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References:

Section 1004.23, Florida Statutes
Universities; Powers; Patents, Copyrights, and Trademarks

University of Florida Regulation 1.018, Works and Inventions

Article 25
UFBOT/UFF Collective Bargaining Agreement-Intellectual Property

University of Florida/IFAS Policy for Program Support and Royalty Distribution from Released Cultivars

This document and related forms are available in their entirety at
A. **General Comments**

Central to the purpose of the University of Florida are teaching, research, and service. Research is undertaken to educate students, to stimulate a spirit of inquiry, to solve problems, and to discover new knowledge. Patentable inventions and other marketable forms of intellectual property may result from research conducted by personnel of the University. The University of Florida believes that a university has an obligation to serve the public interest by insuring that such intellectual property is appropriately developed.

The University of Florida Intellectual Property Policy is meant to encourage and enable technology development and transfer for the benefit of the public. Adequate recognition of and incentive to potential inventors through the sharing of the financial benefits resulting from the transfer and development of patentable inventions and other marketable forms of intellectual property encourages the creation of such intellectual property. At the same time, the University’s share in the financial benefits provides funds for further research at the University.

In order to have successful technology transfer, a team effort on the part of the creator of the intellectual property, the staff of the University’s Office of Technology Licensing (OTL), the administrative staff of the creator’s department and college, and others involved in the creator’s research enterprise is necessary. Many factors must come together to make technology transfer successful. There must be appropriate intellectual property; an effort on the part of the creator to assist in protecting and marketing the intellectual property; an effort on the part of OTL to protect, market, and license the intellectual property; a corporate licensee that is willing to invest the money, time, and effort to turn the intellectual property into a marketable product; and a market that is ready to buy the product when it has been fully developed and is ready to be sold. The University’s policy is intended to further that result.

The Intellectual Property Policy, as set forth below, is a University-level document and applies to all “University Personnel,” as that term is defined in the policy.

B. **Legal Considerations**

With the passage of the Bayh-Dole Amendments, Public Law 96-517, entitled “The Patent and Trademark Amendments Act of 1980,” the federal government facilitated the retention of intellectual property, particularly inventions, by universities. In this act the federal government gives nonprofit organizations, including universities, the right to retain title to inventions they have made in the performance of government grants and contracts. The act reflects Congress’ intention that these organizations use the patent system as a vehicle to “effectuate the transfer of government-funded inventions to the public.”

The Intellectual Property Policy of the University of Florida is based on Section 1004.23, Fla. Stat., which authorizes the University to license, protect, and otherwise deal with the work products of University personnel. The University has implemented this authority through University of Florida Regulation 1.018, which requires that all University of Florida personnel disclose certain works and all inventions which that person may develop or
discover while affiliated with the University. Such a disclosure requirement is also found in Article 25 of the Collective Bargaining Agreement between the University of Florida Board of Trustees and the United Faculty of Florida, which governs faculty members and other employees in the collective bargaining unit. Both the regulation and the collective bargaining agreement set forth the standards under which the University’s ownership of such works and inventions are determined.

C. University Inventions and Works

Those faculty members and other employees who are within the collective bargaining unit are governed by Article 25 of the collective bargaining agreement between the United Faculty of Florida and the University of Florida Board of Trustees (UFF/UFBOT CBA). If there is any ambiguity or conflict between the provisions of that Article and Sections C through E of this Policy, the provisions of the Article control for those faculty and other employees in the bargaining unit.

C.1. Definitions.

For the purposes of this Intellectual Property Policy, the following definitions shall apply:

a. A “Creator” shall mean a member of University Personnel who creates a Work or Invention.

b. “Cultivar Royalty Policy” shall mean that policy covering certain materials developed by certain University Personnel of the University’s Institute of Food and Agricultural Sciences/Florida Agricultural Experiment Station who are involved in the breeding and development of cultivars, germplasm lines, or other genetic material, as defined in that policy.

c. “Development Expenses” shall mean all monies paid by the University and UFRF for goods and services to protect, develop, and/or enhance the marketability or any other aspect of a Work or Invention, including, but not limited to, patent filing fees, Intellectual Property protection and patent enforcement and defense expenses, marketing expenses, patent maintenance fees, consulting fees, prosecution expenses, expenses incurred in dealing with equity and other ownership interests, travel, attorneys’ fees, commercialization expenses, and research costs. Not included as Development Expenses are salaries and general operating expenses of University administrative personnel.

