PURPOSE

• To outline the rights and obligations of Alberta Health Services (“AHS”) and Intellectual Property (“IP”) Creators in the disclosure, ownership, transfer, commercialization, and revenue sharing of IP.

• To support and foster a culture of knowledge, innovation, and research throughout AHS.

POLICY STATEMENT

AHS promotes the development of a body of knowledge and expertise to support innovation and research that benefits patient health and safety, health care delivery, and sound business operations. AHS encourages and facilitates the disclosure of IP by upholding the principles of academic integrity and scholarship in the possible commercialization of IP.

The AHS Senior Vice President, Research (“SVP, Research”) and the AHS Research Division are responsible for the administration of IP in accordance with this policy. The SVP, Research may delegate his/her duties in this policy to an AHS employee in the Research Division.

AHS recognizes that other organizations and/or third parties may have a claim to rights associated with joint IP resulting from collaborations or contracts that AHS has entered into, or from the provision of another party’s facilities, materials, or resources that have contributed to the development of the IP. AHS shall ensure that proper Affiliation Agreements and processes are in place to manage joint IP based on each party’s relative contribution to the development of the IP.
APPLICABILITY
Compliance with this policy is required by all AHS employees, members of the medical and midwifery staffs, students, volunteers, and other persons acting on behalf of AHS (including contracted services providers as necessary). This policy is subject to all applicable laws.

Individuals with joint appointments or those using AHS resources for the purpose of innovation and research shall also comply with this policy.

POLICY ELEMENTS

1. Ownership Considerations

1.1 IP innovated as part of a collaboration or contractual arrangement between AHS and third parties may require alternative processes and agreements about disclosure, ownership, and revenue sharing to be developed on a case-by-case basis. Whenever IP is innovated in these circumstances, AHS and such third parties shall collaborate to ensure appropriate processes and agreements are in place.

1.2 IP Creators with joint appointments with another organization shall be governed by the IP policy of the organization in which they hold their primary appointment, except as otherwise mutually agreed to by all parties. The rights to IP by the organization(s) in which the IP Creators do not hold their primary appointment shall be managed by an Affiliation Agreement or a one-time agreement negotiated by the SVP, Research, if no Affiliation Agreement is in place. Any such agreements shall include provisions by which to determine apportionment of IP ownership and apportionment of revenues and expenses.

1.3 AHS may enter into Affiliation Agreements or other joint IP sharing agreements with relevant parties to establish which party has the authority to represent and negotiate on behalf of all those claiming any interest in joint IP. The leading party shall negotiate the arrangements for exploiting the joint IP and the leading party's IP policy shall govern the entitlement and amount of each party’s share in the exploitation of IP.

1.4 The SVP, Research shall, in consultation with all parties, determine how joint IP assessment and commercialization takes place in the absence of an Affiliation Agreement or other joint IP sharing agreement.

1.5 AHS recognizes the freedom of IP Creators to publish scholarly or artistic works within their profession. Subject to Section 3 of this policy, IP Creators shall be free to publish scholarly or artistic works that are not commercially viable, regardless of their form of expression, unless otherwise agreed between the SVP, Research and the IP Creator.

1.6 The ownership of IP created as part of a sponsored innovation or research agreement shall be determined by the regulations of the sponsor or the terms of...
the agreement. IP Creators must be made aware of any such stipulations in the innovation or research agreement by the leader of the project.

2. Initial Ownership of Intellectual Property

2.1 Unless otherwise indicated in Section 1 and Section 2 of this policy, IP is owned by AHS when the IP is created:
   a) primarily within an AHS facility;
   b) through substantial use of AHS resources or facilities;
   c) using Research Grants administered by AHS;
   d) as a result, in whole or in part, of work undertaken as part of an employee’s relationship and/or contract with AHS;
   e) in the performance of a contract for service, agreement, or commission in which AHS and the IP Creator have agreed that the IP shall be owned by AHS; or
   f) in the course of a sponsored research agreement or collaborative agreement in which the IP rights are to be assigned to AHS.

