

ARTICLE 16
INTELLECTUAL PROPERTY

16.1 Definitions. The following definitions shall apply in Article 16:

- (a) “Intellectual property” means any work or invention.
- (b) “Faculty member” or “creator” means a member of the bargaining unit who creates a work or invention. “Creator” shall also mean other University personnel who create a work or invention.
- (c) A “work” means any copyrightable material, that is, any material fixed in a tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device. Such copyrightable material includes, but is not limited to, such things as printed material, computer software or databases, audio and visual material, circuit diagrams, architectural and engineering drawings, lectures, musical or dramatic compositions, choreographic works, pictorial or graphic works, and sculptural works. Instructional material, as defined in Section 16.1(f), below, is included in the definition of a “work.” A “work” does not include any patentable material, which patentable material is encompassed within the definition of an “invention” in Section 16.1(d), below.
- (d) An “invention” means any discovery, invention, process, composition of matter, article of manufacture, design, model, technological development, biological material, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, and any mark and/or directly related know-how used in connection with these items. It includes, but is not limited to, such things as new or improved devices, systems, circuits, chemical compounds, or mixtures and directly related know-how.
- (e) “Instructional technology,” as used in this Article, means the form of an “invention” that is substantially new technology and is used to deliver instructional material, as distinct from the application of existing technology to deliver such instructional material.
- (f) “Instructional material,” as used in this Article, means the form of a “work” (i.e., copyrightable) that includes materials delivered through the use of existing or new technology such as video and audio recordings, motion pictures, film strips, photographic and other similar visual materials, live video and audio transmissions, computer programs, computer-assisted instructional course work, programmed instructional materials, three-dimensional materials and exhibits, web pages, and combinations of the above materials that are prepared or produced in whole or in part by a faculty member and that are used to assist or enhance instruction.
- (g) “Independent efforts” with regard to a work means that the ideas for the work came from the faculty member and the work was not made with the use of University support. The University is not liable for any opinions expressed in such works.

- 39 (h) “University support” means the use of University funds or more than the incidental use of
40 University personnel, facilities, equipment, materials, or technological information in the
41 creation of a work or invention and includes such support provided by outside sponsors
42 when it is arranged, administered, or controlled by the University.
- 43 (i) “Distance learning” means learning in a course that is rarely or never conducted with the
44 instructor and the student in the same general physical space simultaneously.
- 45 (j) “Gross revenue” means
46 i. proceeds from the sale, lease, transfer, or other conveyance of any interest in an
47 invention or work owned by the University and
48 ii. license issue fees, option fees, running royalties, minimum royalties, equity and
49 other ownership interests, and any other remuneration paid to the University by a
50 licensee of an invention or work, except that such equity or other ownership
51 interests, or portion thereof, shall not be considered “gross revenue” unless and
52 until the equity or other ownership interests, or portion thereof, are sold or
53 liquidated by the University.
- 54 (k) “Development expenses” means all monies paid by the University for goods and services
55 to protect, develop, and/or enhance the marketability or any other aspect of a work or
56 invention, including, but not limited to, patent-filing fees, intellectual property
57 protection and patent enforcement and defense expenses, marketing expenses, patent
58 maintenance, consulting fees, prosecution expenses, expenses incurred in dealing with
59 equity and other ownership interests, travel, attorneys’ fees, commercialization expenses,
60 and research costs. Not included as development expenses are salaries and general
61 operating expenses of University administrative personnel.
- 62 (l) “Net adjusted income” means gross revenues less any foreseeable development expenses
63 University deems necessary to defend or maintain a work or invention and its
64 improvements.
- 65 (m) Program” means the specific University research program within which an invention or
66 work was developed.
- 67 (n) “Office of Technology Licensing” or “OTL” means the designee responsible for all
68 matters relating to patents, trademarks, and copyrights as related to the identification,
69 protection, and commercialization of works and inventions owned by the University.
- 70 (o) “Sponsored agreement” means any award from an outside sponsor to support research or
71 any other University activity, whether such support is through a grant, contract,
72 cooperative agreement, or any other means.

73 16.2 Policy.

