
 <p style="text-align: center;">NORTHEAST OHIO MEDICAL UNIVERSITY</p>	<p>Policy No: 3349-20-50</p>
<p>POLICY TITLE: Intellectual Property</p>	<p>EFFECTIVE DATE: September 1, 2011 REVISED: February 7, 2023</p>
<p>RESPONSIBLE DEPARTMENT: General Counsel and Research and Sponsored Programs</p>	<p>All Persons Engaged in Research Activities at the University</p>

(A) PURPOSE

Under Ohio law, all Discoveries or Inventions resulting from research or investigations conducted in any College or University are the sole property of the University. The purpose of this Policy is to establish a framework for University Intellectual Property protection and development that will transfer the benefits of its Innovations to society, and at the same time, obtain appropriate financial gains for the University and its Inventors as appropriate.

(B) SCOPE

- (1) This Policy applies to all Discoveries, Innovations, or Inventions, made by any University Employee (as defined herein) if such Discovery, Invention, or Innovation was:
 - (a) The result of research carried on, by, or under the direction of, any University Employee, the cost of which was paid for, in whole or in part, with funds from, under the control of, or administered by, the University. This includes all grant funds under the control of a University Employee regardless of the source; or
 - (b) The Discovery, Innovation, or Invention resulted from efforts that utilized more than a *de minimus* amount of University facilities or resources.
- (2) Inventions not involving any University funds, equipment, facilities, or personnel (or a *de minimus* amount) are the property of the Inventor, so long as the Discovery, Innovation, or Invention is not in a substantive area of research in which the Inventor is customarily engaged on behalf of the University.
- (3) Generally, the University does not claim ownership in the rights of Inventions created by individuals in their capacity as students.
 - (a) University claims to ownership will depend on the nature of the relationship between the student and the University at the time of the Invention. If the student made the Discovery while engaged in paid


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research work, the student will be treated as an Employee under this Policy and subject to the Policy as set forth herein. Specifically, students who are engaged in the Bench to Bedside Program, who make a Discovery while engaged in a paid research project, will be treated as Employees under this Policy and subject to the Policy as set forth herein. Students who are involved in the Bench to Bedside Program, who make a Discovery, but are not involved in paid research, will not be treated as Employees under this Policy.

If, because of their involvement, a student will be required to assign rights in any potential future Invention arising from a given project to the University, the student will be made aware of this obligation in advance and offered the opportunity to select a different project.


(C) DEFINITIONS

- (1) "Confidential Information" refers to all proprietary or Confidential Information of the University, the Affiliated Entities of the University, research sponsors, foundations, governmental agencies, or others, whether provided or made available verbally, in writing, electronically, by observation or through any other means, as well as all information generated during the review of such information or concerning the existence, scope or terms of any past, present or potential future research project, study, collaboration, grant, contract or other agreement. Confidential Information includes, by way of example, but without limitation, the following: all business, financial, or scientific information; contractual arrangements and methods of operating; lab notes, graphic materials, work papers; Patent applications and Trade Secrets; research protocols or other information; biological materials; reagents; Software or documentation; prototypes; mask works; information pertaining to any directors, officers, medical staff members, Employees, consultants, representatives, or agents of University Affiliates or relating to actual or potential sponsor, patient, supplier, customer, or licensee identities, accounting and patient records; and any other information or materials not specifically mentioned above that is designated as confidential, that Affiliated Entities have an obligation to keep confidential; that the University


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designates as confidential or designate as requiring permission to release; or that would constitute a Trade Secret under applicable law.