d. “Gross Revenue” shall mean (1) proceeds from the sale, lease, transfer, or other conveyance of an Invention or Work by the University and/or UFRF, and (2) license issue fees, option fees, running royalties, and equity or other ownership interests paid to the University and/or UFRF by a licensee of an Invention or Work, except that such equity or other ownership interests, or portion thereof, shall not be considered
“Gross Revenue” unless and until the equity or other ownership interests, or portion thereof, are sold by UFRF.

e. “Independent Efforts” with regard to a Work means that the ideas for the Work came from the Creator, the Work was not made with the use of University Support, and the University is not held responsible for any opinions expressed in the Work.

f. “Intellectual Property” includes all Works and Inventions.

g. An “Invention” shall include any discovery, invention, process, composition of matter, article of manufacture, know-how, design, model, technological development, biological material, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, and any mark used in connection with these items.

h. “Net Income” shall mean Gross Revenues less all Development Expenses for a Work or Invention and its improvements.

i. “OTL” shall mean the Office of Technology Licensing. This office is responsible for the implementation of Section 1004.23, Fla. Stat., concerning all matters relating to patents, trademarks, and copyrights as related to the identification, protection, defense, and commercialization of University-owned Works and Inventions. The OTL represents the University in the implementation of this Intellectual Property Policy with regard to governmental entities, industry, and the public. Only the President and the Sr. Vice President and C.O.O. supervising OTL, and their designees, shall be authorized to commit available University funds for the expenses of licensing and patenting of inventions on behalf of the University.

j. A “Program” shall mean the specific University research program within which an Invention or Work was developed.

k. “UFRF” shall mean the University of Florida Research Foundation, Incorporated, a direct support, not-for-profit organization incorporated in August 1986, in the State of Florida, to promote, encourage and provide assistance to the research activities of University faculty, staff, and students. UFRF may take equity or other ownership interests in licensee entities. At the sole discretion of the University, Works and Inventions in which the University asserts its interests may be assigned to UFRF. If a Work or Invention is assigned to UFRF, UFRF follows the same policy as the University in the distribution of proceeds.

l. “University” shall mean the University of Florida.

m. “University Personnel” shall include all full-time and part-time employees of the University, including Academic Personnel (AP), Technical, Executive, Administrative and Managerial Support (TEAMS), University Support Personnel
System (USPS), and Other Personnel Services (OPS) employees; appointees of the University, including certain faculty members and all volunteers; persons paid by or through the University, including fellows; and anyone working under University auspices. Students who are encompassed within any of these categories shall be considered “University Personnel.”

n. “University Support” shall include the use of University funds, personnel, facilities, equipment, materials, or technological information, and includes such support provided by other public or private organizations when it is arranged, administered, or controlled by the University.

o. “University-supported Work” shall mean a Work of a Creator not made in the course of Independent Efforts. Notwithstanding the foregoing, “University-supported Works” do not include scholarly articles published in journals independent of the University and theses or dissertations of graduate students. With regard to faculty members and other employees in the collective bargaining unit, “University-supported Works” do not include: (1) scholarly or artistic works, the intended purpose of which is to disseminate the results of academic research, scholarly study, or artistic expression; and (2) “Instructional Material,” as defined in the UFF/UFBOT CBA except if the University has either (a) expressly commissioned the faculty member in writing to produce, or participate in production of, the Work with University funds for a specific University purpose or (b) expressly assigned the faculty member in writing to produce or participate in the production of the Work.

p. A “Work” shall include any copyrightable material, such as, printed material, computer software or databases, audio and visual material, circuit diagrams, architectural and engineering drawings, lectures, musical or dramatic compositions, choreographic works, and pictorial or graphic works.