- 74 (a) Statement of Principles. Research is undertaken to create new knowledge, to stimulate a
75 spirit of inquiry, to solve problems, and to educate students. Adequate recognition of and
76 incentive to potential inventors through the sharing of the financial benefits resulting

77 from the transfer and development of patentable inventions and other marketable forms
78 of intellectual property encourages the creation of such intellectual property and serves
79 the public interest. The research and teaching missions of the University always take
80 precedence over patent considerations. While the University recognizes the benefits of
81 patent development, it is most important that the direction of University research not be
82 established or unduly influenced by patent considerations or personal financial interests.

83 (b) Authority and Responsibilities. Section 1004.23, Florida Statutes, and the Board of
84 Governors' delegation to the FPU Board of Trustees, authorizes the University to
85 establish regulations and procedures regarding the works and inventions of its personnel,
86 including regulations and procedures regarding patents, copyrights, and trademarks. The
87 University has the authority to agree to the terms of this Article, and any regulations and
88 procedures applied to in-unit faculty shall be consistent with the terms of this Article.

89 (c) Faculty Authority and Responsibilities. Intellectual property created, made, or originated
90 by a faculty member shall be governed by the terms of this Agreement. The faculty
91 member shall also be governed by the University implementing procedures concerning
92 works and inventions of University personnel unless the procedure is inconsistent with
93 the terms of this Agreement.

94 (d) When a faculty member is acting in the capacity of Principal Investigator of a research
95 project, the faculty member shall be granted the right, within the conditions set forth in
96 this Article and in any applicable sponsored agreement and federal and state laws and
97 regulations and with the proper administrative approval, to raise resources from sponsors,
98 shall be responsible for properly utilizing the resources obtained from the sponsors, and
99 for executing the sponsored research.

100 16.3 Rights to Working Papers. Except as otherwise required by the Florida Sunshine Law and
101 other applicable federal and state laws, federal and state regulations, or the terms of any
102 applicable sponsored agreements, faculty members shall have the right to control of their
103 personal correspondence, notes, unpublished drafts, and other working papers.

104 16.4 Works.

105 (a) Faculty Exclusive Ownership Rights.

106 i. A work made in the course of independent efforts is the property of the faculty
107 member, who has the right to determine the disposition of such work and the
108 revenue derived from such work.

109 ii. In accordance with academic tradition, and unless required by federal and state
110 laws, federal and state regulations, or the terms of any applicable sponsored
111 agreements, the University shall not assert rights to the following works:

112 A. Scholarly or artistic works, regardless of their form of expression,
113 for which the intended purpose is to disseminate the results of academic
114 research, scholarly study, or artistic expression, such as books,

115 monographs, articles, bibliographies, poems, novels, dramatic works,
116 pictorial or sculptural works, films, videotapes, musical compositions, or
117 other scholarly or artistic expressions in any medium;

118 B. Instructional material, except if the University either (1) expressly
119 commissioned the faculty member in writing to produce, or participate in
120 the production of, the work with University funds for a specific University
121 purpose; or (2) expressly assigned the faculty member in writing to
122 produce, or participate in the production of, the work. The University may
123 grant a non-exclusive license to the faculty member who is the author of
124 instructional materials for the use of that portion of the materials. The non-
125 exclusive license must be negotiated as set forth in writing and must be
126 limited to noncommercial educational uses. That such a license is not
127 granted shall not be deemed a violation of this Collective Bargaining
128 Agreement.

129 C. Works made without University support, as defined in Section
130 16.1(h), above.

131 If the terms of a sponsored agreement or applicable federal and state laws and
132 federal and state regulations require publication of articles in specified ways or in
133 specified places, the terms of this subsection 16.4(a)ii shall not be construed to relieve the
134 faculty member of these publication obligations.

135 (b) Works Owned by the University. The following works are owned by the University. The
136 faculty member shall share in the proceeds from such works, pursuant to Section 16.7(a):

137 i. Instructional material if the University has either (A) expressly commissioned the
138 faculty member in writing to produce, or participate in the production of, the work
139 with University funds for a specific University purpose; or (B) expressly assigned
140 the faculty member in writing to produce, or participate in the production of, the
141 work. The creation, use, and revision of such works shall be governed by Section
142 16.4(f).