- (2) "Composition of Matter" generally, refers to chemical compositions and can include mixtures of ingredients as well as new chemical compounds *per se*.
- (3) "Copyright" refers to the protection that is accorded to original works of authorship fixed in tangible media of expression. Copyright protects the owner of the work if others copy, present, or display the work without the permission of the owner.
 - (a) "Works of authorship" include but are not limited to literary, musical, dramatic, audiovisual, architectural, pictorial, graphic, and sculptural works and sound recordings. Computer Software is works of authorship to the extent they are protected by federal Copyright laws.
 - (b) "Tangible media of expression" include physical, digital, and other formats now known or later developed from which Copyrightable works may be stored, reproduced, perceived, or otherwise communicated, either directly or with the aid of a machine or device.
 - (c) Copyright may be used to protect Software source codes from being copied or infringed.
- (4) "Direct and Significant Amount of University Resources" refers to a requested and approved allocation of resources not routinely available to members of an Employee's unit. College resources include, but are not limited to, staff time, equipment, funds, computer usage, and release time from assigned duties. Clarification of whether an allocation is "direct and significant" should be sought by the Employee at the time of the request for allocation.
- (5) "Disclosure" refers to reporting of an Invention or Discovery in sufficient detail to communicate an understanding of the Invention or Discovery.

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- (6) "Discovery" refers to the process of finding out about some substance, mechanical device, improvement, or application not previously known. It is something less than Invention and may be the result of industry, application, or be merely fortuitous.
- (7) "Employee," for the purposes of this Policy, refers to any faculty, staff, student, or volunteer of the University regardless of any compensation paid or the amount of hours worked. This includes any visiting scholars/researchers who are working or studying within the University.
- (8) "Intellectual Property (IP)" refers to any and all rights resulting from endeavors of the mind including those that protect the application and/or expression of ideas, Inventions, creations, works, developments, improvements products, processes, procedures, techniques, devices, Software, designs, materials and Compositions of Matter, as well as the embodiments of all such rights, whether in tangible or intangible form, including but not limited to, those items specifically referred to in the definition of Confidential Information. Intellectual Property rights may be protected under Federal law under Patents, Trademarks, Service Marks, Copyrights, and Trade Secrets.
- (9) "Innovation" refers to a new model, idea, or product. A useful application of new Inventions or Discoveries.
- (10) "Invention" refers to, but is not limited to, products, methods, or uses, whether or not they are Patentable.
- (11) "Inventor" refers to one who invents, creates, or finds out something new; a contriver; especially, one who invents mechanical devices, new drugs, new processes, or other useful objects or procedures.
- (12) "Manufactured" (noun) refers to all Manufactured articles.
- (13) "Net Income" refers to gross income from royalties or other payments, such as option payments received by University, minus any fees or costs directly attributable to the Invention being licensed. Examples of such direct fees are

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Patent filing fees, fees for Patent searches, legal advice, consulting fees, fees arising out of litigation, necessary travel, marketing costs, and maintenance fees. Indirect University overhead and other costs normally associated with the operation of the University shall not be deducted from gross royalties or otherwise allocated to costs or fees associated with the Invention.


- (14) "Patent" refers to a grant via the United States Patent and Trademark Office (USPTO) to an original Inventor of certain rights as defined by the claims of the Patent. The term of a Patent is seventeen (17) years from the date of the grant. The right conferred by the Patent is the right to exclude others from making, using, or selling the Invention (as defined in the Patent claims). Separate applications must be made for foreign Patent rights.

- (15) "Publication" refers to a published article or abstract in a technical journal, bulletin, newspaper, textbook, or other tangible medium which gives sufficient information about the Discovery or Invention to permit one skilled in the art to practice the Invention.

- (16) "Software" refers to computer instructions, data, and accompanying documentation. To be Patent-eligible, Software must perform features that are novel and proprietary. Computing code itself isn't Patentable; the Patent application must be directed to the process of execution of the Software code on a computer. This is commonly referred to as a "Software-implemented Invention."

- (17) "Trade Secret" refers to information, including a formula, pattern, compilation, program, device, method, technique, or process that: a) derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its Disclosure or use; and b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.


- (18) "Unobvious" Refers to a characteristic that is not obvious to a person having ordinary skill in the art to which said subject matter pertains.

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- (19) "Work Made for Hire" refers to works prepared by an Employee as a specific responsibility of the position for which the Employee is hired, works specifically commissioned or ordered by University for which a written agreement specifying Copyright ownership has been executed prior to the completion of the work, works created under a sponsorship/contractual agreement with Copyright provisions defined, and other work created through a direct and significant allocation of University resources to a specified project. A faculty member's general obligation to produce scholarly works does not constitute a specific responsibility as included in this definition.