C.2. University Rights to Inventions and Works

An Invention which is made in the field or discipline in which the Creator is engaged by the University or made with the use of University Support is the property of the University. The Creator shall share in the proceeds therefrom subject to preexisting commitments to outside sponsoring agencies. An Invention made outside the field or discipline in which the Creator is engaged by the University and for which no University Support has been used is the property of the Creator. In the latter case, however, the Creator and OTL may agree that the Invention be pursued by the University and the proceeds shared pursuant to this Intellectual Property Policy.

A Work which is made in the course of Independent Efforts is the property of the Creator. A University-supported Work is the property of the University. The Creator shall share in the proceeds from a University-supported Work subject to preexisting commitments to outside sponsoring agencies.

University Personnel are required to disclose promptly, pursuant to the disclosure procedures set forth in section D.2., all their Inventions and University-supported Works.
All Inventions must be disclosed, even those believed by the Creator to be unrelated to his or her University duties and not involving the use of University Support.

When an Invention is a release cultivar, as that term is defined in the Cultivar Royalty Policy, invented by University Personnel and encompassed within the terms of that policy (Appendix IV), the disclosure requirements, the distribution of proceeds, and handling of that Invention, shall be governed by that policy in lieu of paragraphs C.4., C.5., and C.6., and section D. of this policy.

University Personnel have the obligation to refrain from any act that would impair the University’s rights in any Works and Inventions they make as well as the Works and Inventions of other University Personnel. See the Intellectual Property Agreement, Appendix V, which all such personnel are required to sign. In order to maintain the University’s rights to obtain patent or other intellectual property protection of an Invention or Work, University Personnel must maintain the confidentiality of each Invention and University-supported Work, along with applicable data and tangible property (such as, biological materials, chemical compounds, and computer discs) consistent with the University’s decisions regarding the protection desired, commercialization, and/or other uses of the Invention or Work. This is particularly important for Works and Inventions that have been sponsored by outside entities through a grant or contract. If the publication of research results may reveal an Invention, University Personnel must ask OTL for advice on how and when to publish the results in order that patent protection for the Invention is not compromised. It is the University’s policy to publish the research results as soon as possible consistent with the securing of patent protection.

In accordance with recognized scientific research procedures, University Personnel are required to record all research data and information accurately and clearly and to keep all such data in a permanent and retrievable form. In addition, with regard to a patentable Invention, original laboratory data must be kept for the life of the patent. University Personnel must also securely store tangible property (such as, biological materials, chemical compounds, and computer discs) related to an Invention or Work to which the University has asserted or may assert its ownership rights. Personnel who leave the University may be permitted to copy their laboratory notebooks and other research data and take the copies with them, and take samples of tangible property with them, although they are required to maintain the confidentiality of the data contained within the notebooks and the tangible property pursuant to this Intellectual Property Policy. The original notebooks and other research data will remain at the University.

C.3. Research Financed by Outside Sponsors and Outside Consulting Arrangements

It is the University’s policy, except in unusual cases, to require that Works and Inventions developed in the course of University research sponsored by private persons, businesses, not-for-profit entities, and state and local governmental agencies be the property of the University. An exclusive option may be accorded to the sponsor with regard to Intellectual Property. The sponsor may be offered the option to acquire an exclusive license within a stated number of months from the disclosure of the Invention or Work.
Faculty and other University employees engaged in consulting work should use great care to ensure that their consulting agreement(s) are not in conflict with the University’s policies on outside activities and financial interests, University of Florida Regulation 1.011. Consulting agreements frequently require that the consultant waive intellectual property rights as a condition of employment. Approval of such requests will be based on a determination that the University does not possess any interest in such rights or that the agreement is appropriately modified concerning such rights. Where consulting activities involve a reduction to practice of Inventions or potential Inventions or development of Works conceived or developed initially under federal sponsorship or University Support, permission to waive rights to the company or the inventor will not be granted. A determination by the University must be initiated by submitting a Disclosure of Outside Activities and Financial Interests form. All forms as well as further information on outside activities, financial interests, and conflict of interest law and policies are found in “University of Florida Guidelines, Policies, and Procedures on Conflict of Interest and Outside Activities, including Financial Interests,” at www.generalcounsel.ufl.edu/regulations-and-policies/. University Personnel engaged in approved consulting work are required to disclose any University Work or Invention made in the course of the work in accordance with the instructions of subsection D.2 of this policy.