143 ii. Works whose authorship cannot be attributed to one or a discrete number of
144 authors but rather result from simultaneous or sequential contributions over time
145 by multiple faculty, staff, and/or students, such as software tools developed and
146 improved over time by multiple faculty, staff, and/or students. However, the mere
147 fact that multiple individuals have contributed to the creation of a work shall not
148 cause the work to become a work owned by the University.

149 iii. Any other works made with University support, as defined in Section 16.1(h),
150 above.

151 (c) Disclosure. Upon the creation of a work and prior to any publication, the faculty member
152 shall disclose to the Office of Technology Licensing any work that was made in the
153 course of University-supported efforts, together with an outline of the project and the

- 154 conditions under which it was done. However, consistent with the provisions of Section
155 16.4(a)ii, faculty members need not disclose works referenced in subsections (A)–(C),
156 and immediately below:
- 157 i. Books, monographs, articles, bibliographies, poems, novels, dramatic works,
158 pictorial or sculptural works, films, videotapes, musical compositions, or other
159 scholarly or artistic expressions in any medium; and similar works, the intended
160 purpose of which is to disseminate the results of academic research or scholarly
161 work;
 - 162 ii. Instructional material except for works described in Section 16.4(b)i; or
 - 163 iii. Works made without University support, as defined in Section 16.1(h), above.
- 164 (d) Review. The Office of Technology Licensing shall assess the relative equities of the
165 faculty member and the University in the work. If the University wishes to assert its
166 interest in the work, the Office of Technology Licensing shall inform the faculty member
167 as soon as practicable but in no case later than sixty (60) days after disclosure to the OTL.
- 168 (e) The allocation of proceeds resulting from works owned by the University shall be as set
169 forth in Section 16.7(a) below.
- 170 (f) Creation, Use, and Revision of Certain Works Owned by the University. With respect to
171 any work that represents instructional materials owned by the University pursuant to
172 Section 16.4(b)i, the terms of any agreement entered into by the University concerning
173 the work must be consistent with the terms of any sponsored agreement supporting the
174 creation of the work and applicable laws.
- 175 i. The University shall make reasonable efforts to negotiate the terms listed as a, b,
176 and c below in any agreement concerning the work with any third party, including
177 but not limited to any licensee, assignee, or publisher of the work, insofar as such
178 terms are consonant with the terms of any sponsored agreement supporting the
179 creation of the work and applicable laws. That any or all of these terms are not
180 included in the agreement with the third party shall not be deemed a violation of
181 this Collective Bargaining Agreement.
 - 182 A. That the faculty member be identified as an author of the work,
183 including, if the work is materially altered at the time of its assignment,
184 initial licensing, or initial publication, the right to decide whether to allow
185 the author’s name to be displayed in association with the work;
 - 186 B. That the faculty member may freely reproduce the work without
187 paying any licensing fees to use in academic teaching, research, or
188 university service whether at the University of Florida or another tax-
189 exempt academic or research institution; and
 - 190 C. That the faculty member may freely use the work in pursuit of
191 one’s profession, such as during expert witness testimony or in consulting.
 - 192 ii. Other rights and protections for the faculty member may be agreed to by mutual
193 consent of the faculty member and the University, provided that they are

194 consonant with the terms of the FPU BOT-UFF POLY Collective Bargaining
195 Agreement, any sponsored agreement supporting the creation of the work, any
196 agreement, license, assignment, publishing or other agreement entered into by the
197 University concerning the work, and applicable laws. Such rights granted to the
198 faculty member may include:

- 199 A. borrowing portions of the work for use in compilations, other
200 composite works, or new projects;
- 201 B. making derivative works, such as translations, videotaped versions,
202 and film scripts;
- 203 C. adding to the work or updating the content of the work; and
- 204 D. approving decisions related to the publishing or display of new
205 versions of the creator's work or new works based on the creator's work.

206 (g) Release of Rights. The faculty member shall assist the University in obtaining releases
207 from persons appearing in, or giving financial or creative support to, the development or
208 use of works in which the University has asserted an interest.

209 (h) Reconveyance of Copyright to the Faculty Member.