2.2 Unless otherwise indicated in Section 1 and Section 2 of this policy, IP Creators own the rights to IP when none of the circumstances for AHS ownership of IP applies.

3. Disclosure of Protectable Intellectual Property

3.1 IP Creators who develop IP capable of being protected shall disclose the work to the SVP, Research where the work undertaken by the IP Creator is owned by AHS subject to Section 2.1 of this policy.

3.2 IP Creators who create IP capable of being protected shall withhold publication and refrain from making any public presentations on any material relating to the IP until AHS has had a reasonable opportunity, not to exceed thirty (30) days, to identify commercially sensitive material. If AHS identifies commercially sensitive material, IP Creators shall withhold publication and refrain from making any public presentation on any such material relating to the IP for a further period, not to exceed ninety (90) days, to enable AHS to seek patent or other protection of IP if necessary.

3.3 Disclosure of protectable IP to third parties is only permitted if the third party has signed a non-disclosure agreement, or other applicable confidentiality agreement in form and substance approved and signed by the SVP Research.

3.4 Records of IP development must be kept by the IP Creator in accordance with sound scientific practice where protectable IP may arise in the course of work on any project. Records of IP development shall be made available to the SVP, Research.
4. **Acceptance of Innovation or Research Agreements**

4.1 The SVP, Research shall sign off on all external innovation or research agreements on behalf of AHS, and agreements whereby AHS discloses its IP or whereby AHS receives information about a third party’s IP.

4.2 AHS employees, and other persons acting on behalf of AHS, are subject to the Conflict of Interest Bylaw and shall not accept any offer of financial support for the innovation/research, development, or commercialization of IP from a source other than AHS without obtaining prior written consent from the SVP, Research.

4.3 Consultancy fees or separate payments in lieu of IP, including but not limited to honoraria, shall not be accepted without written consent from the SVP, Research.

5. **Assessment of Intellectual Property**

5.1 The SVP, Research, in consultation with the IP Creator, shall make an assessment of the IP, which shall include, but is not limited to:

   a) exploring opportunities for further innovation and research to be performed by the IP Creator or others at AHS;
   b) potential revenues that may arise from commercializing the IP;
   c) payment of costs related to legal protection of IP; and
   d) other aspects of commercializing the IP.

5.2 The SVP, Research may request an external agency oversee all or part of the assessment or accept assessments previously completed by an external agency.

5.3 Once the assessment is completed, the SVP, Research shall, in consultation with the IP Creator, determine the most appropriate revenue sharing model for the IP as set out in Section 8.

6. **Commercialization of Intellectual Property**

6.1 IP Creators shall not be responsible for paying any costs related to the commercialization of AHS-owned IP.

6.2 The SVP, Research shall periodically report to IP Creators on the commercialization of their IP.

6.3 Where the SVP, Research determines that AHS no longer wishes to continue commercialization of the IP, AHS may discontinue such efforts provided:

   a) there are no outstanding contractual commitments; and
   b) the IP Creator has been offered a transfer of any existing rights relating to the IP.

If you have any questions or comments regarding the information in this policy, please contact the Corporate Policy Department at corporatepolicy@albertahealthservices.ca. The Corporate Policy website is the official source of current approved corporate policies, procedures, and directives.
6.4 The SVP, Research, in consultation with the Communications Division, shall approve the publication of AHS’ name, logo, or trademarks used in any commercialized IP.

7. Transfer of AHS Owned Intellectual Property

7.1 The IP Creator may request the SVP, Research transfer ownership of AHS-owned IP to the IP Creator provided that AHS has completed an assessment of the IP. The SVP, Research shall consult with the other parties with an interest in the IP, in accordance with any Affiliation Agreement or other contractual arrangement, before a decision regarding the transfer is made. AHS is not obligated to transfer IP to the IP Creator.