(D) BODY OF THE POLICY

- (1) General Considerations
- (a) The University education and research missions are preeminent over that of the transfer and commercialization of research results.
 - (b) The University is committed to active engagement and support of innovation, technology development, and entrepreneurial activities through the efficient and effective deployment of its resources for the betterment of society and the generation of unrestricted revenue to support its Mission.
 - (c) University resources may be used for non-University purposes so long as they are appropriately serving the public interest. Any such use must conform to University policy and be set forth in appropriate agreements between the parties.
 - (d) The University will respect the Intellectual Property of its partners and collaborators.
 - (e) When the University owns Intellectual Property under this Policy, the Inventor or creator may play an active role in the entire licensing process unless such participation is inconsistent with conflict-of-interest regulations or University policy.

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(2) Patents

- (a) Under this Policy and in accordance with O.R.C. §3345.14, all rights to and interests in Patents that result from research or investigation conducted in any experiment station, bureau, laboratory, research facility, or other facility of the University, or by Employees (as defined herein) acting within the scope of their employment or with funding, equipment, or infrastructure provided by or through the University, shall be the sole property of the University.
- (b) No person, firm, association, corporation, or governmental agency which uses the facilities of the University in connection with such research or investigation and no Employee of the University participating in or making such Discoveries or Inventions shall have any rights to or interests in such Discoveries or Inventions, including income therefrom, except as may, by determination of the University's Board of Trustees, be assigned, licensed, transferred, or paid to such persons or entities in accordance with the terms of this Policy.
- (c) The Board has delegated to the President of the University, unless the President is an Inventor of the Invention, the authority on behalf of the Board of Trustees, to retain, assign, license, transfer, sell, or otherwise dispose of, in whole or in part and upon such terms as the Board of Trustees has set forth herein, or may otherwise direct from time to time. Such dispositions may be to any individual, firm, association, corporation, or governmental agency, or to any Employee, as the President or in the case where the President is an Inventor, the Board of Trustees may direct. All income or proceeds derived or retained from such dispositions shall be applied to the general or special use of the University as determined by the Board of Trustees.
- (d) The University has established these rules within the scope of academic freedom, consistent with its goal to provide incentives and institutional support to those Employees whose research and scholarly activities lead

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to Discoveries, Innovations, or Inventions, or that might be Patented for societal use and to provide for equitable distribution of income resulting from Discoveries, Innovations, and Inventions between the University and the Inventor.

(3) Publications

It is well understood that Publication of research results is an essential part of the activity of a University researcher. While this Policy recognizes this need, the timing of the Publication of research results can be of critical importance when considering Patent activity. Failure to take timely steps to Patent can result in a possible reduction in, or the entire loss of, adequate Patent protection in the U.S. or abroad.

The safest course is to file a U.S. Patent application before any public use, Disclosure or sale of the Invention occurs. There is a period of one year from the date of Publication to file an application for a U.S. Patent; however, in most foreign countries, the Publication itself bars valid Patent protection with no grace period.


(4) Government Grants Under the Bayh-Dole Act

The University generally can obtain title to Inventions and Patents arising under U.S. Government contracts/grants, subject to certain rights reserved by the government, if Invention reporting requirements and formalities are followed.

(5) Technology Commercialization Activity

Inventions disclosed to the University will be evaluated to determine scientific merit, the likelihood of Patentability or other protection, the potential for societal benefit, market potential, barriers to market, and other criteria concerning commercialization potential.

(6) Rights and Obligations of the Parties

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- (a) In accordance with O.R.C. Section 3345.14, unless otherwise modified by contract, all rights to and interests in Discoveries or Inventions to which this Policy is applicable shall be the sole property of the University. Rights to Inventions arising during government and other sponsored research may be controlled by the terms of the underlying research agreement.

- (b) Inventor Rights and Obligations
 - (i) Confidential Disclosure of the Invention to the General Counsel shall precede an Inventor's public Disclosure, Publication of information concerning a Discovery, Innovation, or Invention. Once a Discovery, Innovation, or Invention is reduced to practice, an Invention Disclosure Form shall be promptly submitted by the Inventor to the General Counsel. The Invention Disclosure Form is available through the Office of General Counsel and on the University website.


