

## ARTICLE 18

### **INVENTIONS AND WORKS** (ratification date: April 23, 2020)

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

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

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

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

(c) "Online Course" means a course that requires student access to an 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.

(d) "University Support" means (1) the appreciable use of University resources, such as funds, personnel, facilities, equipment, materials, technological information, or students, (2) course release, and/or (3) support provided by other public or private organizations when it is arranged, administered, or controlled by the University or a University direct support organization. For a use of University resources to be appreciable, it must go beyond the resources commonly or routinely provided or made available to similarly situated employees for the performance of their assignment. For example, the routine use of resources such as the libraries; one's office, office computer and other University computer facilities; and office supplies, is not considered appreciable University Support.

### **18.3 Works.**

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

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

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

(1) Notwithstanding the above,

(a) the University shall not assert ownership rights to Works for which the intended purpose is to disseminate the results of academic research, scholarly study, and/or creative efforts.

(b) the University shall not assert ownership rights to Works developed without appreciable University support and used solely for the purpose of assisting or enhancing the employee's instructional assignment. Examples include case studies, textbooks, laboratory manuals and class notes produced in connection with regular scheduled courses of instruction, regardless of the modality.

(c) Instructional material developed or substantially revised for an Online Course without University Support and without the use of UCF online instructional design services shall be the property of the creating employee(s) and is hereby assigned to the creating employee(s) by the University, subject to the retained rights set forth in Section 18.3(b)(1)(d)(i) through (d)(iii).

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

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

(ii) If an employee who develops or substantially revises an Online Course is unexpectedly unable to complete the employee's instructional assignment as to such Online Course, the University shall possess and expressly retains the right to internal use of such Online Course, including the right to revise, reproduce, or make derivative works, of the instructional materials for instructional purposes and to the extent necessary to ensure successful completion of the instructional assignment.

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

(c) Disclosure/University Review.

(1) Upon the creation of a Work and prior to any publication, the employee shall disclose to the University's representative any Work that was not made in the course of Independent Creative Effort, together with an outline of the project and the conditions under which it was done.

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

(3) Within ninety days after such disclosure, the University's representative will inform the employee whether the University seeks an interest in the Work, and a written agreement shall thereafter be negotiated to reflect the interests of both parties, including provisions relating to the equities of the employee and/or the allocation of proceeds resulting from such Work shall be made in accordance with the University's policy on copyrights and patents. The agreement will also include provisions relating to the creation, use, and revision of such Works by the University or the employee, as well as provisions relating to the use or revision of such Works by persons other than the University or employee. All such agreements shall comport with and satisfy any preexisting terms or commitments to outside sponsoring contractors or agencies.

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

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

(d) Outside Activity. An employee may, in accordance with the Conflict of Interest or Commitment and Outside Activity Article, engage in outside activity, including employment pursuant to a consulting

agreement. An employee who proposes to engage in such outside activity shall furnish a copy of the instant Article and the University's Copyrights and Works Regulation to the outside employer/party prior to the time a consulting or other agreement is signed or, if there is no written agreement, before the employment/activity at the outside employer/party begins.

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

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

#### **18.4 Inventions.**

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

(b) University-Supported Efforts. Inventions made in the field or discipline in which the employee is employed by the University, or by using University Support, are the property of the University and the employee shall share in the proceeds therefrom. Such Inventions and related rights shall be the property of the University and are hereby assigned to the University by the employee. If the University decides to patent, develop and market the Invention, all costs of the patent application and related activities, including those which lead to active licensed production, shall be paid from University funds. These costs shall be recovered before any division of patent or license revenue is made between the University and the employee.

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

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

(1) Undisclosed Outside Activity is considered unauthorized.

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

b. Upon receipt of written notice from the Vice President of Research confirming the University's decision not to assert a University interest in an Invention resulting from unauthorized Outside Activity, the employee shall have the right to determine the disposition of such Invention, subject to third party rights, if any. However, the employee and the Vice President of Research may agree that a patent

for such Invention will be pursued by the University; in that event, the employee and University shall share in the proceeds of any Invention as provided by this Article and any applicable University policies or procedures, including applicable UCFRF Guidelines and Procedures for Distribution of Funds or in such other manner as the employee and the Vice President of Research may agree.

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

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

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

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

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

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

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

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

(f) Release of Rights.

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

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

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

(g) University Policy.

(1) The University shall have a policy addressing the division of proceeds between the employee and the University. See Business Manual, Ch. III(A), at

[www.research.ucf.edu/ResearchFoundation/FoundationTools.html](http://www.research.ucf.edu/ResearchFoundation/FoundationTools.html)

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