- 210 i. When copyright is assigned to the University in full or in part because of the
211 provisions of this Article, the creator of the copyrighted material may request of
212 the Director of the Office of Technology Licensing that ownership be returned to
213 the faculty member.
- 214 ii. Such request may be granted if it does not
 - 215 A. violate any legal obligations of or to the University;
 - 216 B. limit appropriate uses of the materials by the University;
 - 217 C. create a conflict of interest for the faculty member; or
 - 218 D. otherwise conflict with specific goals of the University.
- 219 iii. Such request shall also be granted if the faculty member establishes that the
220 University has willfully misrepresented to the faculty member's substantial
221 detriment the necessity or cost of development expenses.

222 16.5 Instructional Technology and Related Instructional Materials.

- 223 (a) The University and UFF recognize the increasing development and use of technology,
224 and related instructional materials, such as videotapes, interactive television, and
225 computer software, to support teaching and learning and to enhance the fundamental
226 relationship between the faculty member and the student.
 - 227 i. Instructional technology may be used to deliver distance learning.
 - 228 ii. The University and UFF affirm that instructional technology and related
229 instructional materials should be used to the mutual benefit of the University and
230 the faculty member.
 - 231 iii. Development of new technology for use in delivering instructional material is an
232 invention covered by Section 16.6, and is distinguished from the use of existing or

233 new technology to deliver instructional material, which are works covered by
234 Section 16.4.

235 (b) When the University assigns a faculty member to develop or provide instruction through
236 the use of instructional technology or instructional material specifically designed to be
237 used with such instructional technology, including but not limited to distance learning,
238 the University shall provide to such faculty member:

239 i. Training and resources to support the assignment for adaptation of instructional
240 material to instructional technology; and

241 ii. Additional compensation if the assignment is an overload assignment and/or
242 adjustment in a faculty member's assignment.

243 (c) Property Rights and Releases. Provisions governing the intellectual property rights of
244 faculty and releases to be obtained when the University has asserted an interest in
245 instructional materials constituting a work are contained in Sections 16.4, above.

246 16.6 Inventions.

247 (a) Faculty Exclusive Ownership Rights.

248 i. An invention made outside the field or discipline in which the faculty member
249 conducts research, teaching, and/or service activities for the University (which
250 shall include any enhancements, adaptations, or improvements of inventions
251 previously disclosed, or that were required to be disclosed, hereunder) and for
252 which no University support has been used is the property of the faculty member,
253 who has the right to determine the disposition of such invention and revenue
254 derived from it.

255 ii. However, the faculty member and the University may agree that the patent for
256 such invention be pursued by the University and the proceeds shared.

257 (b) University-Supported Efforts. An invention that is made by using University support, as
258 defined in Section 16.1(h), is the property of the University. In addition, an invention
259 made within the field or discipline in which the faculty member conducts research,
260 teaching, and/or service activities for the University (which shall include any
261 enhancements, adaptations, and improvements of inventions previously disclosed or that
262 were required to be disclosed hereunder) is the property of the University. The faculty
263 member shall share in the proceeds from any invention that is the property of the
264 University pursuant to this Article.

265 (c) Disclosure.

266 i. A faculty member shall fully disclose to the Office of Technology Licensing any
267 invention that the faculty member develops, makes or reduces to practice while a
268 faculty member of the University of Florida.