 - (ii) The University requires that researchers maintain adequate laboratory notebooks documenting critical information about the Discovery or Invention. Notebooks and other materials pertaining to research activities leading to a Patent application are the property of University and will remain at University even after termination of employment.

 - (iii) The Inventor shall assign title to the Invention, Discovery, or Innovation to University.

 - (iv) The Inventor shall cooperate in the following:
 - (a) Executing applications and legal documents;

 - (b) Any litigation arising out of the Patent application; and


 - (c) Reasonable marketing efforts related to the Discovery or Invention.

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- (v) The Inventor has a right to receive a share of any royalties or licensing fees received for the Discovery, Invention, or Innovation according to the schedule contained in Section (D)(10) of this Policy.
- (vi) If the General Counsel and the Vice President for Research recommend that University surrender all rights in the Discovery or Invention, and the President agrees that this recommendation is in the best interests of the University, the President will have the authority to surrender the rights of the University with respect to the Discovery, Invention, or Innovation unless the President is an Inventor, in which case, the Board must approve the surrender. After surrender, the Inventor shall have the option to pursue a Patent application in the Inventor's own name at the Inventor's expense, in which case, any royalties or licensing fees received would be the sole property of the Inventor; however, the Inventor will reimburse the University for its out of pocket expenses, if any, and grant to University a royalty-free, irrevocable, perpetual, non-exclusive license to make and use the Invention for its own research and educational purposes.
- (vii) The Inventor has a right to timely publication of his or her findings as required by the principles of Academic Freedom, subject to the University's right to protect its interest in the Intellectual Property.

(7) The University's Rights and Obligations

- (a) The University has the sole right to license, sell, assign, or otherwise dispose of the rights to Discoveries, Innovations, or Inventions that are owned by or have been assigned to University.
- (b) The University shall timely determine whether it chooses to retain or assign title, submit to an external source for evaluation of Patentability, file a Patent application, or surrender title to the Inventor.

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(c) Should the University choose to file a Patent application, it shall file, in a timely manner, any documentation necessary to prosecute a Patent and shall pay all filing fees, maintenance fees, attorney fees, and other costs related to prosecuting and maintaining the Patent. These costs will be recovered by the University before any payments are made in accordance with this Policy.

(8) Administration

(a) The General Counsel and the Vice President for Research shall have overall responsibility for administration of the University's Patent program, including assuring valuable property rights are not lost. Specific responsibilities shall be to:


- (i) Function as points of contact and resources with regard to this Policy and procedure;
- (ii) Receive reports of all Discoveries or Inventions that are subject to this Policy;
- (iii) Conduct or cause to be conducted due diligence studies to determine Patentability, market potential, barriers to market, and other criteria deemed necessary to determine commercial potential.
- (iv) Act upon the due diligence conducted to promote the interests of the University and to the extent appropriate to the University Inventors.

(9) The General Counsel and the Vice President for Research may utilize University funds to engage appropriate consultants and legal and business professionals to evaluate all Discoveries and Inventions disclosed to University for potential Patentability and commercialization. These reports will be sent directly to the

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General Counsel and will be protected from Disclosure under attorney-client work product.

- (10) Income, including Royalties and Other Payments
- (a) For all Inventions for which the University receives royalties or other payments, the Net Income will normally be distributed as follows:
 - (i) 50% to the Inventor(s);
 - (ii) 10% to the Inventor's Department(s);
 - (iii) 20% to the University Research Office; and
 - (iv) 20% to the Technology Transfer Office
 - (b) All monies received by the departments, the University Research Office, or University Technology Transfer Office are considered University funds and will be administered in accordance with established accounting policies and procedures.
 - (c) If multiple Inventors are involved, the royalties as specified above shall be distributed equally among the parties set forth in Section 10(a) above unless a written proposal for an alternate distribution is jointly presented by the Inventors and approved by the General Counsel and the Vice President for Research.
 - (d) The Inventor shall not receive the specified share of royalties when the Inventor is no longer affiliated with the University unless otherwise agreed to, in writing, by the University and the Inventor at the time the Inventor leaves the University It is the responsibility of the Inventor to notify the General Counsel in writing of the Inventor's address. In the event of the Inventor's death, royalties due and payable under this Policy will be paid to the Inventor's estate for the remainder of the royalty period. The Inventor's department(s) shall continue to receive the royalties specified


