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NOTE: The first appearance of terms in bold in the body of this document (except titles) are defined terms – please refer to the Definitions section.

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OBJECTIVES

- To outline the rights and obligations of Alberta Health Services (AHS) and **intellectual property creators (IP creators)** in the assessment of **intellectual property (IP)**.

APPLICABILITY

Compliance with this document is required by all Alberta Health Services employees, members of the medical and midwifery staffs, students, volunteers, and other persons acting on behalf of Alberta Health Services (including contracted service providers as necessary).

ELEMENTS

1. Assessment of the Intellectual Property

- 1.1 Once an AHS *Intellectual Property Disclosure Form (IP Disclosure Form)* has been submitted by an IP creator, in accordance with the AHS *Intellectual Property Disclosure Procedure* and AHS *Intellectual Property Disclosure Form Procedure*, the Vice President, Provincial Clinical Excellence (VP, PCE), in consultation with the IP creator, makes an assessment of the IP.
- 1.2 Assessment of the IP varies from project to project. Assessment of the IP to determine potential commercial value in the IP may include, but not be limited to:
 - a) checking the actions of the IP creator and contributing researchers regarding the IP (material transfer agreements, publications, collaborations, disclosures, non-disclosure agreements);

- b) understanding any university or other third-party involvement in the IP (salary, laboratory space, joint inventors, etc.);
- c) evaluating the technology and its use; and
- d) assessing prior art, current state of the art, freedom to operate, and patentability.

2. External Expertise

- 2.1 The VP, PCE may obtain the advice of external experts, including patent agents or IP consultants, in conducting the assessment or accept assessments previously completed by an external agency.

3. Results of Assessment

- 3.1 If the assessment of the IP shows there is opportunity for **commercialization** or business development, this is presented to the IP creator with a written recommendation as to next steps, and AHS proceeds with any required patent protection. The VP, PCE and the IP creator should meet to review the status of the project and make sure the goals for the future of the project are aligned. Depending on the options for IP protection and commercialization, it might be relevant to review financing capabilities, grant applications, and patent protection.

4. Business Plan

- 4.1 The VP, PCE may require a business plan be developed for the IP which would include a technology assessment, IP assessment, business description, market analysis, management plan, project timeline, and costs.

5. Affiliation Agreements

- 5.1 The VP, PCE may request a third party under an **affiliation agreement** or other joint IP sharing agreement to oversee all or part of the assessment. Further to such requests, AHS shall consider options for IP ownership that are in the best interest of IP development and commercialization.
- 5.2 The considerations for AHS retaining ownership or joint ownership of IP include:
- a) a request by an IP creator;
 - b) strategic relevance to health care or an end user;
 - c) greater potential for successful adoption or commercialization;
 - d) decreased risk and conflict of interest;
 - e) contractual stipulation of a sponsor or funding agreement;
 - f) an overall net benefit to the parties;

- g) increased likelihood for use in a health care environment; or
- h) significant AHS resources were used in IP development.

5.3 The considerations for AHS assigning ownership of IP include:

- a) IP is not relevant to AHS or is not a health system priority;
- b) the bulk of resources used in the development of the IP were not from AHS;
- c) the IP creator is willing and has the capability to undertake commercialization efforts; or
- d) AHS is satisfied that its affiliation agreement partners will diligently pursue and report to AHS on their IP protection and commercialization activities.

DEFINITIONS

Affiliation agreement means a formal legal contract, including a master IP agreement and any sub-agreements, between AHS and another organization, usually an academic institution, which defines the terms of their relationship. These terms may include, but are not limited to, shared and/or overlapping responsibilities for IP, staff, and students.

Commercialization means the transfer or commercial exploitation or any combination thereof undertaken with respect to IP and includes, without limitation, licensing, sale, or further development through a spin-off company or joint venture.

Intellectual property (IP) means:

- o the intangible nature of works or creations that is unique and original;
- o any tangible expression thereof;
- o the rights arising from the legal protection of IP, including copyright, trademarks, patents, industrial designs, and integrated circuit topographies; and
- o know-how and other trade secrets.

IP includes, but is not limited to, technology, technical information, data, databases, formulae, computer software, computer code, drawings, graphics, designs, concepts, ideas, apparatus, processes, research tools, prototypes, methods, techniques, and all original literary, dramatic, musical, and artistic works, all print, multimedia electronic and audiovisual materials, manuals, program packages, and educational materials.

Intellectual property creator (IP creator) means the originator of IP who is an AHS employee, an individual working in association with an AHS employee, an individual using AHS resources, or a partnership of one or more individuals or organizations.

REFERENCES

- Alberta Health Services Governance Documents:
 - *Intellectual Property Policy* (#1137)
 - *Intellectual Property Disclosure Procedure* (#1137-04)
 - *Intellectual Property Disclosure Form Procedure* (#1137-07)
- Alberta Health Services Forms:
 - *Intellectual Property Disclosure Form*

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