

1 **ARTICLE 18**
2 *INVENTIONS AND WORKS*

3 **18.1 University Authority and Responsibilities.** The University is authorized to
4 establish regulations and procedures regarding patents, copyrights, and
5 trademarks consistent with federal and state law. Such regulations and
6 procedures shall be consistent with the terms of this Article.

7 **18.2 Definitions.** The following definitions shall apply in this Article:

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

16 (b) An "Invention" means any discovery; process; composition of matter;
17 article of manufacture; know-how; design; model; computer software or
18 database; technological development; biological material, strain, variety, or
19 culture of any organism; or portion, modification, translation, or extension of
20 these items which is or may be patentable or otherwise protected under Title 35
21 of the United States Code; or any Trademark, and/or any directly related know-
22 how used in connection with these items.

23 (c) "Online Course" means a course that requires student access to a
24 University online learning environment, and includes but is not limited to, courses
25 taught under World Wide Web ("W"), Mixed Mode/Reduced Seat Time ("M"),
26 Video Streaming ("V") Video Streaming/Reduced Seat Time ("RV") and Active
27 Learning/Reduced Seat Time ("RA") course modalities.

28 (d) "University Support" means (1) the appreciable use of University resources,
29 such as funds, personnel, facilities, equipment, materials, technological
30 information, or students, (2) course release, and/or (3) support provided by other
31 public or private organizations when it is arranged, administered, or controlled by
32 the University or a University direct support organization. For a use of University

Commented [TR1]: Does work include journal article? It should not. If it does, we need to then clarify so as to follow current practice.

Commented [SS2R1]: This is the definition of Work by federal copyright law. 18.3(b)(1)(a) has added a new definition of "scholarly work" to better clarify the exception from copyright law and ownership of faculty of these works, and then amendment also clarifies that scholarly works are not required to be disclosed. All aligns with our current practice.

33 resources to be appreciable, it must go beyond the resources commonly or
34 routinely provided or made available to similarly situated employees for the
35 performance of their assignment. For example, the routine use of resources such
36 as the libraries; one’s office, office computer and other University computer
37 facilities; and office supplies, is not considered appreciable University Support.

38 **18.3 Works.**

39 (a) Independent Creative Efforts. A Work made in the course of Independent
40 Creative Efforts is the property of the creating employee(s), who each have the
41 right to determine the disposition of such Work and the revenue derived from it,
42 in accordance with U.S. copyright law. If requested, the employee shall provide
43 documentation to substantiate his or her Independent Creative Efforts. As used in
44 this Section, the term "Independent Creative Efforts" means that:

- 45 (1) the ideas came from the employee;
- 46 (2) the Work was made without the use of University Support; and
- 47 (3) the University is not responsible for any opinions expressed in the Work.

48 (b) University-Supported Efforts. A Work not made in the course of
49 Independent Creative Efforts is the property of the University and is hereby
50 assigned to the University by the employee(s), and the creating employee(s) shall
51 share in any licensing or assignment proceeds therefrom.

- 52 (1) Notwithstanding the above,
- 53 (a) the University shall not assert ownership rights to Works for which
54 the intended purpose is to disseminate the results of academic research, scholarly
55 study, and/or creative efforts. “Scholarly Works”.

56 (b) the University shall not assert ownership rights to Works
57 developed without appreciable University ~~s~~Support and used solely for the
58 purpose of assisting or enhancing the employee’s instructional assignment.
59 Examples include case studies, textbooks, laboratory manuals and class notes
60 produced in connection with regular scheduled courses of instruction, regardless
61 of the modality. (The Works described above, in 18.3(b)(1)(b-d), collectively,
62 “Instructional Material”)

63
64 (c) Instructional Material developed or substantially revised for an
65 Online Course without University Support and without the use of UCF online
66 instructional design services shall be the property of the creating employee(s) and

Commented [CP3]: Sovinski (SMS): To clarify that where the University monetizes a Work itself for its own business purposes, as opposed to licensing it to third party(s) to derive royalties.

Commented [CP4]: SMS: New reference term recommended here and below to distinguish these from those Works obligated to be disclosed.