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above as long as the Inventor is affiliated with said department. Should the Inventor leave the department or the University, all departmental royalties shall become the sole property of University and will be shared equally by the University Research Office and Technology Transfer Office, unless otherwise agreed to in writing.

(11) Research Agreements Collaborators and Industry Involving Patent Rights

It is not uncommon for University Employees to receive awards to conduct research funded by private industry. It is also not uncommon for Employees to conduct research in cooperation with colleagues at other institutions. The University recognizes that to continue these relationships, it must be willing to consider a variety of contractual terms and conditions. In order to protect traditional Academic Freedom, assist Employees in evaluating proposals, and protect University's interest in Discoveries, Innovations, or Inventions, the following policies shall apply to these external relationships:

- (a) All written agreements with private industry or with other institutions utilizing University resources to conduct research must first be reviewed by the General Counsel and the Vice President for Research. The General Counsel and the Vice President for Research will only approve those agreements which assure that the rights of the University are appropriately protected.
- (b) In dealing with Inventions that are conceived or developed in the course of research sponsored by a third party and/or pursuant to an agreement with another institution, the University will abide by the terms of the agreement with that third party. Where an option exists, the University will seek agreements and contracts, or waivers thereof, that will allow Patent rights to remain with University.
- (c) University will not waive the right to publish results of research. University will only agree to delay Publication for reasonable periods of time so appropriate action can be taken to protect Patentable Discoveries or Inventions. In agreeing to delay Publication for a reasonable period,


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University will not agree to delays that effectively inhibit a student's timely completion of a course or degree.

- (d) Title to all documents, records, biological materials, Software, databases, notebooks, and other repositories of information from research shall be held by University. Those materials must remain at University should the Inventor's employment at University be terminated for any reason unless specifically authorized by the University.
- (e) The University will agree that Confidential Information remains the property of private industry and will agree to protect the Trade Secrets of third-party research sponsors. Written agreements with the third party must clearly define what information is proprietary in nature. Trade Secrets will be kept confidential and will not be subject to Disclosure under the provisions of Ohio Revised Code Section 149.43. If a request for such information is received, the University will notify the owner of the Confidential Information of the request and mutually agree to the appropriate response.

(12) Visiting Scholars and Researchers

- (a) For the purposes of this Policy, visiting scholars and researchers will be treated as Employees (as that term is defined herein) and are required to adhere to the provisions of the Visiting Scholar/Researcher Agreement, which is available through the Office of General Counsel.
- (b) The faculty member hosting the visiting scholar/researcher is responsible for, and expected to, ensure the following:
 - (i) The Visiting Scholar/Researcher Agreement has been properly executed with the Office of General Counsel;
 - (ii) that a copy of this Policy has been provided to the visiting scholar/researcher; and

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(iii) that all departments have been properly notified of visiting scholar/researcher's presence at the University.


(13) Copyright

(a) For the purposes of Copyright, the University seeks the following:

- (i) To maximize Academic Freedom and creative expression for the public good;
- (ii) To preserve traditional academic practices and privileges with respect to the Publication of scholarly works;
- (iii) To apply uniform principles and procedures that provide allocation of income resulting from commercial publication;
- (iv) To apply funds accruing to University from Copyrighted materials to advance and encourage scholarly endeavor;
- (v) To disavow any claims by University in an individual's Copyrightable work simply because of the individual's membership in the University community; and
- (vi) To protect University's assets and preserve its reputation of excellence.