269 A. The disclosure shall include an outline of the project and the
270 conditions under which it was conducted.

- 271 B. If the faculty member wants the University to attempt to patent the
272 invention, the faculty member shall explain why it has sufficient
273 commercial potential to warrant the University investment in the patent
274 process.
- 275 ii. With respect to inventions made during the course of an approved outside activity
276 when the University has specifically waived its rights to any inventions as part of
277 their approval of the outside activity, the faculty member may delay such
278 disclosure, when necessary to protect the outside employer’s interests, until the
279 outside employer has made the decision whether to seek a patent.
- 280 (d) Review.
- 281 i. If the University wishes to assert its interest in the invention, the Office of
282 Technology Licensing shall inform the faculty member in writing as soon as
283 practicable but in no case later than one hundred twenty (120) days after the
284 faculty member’s disclosure to the OTL.
- 285 A. If the faculty member desires a preliminary, non-binding
286 assessment of the University interest, the faculty member shall make a
287 written request for such assessment at the time of filing the disclosure.
- 288 B. Such preliminary assessment shall be provided within sixty (60)
289 days, and such assessment shall not be binding upon OTL or the
290 University.
- 291 ii. The OTL shall conduct an investigation that shall assess the respective equities of
292 the faculty member and the University in the invention, and determine its
293 importance and the extent to which the University should be involved in its
294 protection, development, and promotion.
- 295 iii. The OTL shall determine whether sponsored agreements require the University to
296 take ownership of the invention.
- 297 (e) If the University asserts an interest in an invention and the faculty member disputes the
298 University interest, the faculty member may seek to resolve the matter pursuant to Article
299 28, Grievance Procedure and Arbitration. During the pendency of the grievance, the
300 invention will be assigned to the University which will take appropriate steps to protect
301 it. If the grievance and any appeal or other legal proceedings end with a determination
302 that the faculty member is the owner of the invention, the University shall transfer
303 ownership of the invention to the faculty member and none of the costs incurred by the
304 University in the dispute or for the protection of the invention prior to the transfer shall
305 be assessed against the faculty member.
- 306 (f) Release of Rights.
- 307 i. In the event a sponsor under a sponsored agreement has been offered the option to
308 apply for the patent to an invention or other rights in an invention, the University
309 will use its good offices in an effort to obtain the sponsor’s decision regarding the
310 exercise of such rights within the period set forth in the sponsored agreement.

- 311 ii. At any stage of making the patent applications, or in the commercial application
312 of an invention, if the University has not otherwise assigned to a third party the
313 right to pursue its interests, the University may elect to withdraw from further
314 involvement in the protection or commercial application of the invention. At the
315 request of the faculty member in such case, and subject to any applicable
316 sponsored agreement or law, the University shall transfer the invention rights to
317 the faculty member, in which case the invention shall be the faculty member’s
318 property and none of the costs incurred by the University shall be assessed against
319 the faculty member unless they are development expenses deducted from gross
320 revenues received by the University prior to the transfer.
- 321 iii. All assignments or releases of inventions, including patent rights, by the
322 University to the faculty member shall contain the provision that such invention,
323 if patented by the faculty member, shall be available royalty-free for
324 governmental purposes of the State of Florida and in connection with federally-
325 sponsored research, the United States, and for teaching and research purposes for
326 all tax-exempt educational and research institutions, unless otherwise agreed in
327 writing by the University.
- 328 iv. If the University ownership interest in an invention is waived, the creator must
329 disclose the potential conflict of interest created by the creator’s ownership of the
330 invention when proposing research to be conducted using University resources
331 that could reasonably appear to influence the financial value of the invention. In
332 such case the University through the creator and appropriate administrators, may
333 establish the means to manage any conflict of interest that exists in conducting the
334 research.
- 335 (g) It is the policy of the University that in general research results should be publishable,
336 and publication of such results in appropriate venues is encouraged. However, if the
337 publication of research results may reveal an invention in which the University has an
338 interest, faculty members must ask OTL for advice on how and when to publish the
339 results in order that patent protection for the invention is not compromised.
- 340 (h) Voluntary Surrender of Patent Interests. A faculty member and the University may agree
341 to surrender any interests that the faculty member and the University might have to any
342 part of any prospective invention to any outside organization, if the faculty member and
343 the University deem such surrender to be in the best interests of the University and if
344 such surrender is allowable under applicable law and sponsored agreements and such
345 surrender does not impair the intellectual property rights of other employees, students,
346 and other third parties. All faculty members and other University employees involved
347 must agree to the surrender of the patent rights subject to the concurrence of the
348 University in each case.
- 349 16.7 Division of Proceeds.