Commented [CP5]: SMS: These need a collective way to be referred to, below.

Commented [CP6]: Moved to here from lines 96-97

67 is hereby assigned to the creating employee(s) by the University, subject to the
68 retained rights set forth in Section 18.3(b)(1)(d)(i) through (d)(iii).

69 (d) Instructional ~~Material~~ developed or substantially revised for an
70 Online Course with the use of UCF online instructional design services shall be the
71 property of the creating employee(s) and is hereby assigned to the creating
72 employee(s) by the University, subject to a retained right by the University to
73 continued internal use of the Online Course, including the ~~Instructional~~
74 ~~Material~~, for instructional purposes, and subject to the retained rights set forth
75 in Section 18.3(b)(1)(d)(i) through (d)(iii). Unless employee agrees otherwise in
76 writing as long as they are employed by the University, such employee shall have
77 the exclusive right to revise the Online Course, provided that the University shall
78 not be obligated to provide further resources for such revisions unless they are
79 requested by the University or agreed upon jointly by the University and the
80 employee.

81 (i) If an employee who develops or substantially revises an Online
82 Course ceases to be employed by the University, the University shall possess and
83 expressly retains the right to continued internal use of such Online Course,
84 including the right to revise, reproduce, or make derivative works, of the
85 ~~Instructional Material~~ for instructional purposes for no more than the five (5)
86 full academic years following the employee’s separation from the University. The
87 owner (creator) may continue to make personal and professional use of the
88 ~~Instructional Material~~, at no cost to and with no obligation by the University
89 after termination of their employment, subject to any third-party obligations.

90 (ii) If an employee who develops or substantially revises an Online
91 Course is unexpectedly unable to complete the employee’s instructional
92 assignment as to such Online Course, the University shall possess and expressly
93 retains the right to internal use of such Online Course, including the right to
94 revise, reproduce, or make derivative works, of the ~~Instructional Material~~ for
95 instructional purposes and to the extent necessary to ensure successful
96 completion of the instructional assignment. ~~(The Works described above, in~~
97 ~~18.3(b)(1)(b-d), collectively, “Instructional Material”)~~

98 (iii) In any Online Course where the University exercises its rights
99 to internal use of ~~Instructional Material~~ for instructional purposes,
100 acknowledgement and attribution of the creator(s) will be included.

Commented [TR7]: Please clarify the status of regular course material that are posted on Webcourses.

Commented [SS8R7]: These terms were negotiated in the last revision to Article 18. “Online Course” means a course that requires student access to a University online learning environment, and includes but is not limited to, courses taught under World Wide Web (“W”), Mixed Mode/Reduced Seat Time (“M”), Video Streaming (“V”) Video Streaming/Reduced Seat Time (“RV”) and Active Learning/Reduced Seat Time (“RA”) course modalities.

Commented [SS9R7]: By “regular course material”, I’m not certain what is intended? For online courses, 18.3c describes rights if created without University Support and without instructional design services. 18.4(d) addresses rights where instructional design services are used. In each case, rights are assigned to the creator, and it’s the universities rights that vary.

Commented [CP10]: SMS: These need a collective way to be referred to, below.

101 (c) Disclosure/University Review.

102 (1) Upon the creation of a Work and prior to any publication, the employee
103 shall disclose to the University’s representative any Work that was not made in
104 the course of Independent Creative Effort ~~and/or that is not a Scholarly Work or~~
105 ~~Instructional Material~~, together with an outline of the project and the conditions
106 under which it was done.

Commented [CP11]: SMS: Clarifying that these works, owned by faculty, are not required to be disclosed.

107 (2) The University’s representative shall assess the relative equities of the
108 employee and the University in the Work.