(b) Copyright Ownership

- (i) The University encourages scholarly and creative activity by faculty, students, and staff. These activities include the production of works resulting from academic research or scholarly study. Authors of Copyrightable works may register the Copyrights and Publish the works as their own except for "Works Made for Hire" or where a Direct and Significant Amount of University Resources have been used in the creation of the work, or any other work specified in this


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Policy or covered by an agreement to the contrary. In the case of a "Work Made for Hire", the employer or contractor by law, is the author and hence the owner of the Copyright. University's General Counsel, in consultation with the author and the Vice President for Research, shall determine if work is made for hire.

(ii) Personal Copyrights

Works by a University Employee that do not use a Direct and Significant Amount of University Resources as set forth below, are not Works Made for Hire, and are not subject to a written agreement to the contrary, are the property of the Employee. This category includes the products of research and scholarship, and other creative and artistic works. Employees may contribute their Copyright interests to University. If accepted, a confirming agreement will be executed.

Employees often use significant University resources in their work. University requires that its resources be used for University purposes and not for personal gain, commercial advantage, or any other non-University purpose. Unless the author or creator of the work obtained written authorization from the Vice President for Research and the General Counsel prior to using significant University resources, the University shall claim Copyright to works produced with significant use of its resources; such works are considered University property. University property includes works that are supported by a specific allocation of University funds or that are created at the direction of the University for a specific University purpose. In the case of a dispute concerning the allocation of resources, the Employee bears the burden to prove, by clear and convincing evidence, that the Employee did not use significant University resources in the production of the Copyrightable materials.

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The University will retain title to all Copyrighted Software developed by, or substantially with, University resources unless prior written waiver of University rights is issued.

- (iii) The following notice is to appear on all University-owned material:

Copyright © (year) Northeast Ohio Medical University
Rootstown, Ohio. All rights reserved.

The date in the notice should be the year in which the work was first fixed in any tangible mode of expression.

- (iv) The general Policy of the University is to register only those of its works that have the potential for royalty return. University Copyright ownership may be relinquished only upon the authorization of the Vice President for Research and the General Counsel, who are authorized by the Board to surrender such rights if they believe it is in the best interest of the University to do so. If such rights are relinquished, the University will retain a non-exclusive, royalty-free license to use these works.


- (v) Sponsored Works

The disposition of Copyrights of works created with support from an outside sponsor shall be governed by an agreement.


- (c) Policy Administration

The General Counsel with the Vice President for Research will:

- (i) Determine the rights of the University in any Copyrightable works created or to be created with University resources;
- (ii) Develop and approve agreements for the use of University resources in the creation of Copyrightable works;

 <p style="text-align: center;">NORTHEAST OHIO MEDICAL UNIVERSITY</p>	<p>Policy No: 3349-20-50</p>
<p>POLICY TITLE: Intellectual Property</p>	<p>EFFECTIVE DATE: September 1, 2011 REVISED: February 7, 2023</p>
<p>RESPONSIBLE DEPARTMENT: General Counsel and Research and Sponsored Programs</p>	<p>All Persons Engaged in Research Activities at the University</p>

- (iii) Provide assistance as appropriate for securing the registered Copyright to the works the University deems appropriate;
- (iv) Provide assistance in licensing or distributing Copyrightable works in which University holds; and
- (v) Distribute royalties to the author or others as set forth in pertinent agreements.

 <p style="text-align: center;">NORTHEAST OHIO MEDICAL UNIVERSITY</p>	<p>Policy No: 3349-20-50</p>
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REFERENCES

REVISION HISTORY

Revised February 7, 2023

DOCUMENT REFERENCES

Invention Disclosure Form
Visiting Scholar/ Researcher Agreement
Work Made for Hire Agreement

RULES PROMULGATED UNDER

ORC §111.15
ORC §3345.14
ORC §3350.10

LEGAL

Federal Authority
Public Law 105-304: The Digital Millennium Copyright Act
Public Law 96-517, 37 CFR §401.14: The Bayh-Dole Act
FAR Part 52.227: Federal Acquisition Regulation System (FAR), governing Patents, Data, and Copyrights Provisions and Clauses

State of Ohio Authority
Ohio Revised Code §3345.14 Rights to and interests in Discoveries, Inventions or Patents
Ohio Revised Code §1333.61-69 Uniform Trade Secrets Act