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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 disclosure, ownership, transfer, **commercialization**, and revenue sharing of **intellectual property (IP)**.
- To recognize the intellectual contribution of IP creators, and the resources and funding of AHS that lead to the creation of the IP.
- To encourage and support IP creators to develop and translate IP for use in a manner that maximizes its value and benefits AHS, patients, and the public.
- To apply IP created in AHS to improve the care delivered to Albertans.
- To support **AHS representatives** in their understanding of, and compliance with, applicable copyright, patent, and other IP laws, and AHS policies and procedures.

PRINCIPLES

AHS promotes the creation and application of knowledge into health care with expertise to support innovation and research that benefits patients, the health care system, and sound business operations. AHS encourages and facilitates the disclosure of IP (including IP protectable by copyright, patent, and trademark) by upholding the principles of academic integrity, collaboration, knowledge sharing, and co-development, thereby maximizing the benefit to Albertans.

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. Initial Considerations

- 1.1 Individuals using AHS resources for the purpose of innovation and research, including those with joint appointments, shall also comply with this Policy, unless there are written clauses in existing agreements that stipulate otherwise and which have been approved by the Vice President, Provincial Clinical Excellence (VP, PCE).
- 1.2 The VP, PCE is responsible for the IP administration and management in accordance with this Policy and associated procedures. The VP, PCE may delegate their duties in this Policy and associated procedures to an IP delegate in AHS.

2. Ownership Considerations

- 2.1 IP created 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 created in these circumstances, AHS and such third parties shall collaborate to ensure appropriate processes and agreements are in place. IP creators must be made aware of any such stipulations in the agreement governing the project.
- 2.2 AHS may enter into **affiliation agreements** or other joint IP sharing agreements with relevant parties to establish ownership of the joint IP, each party's share in the exploitation of the joint IP, and which party has the authority to represent and negotiate on behalf of all those claiming any interest in the joint IP. The leading party shall negotiate the arrangements for exploiting the joint IP.
- 2.3 The VP, PCE 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.
- 2.4 AHS recognizes the freedom of IP creators to publish scholarly or artistic works within their profession. Subject to Section 4 of this Policy, IP creators are free to publish scholarly or artistic works, regardless of their form of expression.

3. Initial Ownership of Intellectual Property

- 3.1 Unless otherwise indicated in this Policy, AHS is the initial owner of any IP developed using AHS resources:

- a) as a result, in whole or in part, of work undertaken as part of an AHS representative's relationship and/or contract with AHS or otherwise involving a time commitment by an AHS representative;
 - b) through substantial use of AHS facilities, specialized infrastructure, clinical support, and patients;
 - c) such as research grants or other funding administered by AHS;
 - d) 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
 - e) in the course of a sponsored research agreement or collaborative agreement in which the IP rights are to be assigned to AHS.
- 3.2 Unless otherwise indicated in Section 2 and Section 3 of this Policy, IP creators own the rights to IP when none of the circumstances for AHS ownership of IP applies.

4. Disclosure of Protectable Intellectual Property

- 4.1 IP creators who develop IP capable of being protected and of potential commercial value shall submit an AHS ***Intellectual Property Disclosure Form*** (*IP Disclosure Form*) in order to disclose the work to the VP, PCE where the work undertaken by the IP creator is owned by AHS subject to Section 3.1 of this Policy.
- 4.2 IP creators who submit an *IP Disclosure Form* 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 90 days, to identify commercially useful IP. IP creators shall withhold publication and refrain from making any public presentation relating to the IP for a further period, not to exceed 90 days, to enable AHS to seek patent or other protection of IP if necessary. 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, that has been approved and signed by the VP, PCE.
- 4.3 Records of IP development shall 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 VP, PCE.

5. Commercialization-related Agreements

- 5.1 The VP, PCE shall sign off on all agreements related to commercialization on behalf of AHS including but not limited to non-disclosure agreements, material transfer agreements, and data transfer agreements.

- 5.2 AHS representatives, and other persons acting on behalf of AHS, are subject to the AHS *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 VP, PCE.
- 5.3 Consultancy fees or separate payments in lieu of IP, including but not limited to honoraria, shall not be accepted without written consent from the VP, PCE and in consideration of the AHS *Conflict of Interest* Bylaw.