C.4. Relationships between the Creator and the University regarding Inventions

Two separate relationships between the Creator and the University with regard to Inventions are recognized:

a. Inventions Made Outside the Creator’s Field and Without University Support

If an Invention is made or developed without any University Support in a field other than the field or discipline in which the Creator was engaged by the University to teach, do research, or to perform other duties, the rights to the Invention will be retained by the Creator. Under these conditions, the Creator is, nevertheless, required to make full disclosure of the Invention in accordance with subsection D.2. of this policy so that the University may make a determination of rights.

b. Inventions in the Field in Which the Creator is Engaged or Made with University Support

If, after a full disclosure of an Invention and review in accordance with section D of this policy, the Invention is determined to have been made or developed in the field or discipline in which the Creator was engaged by the University to teach, do research, or to perform other duties, or the Invention is determined to have been made with University Support, OTL may, on behalf of the University:

(i) elect to waive the University’s rights to the Invention, thus allowing the Creator to protect the Invention as he or she may wish. If outside funds supported the Work leading to the Invention, this waiver is subject to any provisions in sponsoring agreements. In cases in which the University has waived its interest and the Invention was supported by federal funding, any waiver must be to the supporting
federal agency, rather than to the Creator(s). In addition, the waiver shall not affect the right of the University and the State of Florida to royalty-free use of the Invention, nor shall such a waiver be granted until any pre-existing commitments to sponsoring agencies with regard to Inventions are cleared. In general, the University will not waive its rights to Inventions of Creators who are full-time employees or appointees of the University.

or,

(ii) elect to retain title to the Invention. The development and marketing of the Invention is at the discretion of the University and UFRF. Generally, the University or UFRF seeks to develop and market the Invention and may elect to seek patent or other legal protection. Once application for a patent has been made, OTL will be responsible for the development and negotiation of licensing agreements in order that the Invention is managed in a way which serves the public interest. In certain cases, the University may elect to license the Invention to the Creator for a minimal royalty, and the Creator may elect to obtain patent protection.

or,

(iii) decide the Invention disclosure is premature or incomplete, in which case, the Creator will be asked to resubmit the Invention disclosure when additional information is obtained.

C.5. Relationships between the Creator and the University regarding University-supported Works

Any University-supported Work is required to be disclosed under the procedures of section D. OTL, on behalf of the University, may elect to pursue any of the three alternatives described in C.4.b above with regard to disclosures of University-supported Works.

C.6. Distribution of Net Income from Works and Inventions

With regard to any Work or Invention owned by the University, Net Income less any foreseeable Development Expenses the University or UFRF deems necessary to defend or maintain the Work or Invention (“Net Adjusted Income”) will be distributed as follows:

For Net Adjusted Income up to $500,000 (Schedule A):

<table>
<thead>
<tr>
<th>Percentage</th>
<th>Recipient</th>
</tr>
</thead>
<tbody>
<tr>
<td>40%</td>
<td>individual Creator(s)</td>
</tr>
<tr>
<td>10%</td>
<td>Program(s)</td>
</tr>
<tr>
<td>7 ½%</td>
<td>Creator(s)’s department</td>
</tr>
<tr>
<td>7 ½%</td>
<td>Creator(s)’s college</td>
</tr>
<tr>
<td>35%</td>
<td>University or UFRF</td>
</tr>
</tbody>
</table>
For Net Adjusted Income $500,000 or over (Schedule B):

25% individual Creator(s)
10% Program
10% Creator(s) department
10% Creator(s) college
45% University or UFRF

Notwithstanding the above, all Net Adjusted Income from UFRF’s sale of equity or other ownership interests originally granted to UFRF by a licensee in lieu of cash royalties or license fees shall be distributed according to Schedule B.

Further and notwithstanding the above, University Personnel who work for OTL shall not receive a distribution of Net Income as individual Creators. All Net Income from Works and Inventions that have a Creator that is an OTL University Personnel shall be distributed as though the OTL Creator did not exist.