109 (3) Within ninety days after such disclosure, the University’s representative
110 will inform the employee whether the University seeks ~~an to record its~~ interest in
111 the Work, and ~~if there are multiple creators of a Work and the creators do not~~
112 ~~agree that each creator should equally share in any licensing or assignment~~
113 ~~proceed distributions according to University policy~~, a written agreement shall
114 thereafter be negotiated to reflect the interests of ~~both the applicable~~ parties,
115 including provisions relating to the equities of the employee and/or the allocation
116 of proceeds resulting from such Work shall be made in accordance with the
117 University’s policy, ~~per 18.4(g) on copyrights and patents~~. The agreement will also
118 include provisions relating to the creation, use, and revision of such Works by the
119 University or the employee, as well as provisions relating to the use or revision of
120 such Works by persons other than the University or employee, ~~as applicable~~. All
121 such agreements shall comport with and satisfy any preexisting terms or
122 commitments to outside sponsoring contractors or agencies.

Commented [CP12]: SMS: Ownership is already with the University per 18.3b, by express assignment. This clarifies this statement is meaning the creator will be informed whether the University wants to commercialize the copyright. (If not, the sections regarding return of IP to employee describe next steps)

Commented [CP13]: SMS had no comment for this change.

Commented [CP14]: SMS: I’m not sure what the original intent of this language was, but grant of any licensing rights to the individual for their own use, or to third parties, is managed by TTO, as needed/upon request.

123 (4) The employee shall assist the University in obtaining releases from
124 persons appearing in, or giving financial or creative support to, the development
125 or use of these Works in which the University asserts an interest. The employee
126 shall certify that such development or use does not infringe upon any existing
127 copyright or other legal right.

128 (5) The employee and the University shall not commit any act that would
129 tend to defeat the University's or employee's interest in the Work, ~~such as making~~
130 ~~a public disclosure prior to the University obtaining intellectual property~~
131 ~~protection, and shall take any necessary steps to protect such interests.~~
132 Employees will execute any and all necessary documents to affirm, publicly
133 formalize, and record the transfer of all rights to the University or to University of
134 Central Florida Research Foundation.

Commented [TR15]: Needs clarification since in academia we do not obtain permission from the institution before submitting journal articles for publication.

Commented [SS16R15]: The proposed amendment is intending to clarify that scholarly works are not required to be disclosed, at 18.3c(1). This section C is focused on Works that are owned by the university and required to be disclosed, for one example, software.

135 (d) Outside Activity. An employee may, in accordance with the Conflict of
 136 Interest or Commitment and Outside Activity Article, engage in outside activity,
 137 including employment pursuant to a consulting agreement. An employee who
 138 proposes to engage in such outside activity shall furnish a copy of the instant
 139 Article and the University’s Copyrights and Works Regulation to the outside
 140 employer/party prior to the time a consulting or other agreement is signed or, if
 141 there is no written agreement, before the employment/activity at the outside
 142 employer/party begins.

143 (e) Transfer of copyright to the employee. When copyright is owned by the
 144 University in accordance with the provisions of this Article, the originating
 145 employee of the Work may request of the Vice President of Research that
 146 ownership be transferred to the employee. Such request shall be granted if it
 147 does not:

- 148 (1) violate any legal obligations of or to the University;
- 149 (2) limit appropriate uses of the Work by the University;
- 150 (3) create a conflict of interest for the employee; and
- 151 (4) otherwise conflict with specific goals of the University.

152 **18.4 Inventions.**

153 (a) Independent Inventive Efforts. All Inventions made outside the field or
 154 discipline in which the employee is employed by the University, and for which no
 155 appreciable University Support has been used, are the property of the employee,
 156 subject to 35 U.S.C. 115, who has the right to determine the disposition of such
 157 property and revenue derived from such property. The employee and the
 158 University’s representative may agree that the patent for such Invention be
 159 pursued by the University and the licensing or assignment proceeds shared.

160 (b) University-Supported Efforts. Inventions made in the field or discipline in
 161 which the employee is employed by the University, or by using University
 162 Support, are the property of the University and the employee shall share in the
 163 licensing or assignment proceeds therefrom. Such Inventions and related rights
 164 shall be the property of the University and are hereby assigned to the University
 165 by the employee. If the University decides to patent, develop and market the
 166 Invention, all costs of the patent application and related activities, including those
 167 which lead to active licensed production, shall be paid from University funds.

