outside activity.

77 b. An employee who proposes to engage in an outside activity
78 where the employee is asked to waive the University’s rights shall furnish a copy of this
79 Article and the University's Copyrights and Works Regulation to the outside employer
80 prior to the time a consulting or other agreement is signed or, if there is no written
81 agreement, before the outside activity/employment begins.

82 (3) Scholarly or artistic works. Works, regardless of their form of
83 expression, for which the intended purpose is to disseminate the results of academic
84 research, scholarly study, or artistic expression such as textbooks, journal articles,
85 scholarly papers, conference presentations, works of popular nonfiction, novels, poems,

86 dramatic works, visual works of art or design, films, musical compositions/arrangements,
87 etc.

88 (4) Instructional Materials as defined in 18.2(b), subject to an irrevocable,
89 nonexclusive, royalty free license to the University to use, reuse, reproduce, update,
90 display, distribute, and make derivative works (such as compilations, archives, or
91 composite works) for the research and educational purposes of the University. A copy of
92 current Instructional Materials shall be filed in the department office.

93 (b) Works owned by the University. The University asserts copyright ownership
94 as a Work for Hire (with the exceptions noted in 18.3(a)) in any Work where:

95 (1) The Creator was expressly commissioned in writing to produce or
96 participate in the production of the Work with University funds for a specific University
97 purpose.

98 (2) The Creator was expressly assigned in writing by the University to
99 produce or participate in the production of the Work.

100 (3) The Creator was a faculty administrator or a non-faculty employee
101 acting within the scope of his or her employment.

102 (4) The Creator was substantially assisted by a support agency of the
103 University, received assistance in the form of released time, or received University support
104 including grants and contracts funds administered by the University, for the creation of the
105 Work.

106 (5) Authorship cannot be attributed to one or a discrete number of authors
107 but rather results from simultaneous or sequential contributions over time by multiple
108 employees, such as software tools developed and improved over time by multiple
109 individuals. Joint authorship is not the determining factor; rather, the University looks
110 to determine whether authorship or creation is so diffuse as to be non-attributable.

111 (c) Transfer of copyright to the employee.

112 (1) When copyright is owned by the University in accordance with the
113 provisions of this Article, the originating employee of the Work may request of the Vice
114 President of Research and Dean of the College of Graduate Studies (“Vice President of
115 Research”) that ownership be transferred to the employee. Such request may be granted if
116 it does not:

- 117 a. violate any legal obligations of or to the University
- 118 b. limit appropriate uses of the Work by the University
- 119 c. create a conflict of interest for the employee
- 120 d. otherwise conflict with specific goals of the University

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122 **18.4 Rights in Inventions**

123 (a) Inventions owned by employees.

124 (1) Independent Inventive Efforts. All Inventions made outside the field
125 or discipline in which the employee is employed by the University, and for which no
126 University Support has been used, are the property of the employee, subject to 35
127 U.S.C. 115, who has the right to determine the disposition of such property and revenue

128 derived from such property. The employee and the University's representative may
129 agree that the patent for such Invention be pursued by the University and the proceeds
130 shared.

131 (2) Outside Activity. An employee may, in accordance with the
132 Conflict of Interest or Commitment and Outside Activity Article, engage in outside
133 activity, including employment pursuant to a consulting agreement. All Inventions
134 arising from authorized Outside Activity and outside of the field or discipline of the
135 employee are the property of the employee, subject to the following conditions:

136 a. Any requirement that an employee waive potential University
137 rights to any Inventions that arise during the course of such outside activity shall not be
138 entered into unless specifically approved by the University's representative, in writing,
139 prior to the start of such outside activity

140 b. An employee who proposes to engage in an outside activity
141 where the employee is asked to waive the University's rights shall furnish a copy of this
142 Article and the University's Patents, Trademarks, and Trade Secret Regulation to the
143 outside employer prior to the time a consulting or other agreement is signed or, if there
144 is no written agreement, before the outside activity/employment begins. Employees are
145 not authorized to waive University rights, and any such waiver is deemed rejected
146 unless specifically accepted by the Vice President of Research and Commercialization
147 or designee.

148 c. Undisclosed Outside Activity is considered unauthorized.

149 (i) Any Invention arising from undisclosed Outside
150 Activity must be disclosed to the Vice President of Research & Dean of the College of
151 Graduate Studies ("Vice President of Research") or designee. If the employee claims the
152 Invention resulted from Independent Inventive Effort(s), then as part of the disclosure,
153 the employee shall provide sufficient documentation to substantiate the claim.

154 (ii) Upon receipt of written notice from the Vice
155 President of Research or designee confirming the University's decision not to assert a
156 University interest in an Invention resulting from unauthorized Outside Activity, the
157 employee shall have the right to determine the disposition of such Invention. However,
158 the employee and the Vice President of Research or designee may agree that a patent for
159 such Invention will be pursued by the University; in that event, the employee and
160 University shall share in the proceeds of any Invention as provided by this Article any
161 applicable University policies or procedures, including applicable University of Central
162 Florida Research Foundation ("UCFRF") Guidelines and Procedures for Distribution of
163 Funds or in such other manner as the employee and the Vice President of Research or
164 designee may agree.

165
166 (b) Inventions owned by the University.