Distributions of income will be made semiannually on or before June 1 and December 1 of each year. This distribution schedule allows the University or UFRF to assure that all applicable licensing and related expenses have been accounted for. The University or UFRF may, at its sole judgment, withhold or delay distribution of any income if there is a foreseeable Development Expense yet to be incurred. In instances where funds are held because of foreseeable Development Expenses or where expenses exceed revenue, an accounting of such will be sent to the Creator’s department and college indicating the amounts received for the current six-month period and the amount of the anticipated expense or deficit. Once expenses are known with certainty, any excess withholding will be distributed.

Payments of the portion allocated to the Creator(s) must be made to Creator(s) individually and cannot be assigned by the Creator(s) to other parties or entities. The only exception will be that after a Creator’s death, appropriate notification by the personal representative of the Creator’s estate, and court approval, if necessary, payment will be made to the Creator’s estate, heirs or devisees. An IRS Form 1099 or other appropriate form will be issued to the Creator for the Creator’s share of revenues. The University cannot advise individuals on the tax consequences of these payments. It is the sole responsibility of the Creator to inform the University or UFRF of any changes of address for payments.

In the event there are multiple Creators for an Invention or Work, the Creators’ share will be divided equally among all Creators. If the Creators agree among themselves to a different split, OTL must be notified in writing at least one month prior to the date of the first income distribution as to the agreed-upon division of income. The portions distributed to the academic units, which are the academic units of the Creator(s) at the time of the creation of the Invention or Work, will be pro-rated when more than one unit is involved. The University will make the final decisions on the pro-ration of such portions to academic units. In the case of licenses or other transactions involving multiple Inventions or Works, the University or UFRF shall resolve any potential conflicts concerning the applicable distribution schedules after reviewing the technologies involved.
That portion allocated to the Program (or Programs) remains under the control of the University or UFRF. If there is more than one Program in which the Invention or Work was developed, the Program portion will be pro-rated as determined by the University. If a Creator should leave the University, the portion allocated to the Creator’s program will be allocated to that Program as long as the Program exists and consists of research in the same area as that conducted by the Creator prior to leaving the University. If the Program ends, the portion allocated to the Program will be allocated to the University or UFRF. Any determinations regarding the distribution of the Program portion of Net Income shall be at the sole discretion of the University.

The University or UFRF will utilize its share of the Net Income distribution to support research activities at the University. Funds allocated to academic units must be used solely for the support of research at the University.

Distribution of income in the case of Inventions of University Personnel employed by the U.S. Department of Veterans Affairs pursuant to an affiliation agreement between the University and the Department of Veterans Affairs shall be in accordance with the Cooperative Technology Administration Agreement between the University and the Department.

**Equity or other Ownership Interests in lieu of Cash Payment**

UFRF may elect to accept equity or other ownership interests from licensees in lieu of cash payments for a license fee or royalty. The decision to accept equity or other ownership interests is made at the sole discretion of UFRF, and UFRF is not obliged to make a disbursement of equity or other ownership interest to the Creator(s) or to department(s) and college(s) until the equity or other ownership interest is sold.

UFRF will own and exercise all rights of ownership, including but not limited to the rights to vote equity interests on all matters which are subject to the consent or approval of the holders of equity interests (including voting such equity interests for the election of the directors, approving or disapproving amendments to articles of incorporation, etc.). UFRF will retain and own the equity interest until the sale or exchange of the interest. The decision as to when to sell or exchange equity resides with the UFRF Board of Directors in its sole discretion.

When selling, exchanging or otherwise disposing of any equity or other ownership interests, UFRF may agree to pay such commissions or other fees or charges and may incur such expenses as it shall determine at its sole discretion. All such expenses are considered Development Expenses in determining Net Income to be distributed.

**C.7. Relationships Between Employees and the University Regarding Business Transactions**

In accordance with University of Florida Regulation 1.011 and Article 29 of the UFF/UFBOT collective bargaining agreement, University employees are required to receive appropriate permission before soliciting business from the University by completing and submitting a Disclosure of Outside Activities and Financial Interests form.
The form must be submitted by a Creator with a financial and/or managerial interest in a business or a contractual relationship (for example, an ownership, employment or consulting agreement) with a business entity which is licensing or otherwise entering into a business relationship with the University or UFRF concerning the Creator’s Invention or Work. Disclosure and approval of the interest or relationship must be accomplished by requesting an exemption under Section 112.313(12)(h), Florida Statutes. Guidelines for submitting a request may be obtained by contacting the Division of Research Compliance Office.