Commented [TR17]: "...shall furnish a copy of the instant Article and the University’s Copyrights and Works Regulation to the outside employer/party prior to..." This is something that could really get people in trouble. It seems like it is the responsibility of the UCF employee to follow UCF’s rules, but it is not the responsibility of an outside employer to enforce UCF’s rules.

Commented [SS18R17]: This is the current CBA language and UCF regulation. This is not to make the employer enforce the rules, but to obligate the employee to inform the other party of the employee’s obligations that are set forth in the CBA and Regulation.

Commented [TR19]: The word "field" is vague. Does it mean all of the subject matter in the area in which someone has previously published, e.g. catalysis? Or does field apply to anything under the umbrella of one’s department?

Commented [SS20R19]: This is the existing CBA language and is fairly standard across universities. I don’t think there is a singular source for defining as to any one individual. The hiring letter could be one source, for example.

168 These costs shall be recovered before any division of ~~patent or license~~ and
169 ~~assignment~~ revenue is made between the University and the employee.

Commented [CP21]: SMS: Consistent with other language.

170 (c) Private or Industrially Sponsored Efforts. Except in unusual cases,
171 Inventions developed in the course of privately or industrially sponsored research
172 (also University-Supported Efforts) are the property of the University. The sponsor
173 may be accorded the first option to negotiate an exclusive license, in which case
174 the term of exclusivity and the compensation shall be negotiated at the time the
175 Invention is made or under the provisions of the University’s policy on copyrights
176 and patents. If the sponsor exercises this option, the University generally retains
177 royalty-free license rights to use the Invention or discovery for its own purposes.

178 (d) Outside Activity. An employee may, in accordance with the Conflict of
179 Interest or Commitment and Outside Activity Article, engage in outside activity,
180 including employment pursuant to a consulting agreement. All Inventions arising
181 from authorized Outside Activity and outside of the field or discipline of the
182 employee are the property of the employee. However, any requirement that the
183 employee waive the University’s rights to any Inventions which arise during the
184 course of such activity must be approved in writing by the University’s
185 representative. Employees who propose to engage in such Outside Activity shall
186 furnish a copy of Article 18 and the University’s Patent, Trademarks, and Trade
187 Secrets Regulation to the outside employer/party prior to the time an agreement
188 is signed or, if there is no written agreement, before the Outside
189 Activity/employment begins. Employees are not authorized and do not possess
190 necessary ownership to waive University rights, and any such waiver is deemed
191 void unless specifically authorized by the Vice President of Research or designee.

192 (1) Undisclosed Outside Activity is considered unauthorized.

193 a. Any Invention arising from undisclosed Outside Activity must be
194 disclosed to the Vice President of Research (see 18.4(e)). If the employee claims
195 the Invention resulted from Independent Inventive Effort(s), then as part of the
196 disclosure, the employee shall provide sufficient documentation to substantiate
197 the claim.

Commented [TR22]: What constitutes adequate disclosure? The annual AA21? Out of cycle disclosure procedure should be specified.

198 b. Upon receipt of written notice from the Vice President of Research
199 confirming the University’s decision not to assert a University interest in an
200 Invention resulting from unauthorized Outside Activity, the employee shall have
201 the right to determine the disposition of such Invention, subject to third party

Commented [SS23R22]: Office of Technology Transfer has standard invention disclosure forms for Inventions (and other forms of IP). Completion, execution, and submission of the applicable disclosure form would constitute adequate disclosure of an Invention.

Commented [SS24R22]: Outside Activity disclosure is handled by compliance, and employees are obligated to update their disclosure upon relevant change of circumstances (new Outside Activity).

202 rights, if any. However, the employee and the Vice President of Research may
203 agree that a patent for such Invention will be pursued by the University; in that
204 event, the employee and University shall share in the [licensing or assignment](#)
205 proceeds of any Invention as provided by this Article and any applicable
206 University policies or procedures, including applicable UCFRF Guidelines and
207 Procedures for Distribution of Funds or in such other manner as the employee
208 and the Vice President of Research may agree.