167 (1) University-Supported Efforts. Inventions made in the field or
168 discipline in which the employee is employed by the University, or by using University
169 Support, are the property of the University and the employee shall share in the proceeds
170 therefrom. Such Inventions and related rights shall be the property of the University or

171 its designee, UCFRF, and are hereby assigned to the University's designee, UCFRF, by
172 the employee. If the University decides to patent, develop and market the Invention, all
173 costs of the patent application and related activities, including those which lead to active
174 licensed production, shall be paid from University funds. These costs shall be recovered
175 before any division of patent or license revenue is made between the University and the
176 employee.

177 (2) Private or Industrially Sponsored Efforts. With some exceptions,
178 Inventions developed in the course of privately or industrially sponsored research are
179 the property of the University. The sponsor may be accorded the first option to negotiate
180 an exclusive license, in which case the term of exclusivity and the compensation shall
181 be negotiated at the time the Invention is made or under the provisions of the
182 University's policy on copyrights and patents. **The sponsor may also be accorded a pre-**
183 **negotiated license, ownership, or other non-standard rights (collectively, "Non-Standard**
184 **IP Rights"), upon written agreement of participating employees to the Non-Standard IP**
185 **Rights. If the sponsor exercises the option, or any other Non-Standard IP Rights, the**
186 **University retains royalty-free license rights to use the Invention or discovery for its**
187 **own purposes.**

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189 **18.5 Disclosure/University Review**

190 (a) Employees are required to disclose all Inventions owned by the University
191 and all Inventions resulting from any Outside Activity within the field or discipline of
192 the inventing employee. It is the policy of the University that, in general, research
193 results should be publishable; publication of such results in appropriate venues is
194 encouraged. However, if the publication of research results may reveal an Invention in
195 which the University has an interest, employees should seek advice on how and when
196 to publish the results in order that potential patent rights for the Invention are not
197 compromised. That is, upon the making of an Invention and prior to any publication or
198 public disclosure, employees shall promptly and fully disclose to the Vice President of
199 Research & Commercialization any Invention described in 18.4(b). Any delay in
200 publication resulting from seeking such advice shall be minimized, but in any event
201 shall not exceed **ninety days** from the date of presentation of the proposed publication,
202 unless a sponsor has contractually required a more lengthy period, and such time period
203 was confirmed acceptable to the employee(s) participating in the sponsored project.

204 (1) The disclosure shall be made on the forms and according to
205 procedures prescribed by the Vice President of Research. At a minimum the disclosure
206 shall: (1) identify each employee who contributed to the Invention, (2) provide a brief
207 description of the Invention, and (3) identify and summarize the research project
208 including the participants and applicable funding sources

209 (2) The Vice President for Research or designee shall conduct an
210 investigation to assess the patentability and marketability, as well as the respective
211 equities of the employee and the University in the Invention, and to determine the
212 extent to which the University should be involved in its protection, development, and

213 promotion.

214 (3) The Vice President for Research or designee shall inform the
215 employee of the University's decision regarding the University's interest in the
216 Invention within a reasonable time, not to exceed **ninety** days from the date of the
217 disclosure.

218 (4) In the event the University elects to obtain a Patent, register a
219 Trademark or a Copyright, or to formally define a Trade Secret to protect the
220 University's rights in the Invention, employees will execute any and all necessary
221 documents to affirm, publicly formalize, and record the transfer of all rights to the
222 University or to UCFRF. UCFRF is required to comply with the same policies and
223 procedures regarding allocation of proceeds/royalties as the University.

224 (5) In the event the University asserts its rights in the Invention, all costs
225 and expense of patenting, developing, and marketing the Invention and related activities,
226 including those which may lead to active licensing of the Invention, shall be paid by the
227 University.

228 (6) The division, between the University and the employee, of proceeds
229 generated by the licensing or assignment of an Invention shall be as set forth in the
230 University's policy on copyrights and patents, including the applicable UCFRF
231 Guidelines, or negotiated and reflected in a written contract between the University and
232 the employee. All such agreements shall comport with and satisfy any preexisting
233 commitments to outside sponsoring contractors.

234 (7) The employee shall execute a Rights to Inventions Agreement and
235 not commit any act that would tend to defeat the University's interest in the matter,
236 and the University shall take any necessary steps to protect such interest.

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238 (b) Release of Rights.

239 (1) In the event a sponsored research contractor has been offered the
240 option to apply for the patent to an Invention or other rights in an Invention, the
241 University will obtain the contractor's decision regarding the exercise of such rights
242 within 120 days, or within the time provided in the sponsored research agreement.

243 (2) Prior to making a patent application, at any stage of the patent
244 process, or in the commercial application of an Invention, if the University has not
245 otherwise assigned to a third party the right to pursue its interests, the University's
246 representative may elect to waive the University's rights to the patent, or withdraw from
247 further involvement in the protection or commercial application of the Invention. At the
248 request of the employee in such case, subject to government approval, if applicable, the
249 University shall transfer the Invention rights to the employee. The Invention shall be the
250 employee's property and any costs already incurred by the University or on its behalf
251 shall not be assessed against the employee.

252 (3) All assignments or releases of Inventions, including patent rights,
253 by the University's representative to the employee shall contain the provision that such
254 Invention, if patented by the employee, shall be available royalty-free for governmental
255 purposes of the State of Florida and research and instructional purposes of the

256 University, including its affiliated entities, unless otherwise agreed in writing by the
257 University.