All forms as well as further information on outside activities, financial interests, and conflict of interest law and policies are found in “University of Florida Guidelines, Policies, and Procedures on Conflict of Interest and Outside Activities, including Financial Interests,” at www.generalcounsel.ufl.edu/regulations-and-policies/.

D. Procedures Regarding Inventions and University Works

D.1. Organization

The Office of Technology Licensing (OTL) is responsible for all patent, trademark and copyright matters as related to the identification, protection, and commercialization of the University’s Intellectual Property. Licensing specialists in OTL are the primary contacts for Creators with regard to the disclosure of Inventions and Works and during the subsequent stages of protection, marketing, licensing, and other activities.

D.2. Making Disclosures

A timely and complete disclosure on the applicable Invention or Works disclosure form located at http://www.research.ufl.edu/otl/newdiscovery.html must be made to the Director of OTL. Licensing specialists in OTL are readily available for assisting in the disclosure process.

D.3. Disclosure Review

OTL will conduct a review of the disclosure which shall assess the respective equities of the Creator and the University in the Invention or Work and determine its importance and the extent to which the University should be involved in its protection, development, and promotion.

OTL shall recommend whether the University should assert or waive its interest in the Invention or University-supported Work based on a determination of potential technical and market value.

OTL may employ outside evaluators and other consultants to review the disclosure, as well as to assist in the licensing, other commercialization, or protection of the Invention or Work. OTL will determine the University’s interests consistent with the provisions of section C of this policy. It shall be the obligation of the Creator to be available to provide additional information as needed in all stages of this procedure.
D.4. Determination of University Interests

The Director of OTL or designee shall inform the Creator of the University’s decision regarding the University’s interests and legal rights as soon as practicable, with a goal of no more than 120 calendar days from receipt of the complete disclosure in the case of an Invention and 60 days from receipt of the complete disclosure in the case of a University-supported Work.1

If the University’s ownership interest is waived to the Creator(s), it is the policy of the University that the Creator(s) must disclose the potential conflict of interest created by the ownership interest when proposing research to be conducted using University resources that could reasonably appear to influence the financial value of the Invention. In such cases the University, through the Creator(s) and appropriate administrators, must have established the means to manage the conflict prior to conducting the research.

At any stage in the commercialization of an Invention or Work, the University or UFRF through OTL, may elect to withdraw from further involvement in the protection or commercial application of the Invention or Work. At the request of the Creator in such case, OTL shall transfer the Intellectual Property rights to the Creator, subject to the ownership rights of a federal agency or other research sponsor. If the property rights are transferred to the Creator, none of the costs incurred by the University or on its behalf shall be assessed against the Creator unless they are Development Expenses deducted from Gross Revenues received by the University or UFRF prior to the transfer. The transfer shall not affect the right of the University and the State of Florida to royalty-free use of the Invention or Work.

Inventions and Works in which the University has asserted its ownership interest may be protected, marketed, and licensed as appropriate. The OTL licensing specialist with responsibility for a particular disclosure will play a primary role in taking appropriate action on such disclosure in close collaboration with the Creator(s) and appropriate departments or colleges at the University. All final decisions with regard to Inventions and Works in which the University has asserted its ownership interest are made by OTL.

E. Effective Date for Division of Proceeds Provisions

Those provisions of this policy concerning the distribution of proceeds as set forth in section C.6. are effective as follows: the proceeds from any Works or Inventions that are the subject matter of any license agreement or other transaction entered into by the University or UFRF before July 15, 1997 shall continue to be distributed pursuant to the University of Florida Patent Policy dated February 1993 or any previous agreement entered into by the Creator and the University. The proceeds from any other Works or Inventions will be governed by the provisions of section C.6. of this policy. July 15, 1997; revised April 2013.

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1 University regulations and collective bargaining agreements provide informal appeal and formal grievance procedures for University employee and students who believe that they have not been afforded their rights under those regulations and agreements. Employees and students should refer to the appropriate handbooks, regulations, and collective bargaining agreements for further information.