7.2 AHS is not obligated to provide any support after a transfer, as described in Section 7.1, has occurred. Once transferred, IP Creator is solely responsible for all obligations and costs for the IP, unless otherwise agreed to between AHS and the IP Creator.

7.3 AHS shall maintain a perpetual, royalty free, non-exclusive, and irrevocable licence to make, use, and modify any IP transferred back to the IP Creator solely for use by AHS for not-for-profit activities or for the provision of health care services. AHS shall not sell or sub-license IP that has been assigned back to the IP Creator.

8. Revenue Sharing

8.1 When AHS owns and commercializes the IP, unless otherwise determined following the assessment of the IP, Net Revenues shall be distributed as follows:

a) 33.33% to the IP Creator.
b) 33.33% to AHS for innovation and research administration and other purposes.
c) 33.33% to support ongoing innovation and research in the IP Creator’s AHS department.

8.2 All revenues from AHS owned IP shall be paid directly to AHS and distributed by the SVP, Research to the appropriate areas.

8.3 Before AHS commercializes the IP, AHS and the IP Creator shall enter into an agreement which shall specify how Net Revenues shall be distributed when the relationship between AHS and the IP Creator ceases to exist and describes the rules for collecting, reporting, and paying Net Revenues to each party.

8.4 When the IP Creator commercializes IP that AHS has transferred to the IP Creator, the Net Revenues shall be distributed as follows:

a) 66.67% to the IP Creator.
b) 33.33% to AHS for innovation and research administration and other purposes.
8.5 Net Revenues from IP developed by an IP Creator with a joint appointment shall be distributed under the terms of an Affiliation Agreement, a contractual arrangement, or as mutually agreed upon.

8.6 When a third party commercializes IP, Net Revenues shall be distributed under the terms of an Affiliation Agreement, a contractual arrangement, or as mutually agreed upon with external partners.

8.7 In the event that there is more than one IP Creator for any IP, the IP Creators shall determine the division of Net Revenues owed to the IP Creators between them.

9. Dispute Resolution and Arbitration

9.1 Any disputes about IP or the application of this policy that cannot be resolved by the parties involved shall be referred to the SVP, Research. The SVP, Research shall consider the dispute and advise the parties of his/her decision.

9.2 An appeal of the SVP, Research’s decision shall be made in writing to the applicable Executive Vice President (“EVP”). The EVP shall recommend a resolution.

9.3 Should one or more party reject the EVP’s recommendation, the parties shall agree between them to identify a single arbitrator. Arbitration shall be in accordance with the Simplified Arbitration Rules of the Alternative Dispute Resolution (“ADR”) Institute of Canada, Inc. The place of the arbitration shall be in Edmonton or Calgary, Alberta. The language of the arbitration shall be English. The decision of the arbitrator shall be final and binding on the parties.

9.4 The costs associated with arbitration shall be shared equally by all parties.

DEFINITIONS

Affiliation Agreement means a formal legal contract, including 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.

Intellectual Property Creator (“IP Creator”) means the originator of IP that 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.

Intellectual Property (“IP”) means:
   a) the intangible nature of works or creations that is unique and original;
   b) any tangible expression thereof;
   c) the rights arising from the legal protection of IP, including copyright, trademarks, patents, industrial designs, and integrated circuit topographies; and
   d) 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.

**Net Revenue** means all revenue or other considerations generated by the commercialization of IP less all direct expenses pursuing such commercialization including, but not limited to, any fees for protecting, marketing, manufacturing, licensing, publishing, or selling IP.

**Research Grants** means research sponsorship where the objectives of the research are flexible or initiated by AHS or those acting on behalf of AHS, or academic collaborators at other organizations.

**REFERENCES**
- *Copyright Act* (Canada)
- *Trade-Mark Act* (Canada)
- *Patent Act* (Canada)
- *Industrial Design Act* (Canada)
- AHS Conflict of Interest Bylaw
- AHS Policies:
  - Collection, Access, Use, and Disclosure of Information (#1112)

**REVISIONS**
November 8, 2012