- 350 (a) With regard to any work or invention owned by the University and subject to the
351 requirements of any applicable sponsored agreements, the net adjusted income shall be
352 distributed as follows:
- 353 i. Schedule A: Up to \$500,000:
 - 354 40% to the individual creator(s)
 - 355 10% to the University program(s)
 - 356 7.5% to the creator(s)'s department
 - 357 7.5% to the creator(s)'s college
 - 358 35% to the University
 - 359 ii. Schedule B: \$500,000 or over:
 - 360 25% to the individual creator(s)
 - 361 10% to the University program(s)
 - 362 10% to the creator(s)'s department
 - 363 10% to the creator(s)'s college
 - 364 45% to the University
 - 365 iii. Notwithstanding the above, all net adjusted income from the University sale or
366 liquidation of equity or other ownership interests originally paid to the University
367 by a licensee in lieu of cash royalties or license fees shall be distributed according
368 to Schedule B. The decision as to when to sell, exchange or convert equity
369 interests resides with the University in its sole discretion.
- 370 (b) Distributions of income shall be made semiannually on or before June 1 and December 1
371 of each year.
- 372 i. The University may, at its sole judgment, withhold or delay distribution of any
373 income if there is a foreseeable development expense yet to be incurred.
 - 374 ii. In instances where funds are held because of foreseeable development expenses
375 or where expenses exceed revenue, an accounting of such shall be sent to the
376 creator's department and college indicating the amounts received for the current
377 six-month period and the amount of the anticipated expense or deficit.
 - 378 iii. Once expenses are known with certainty, any excess withholding shall be
379 distributed.
- 380 (c) Payments of the portion allocated to the creator(s) must be made to creator(s)
381 individually and cannot be assigned by the creator(s) to other parties or entities. The only
382 exception shall be that after a creator's death, appropriate notification by the personal
383 representative of the creator's estate, and court approval, if necessary, payment shall be
384 made to the creator's heirs or devisees.
- 385 (d) In the event there are multiple creators for an invention or work, the creators' share shall
386 be divided equally among all creators unless the creators agree among themselves to a
387 different division.

- 388 i. If the creators agree among themselves to a different split, OTL must be notified
389 in writing at least one month prior to the date of the first income distribution as to
390 the agreed upon division of income.
391 ii. The portions distributed to the academic units, which are the academic units of the
392 creator(s) at the time of the creation of the invention or work, shall be pro-rated
393 when more than one unit is involved.
394 iii. The University shall make the final decisions on the pro-ration of such portions to
395 academic units.
396 (e) In the case of licenses or other transactions involving multiple inventions or works, the
397 University shall resolve any potential conflicts concerning the applicable distribution
398 schedules after reviewing the technologies involved.
399 (f) That portion allocated to the program (or programs) remains under the control of the
400 University. If there is more than one program in which the invention or work was
401 developed, the program portion will be pro-rated as determined by the University. If a
402 creator should leave the University, the portion allocated to the creator's program shall be
403 allocated to that program as long as the program exists and consists of research in the
404 same area as that conducted by the creator prior to leaving the University. If the program
405 ends, the portion allocated to the program shall be allocated to the University. Any
406 determinations regarding the distribution of the program portion of net income shall be at
407 the sole discretion of the University.

408 16.8 Other Requirements.

- 409 (a) A faculty member and the University shall not commit any act that would tend to defeat
410 the University's or the faculty member's interest in a work or invention. The University
411 shall neither require nor pressure a faculty member to waive the faculty member's
412 intellectual property rights, nor shall the University retaliate against a faculty member
413 who declines to waive or otherwise exercises intellectual property rights in accordance
414 with this Agreement as long as the intellectual property rights of the University, other
415 employees of the University, students, and other third parties are unimpaired or not at risk
416 of impairment. Any such waiver shall be in writing and signed by the faculty member.
417 (b) In accordance with recognized scientific research procedures and sponsored agreement
418 requirements, faculty members are required to record all research data and information
419 accurately and clearly and to keep all such data in a permanent and retrievable form. In
420 addition, with regard to a patentable invention, original laboratory data must be kept for
421 the life of the patent.
422 (c) Faculty members must securely store tangible property (such as biological materials,
423 chemical compounds, and computer discs) related to an invention or work to which the
424 University has asserted or may assert ownership rights.
425 (d) Faculty members who leave the University shall be permitted to copy their laboratory
426 notebooks and take the copies with them, or take samples of tangible property with them,

427 although they are required to maintain the confidentiality of the data contained within the
428 notebooks or the tangible property. The original notebooks and other research data will
429 remain at the University.

430 (e) The University and the faculty member shall document the terms of any such transfer of
431 tangible property.

432 16.9 Execution of Documents. Upon employment the faculty member shall be provided with a
433 copy of this Article and shall sign an agreement recognizing the terms of this Article.