209 (e) Disclosure/University Review. Employees are required to disclose all
210 Inventions resulting from University-Supported Efforts and all Inventions resulting
211 from any Outside Activity within the field or discipline (field) of the inventing
212 employee. It is the policy of the University that, in general, research results
213 should be publishable; publication of such results in appropriate venues is
214 encouraged. However, if the publication of research results may reveal an
215 Invention in which the University has an interest, employees should seek advice
216 on how and when to publish the results in order that potential patent rights for
217 the Invention are not compromised. That is, upon the making of an Invention and
218 prior to any publication or public disclosure, employees shall promptly and fully
219 disclose to the Vice President of Research any Invention described in 18.4(b). Any
220 delay in publication resulting from seeking such advice shall be minimized, but in
221 any event shall not exceed ninety days from the date of presentation of the
222 proposed publication.

223 (1) The disclosure shall be made on the forms and according to procedures
224 prescribed by the Vice President of Research. At a minimum the disclosure shall:
225 (1) identify each employee, (2) provide a brief description of the Invention, and
226 (3) identify and summarize the research project including the participants and
227 applicable funding sources

228 (2) The Vice President for Research shall conduct an investigation to assess
229 the patentability and marketability, as well as the respective equities of the
230 employee and the University in the Invention, and to determine the extent to
231 which the University should be involved in its protection, development, and
232 promotion.

233 (3) The Vice President for Research shall inform the employee of the
234 University's decision regarding the University's interest in the Invention within a
235 reasonable time, not to exceed ninety days from the date of the disclosure.

236 (4) In the event the University elects to obtain a Patent, register a
237 Trademark or a Copyright, or to formally define a Trade Secret to protect the
238 University's rights in the Invention, employees will execute any and all necessary
239 documents to affirm, publicly formalize, and record the transfer of all rights to the
240 University or to UCFRF. UCFRF is required to comply with the same policies and
241 procedures regarding allocation of licensing or assignment proceeds/royalties as
242 the University.

243 (5) In the event the University asserts its rights in the Invention, all costs
244 and expense of patenting, developing, and marketing the Invention and related
245 activities, including those which may lead to active licensing or assignment of the
246 Invention, shall be paid by the University.

247 (6) The division, between the University and the employee, of proceeds
248 generated by the licensing or assignment of an Invention shall be negotiated and
249 reflected in a written contract between the University and the employee and/or
250 as set forth in the University's policy on copyrights and patents, including the
251 applicable UCFRF Guidelines. All such agreements shall comport with and satisfy
252 any preexisting terms or commitments to outside sponsoring contractors.

253 (7) The employee shall not commit any act that would tend to defeat the
254 University's interest in the matter, and the University shall take any necessary
255 steps to protect such interest.

256 (f) Release of Rights.

257 (1) In the event a sponsored research contractor has been offered the
258 option to apply for the patent to an Invention or other rights in an Invention, the
259 University will obtain the contractor's decision regarding the exercise of such
260 rights within ninety days, or within the time provided in the sponsored research
261 agreement.

262 (2) Prior to making a patent application, at any stage of the patent process,
263 or in the commercial application of an Invention, if the University has not
264 otherwise assigned to a third party the right to pursue its interests, the
265 University's representative may elect to waive the University's rights to the
266 patent, or withdraw from further involvement in the protection or commercial
267 application of the Invention. At the request of the employee in such case, the
268 University shall transfer the Invention rights to the employee, subject to third
269 party rights, if applicable. After ownership transfer to an employee, the Invention

270 shall be the employee's property and any costs already incurred by the University
271 or on its behalf shall not be assessed against the employee.

272 (3) All assignments or releases of Inventions, including patent rights, by the
273 University's representative to the employee shall contain the provision that such
274 Invention, if patented by the employee, shall be available royalty-free for
275 governmental purposes of the State of Florida and research or instructional
276 purposes of the University, unless otherwise agreed in writing by the University.

277 (g) University Policy.

278 (1) The University shall have a policy addressing the division of proceeds
279 between the employee and the University. See Business Manual, Ch. III(A), at
280 www.research.ucf.edu/ResearchFoundation/FoundationTools.html

281 (2) Such policy may be the subject of consultation meetings pursuant to the
282 Consultation Article.

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