6. Assessment of Intellectual Property

- 6.1 The VP, PCE, in consultation with the IP creator, shall review the *IP Disclosure* Form and 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) IP due diligence and protection strategy;
 - c) business case analysis;
 - d) determining routes for partnering or commercialization; and
 - e) considering legal costs in relation to potential revenues for the IP.
- 6.2 The VP, PCE may request an external agency oversee all or part of the assessment or accept assessments previously completed by an external agency.
- 6.3 Once the assessment is completed, the VP, PCE shall, in consultation with the IP creator, determine the most appropriate commercialization model for the IP as set out in Sections 8 and 9 of this Policy, including commercialization by a third party under an affiliation agreement.

7. Copyright

- 7.1 AHS representatives shall:
- a) ensure that their work complies with applicable copyright laws and AHS policies and procedures (refer to the AHS *Copyright* Procedure);
 - b) ensure that permissions are in place before reproducing or adapting content that is not the copyright of AHS;
 - c) abide by any relevant terms of use and license agreements when using third-party material to create content for AHS;
 - d) attribute or reference third-party material in AHS content; and

- e) consider using an open license that permits institutions outside of AHS (i.e., third parties) to use or adapt AHS copyrighted material, providing the content is in compliance with the disclosure of protectable IP and other IP requirements.

8. Commercialization of Intellectual Property by AHS

- 8.1 IP creators shall not be responsible for paying any costs related to the commercialization of AHS-owned IP.
- 8.2 The VP, PCE shall periodically report to IP creators on the commercialization of their IP.
- 8.3 Where the VP, PCE determines that AHS no longer wishes to continue commercialization of the IP, and no third party under an affiliation agreement wishes to undertake commercialization, 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.
- 8.4 The VP, PCE, in consultation with the AHS Communications Department, shall approve the publication of AHS' name, logo, or trademarks used in any commercialized IP.

9. Transfer of AHS-owned Intellectual Property

- 9.1 AHS may receive requests or may determine to transfer IP either to the IP creator or to a third party. Upon such a request, the VP, PCE 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 any requestor.
- 9.2 When AHS decides to transfer IP to the IP creator or to a third party for commercialization, it shall ensure that it obtains fair value for such IP transfer, as required by Section 2.71(1) of the *Regional Health Authorities Regulation* (Alberta).
- 9.3 AHS is not obligated to provide any support after a transfer, as described in Section 9.1 above, has occurred. Once transferred, the transferee is solely responsible for all obligations and costs for the IP, unless otherwise agreed to between AHS and the transferee.
- 9.4 AHS shall retain a perpetual, royalty-free, non-exclusive, and irrevocable license to make, use, and modify any transferred IP solely for use by AHS, its affiliates and any third-party health care provider in the Province of Alberta 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 or a third party.

- 9.5 When AHS has transferred IP to the IP creator, the IP creator shall report and obtain approval from AHS prior to any subsequent transaction whereby the rights to the IP are transferred to a party that is either directly or indirectly not at arm's length to the IP creator.

10. Revenue Sharing

- 10.1 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; and
 - c) 33.33% to support ongoing innovation and research in the IP creator's AHS department.
- 10.2 All net revenues from AHS-owned IP shall be paid directly to AHS and distributed by the VP, PCE to the appropriate areas.
- 10.3 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; and
 - b) 33.33% to AHS for innovation and research administration and other purposes.
- 10.4 Net revenues from joint IP developed by an IP creator and a third party shall be distributed under the terms of an affiliation agreement, a contractual arrangement, or as mutually agreed upon.
- 10.5 In the event that there is more than one (1) IP creator for any IP, the IP creators shall determine the division of net revenues owed to the IP creators between them.

11. Dispute Resolution and Arbitration

- 11.1 Any disputes about IP or the application of this Policy that cannot be resolved by the parties involved shall be referred to the VP, PCE. The VP, PCE shall consider the dispute and advise the parties of their decision.
- 11.2 An appeal of the VP, PCE's decision may be made in writing to the President and Chief Executive Officer (CEO). The CEO shall recommend a resolution.
- 11.3 Should one (1) or more party reject the CEO'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.

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

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.

AHS representative means Alberta Health Services employees, members of the medical and midwifery staffs, students, volunteers, and other persons acting on behalf of AHS (including contracted service providers as necessary).

Commercialization or **commercialize** 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:

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

Intellectual Property Disclosure Form (IP Disclosure Form) means the form designated by the VP, PCE for the recording and documenting of new IP.

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

REFERENCES

- Alberta Health Services Governance Documents:
 - *Collection, Access, Use, and Disclosure of Information Policy* (#1112)
 - *Commercialization and Revenue Sharing Procedure* (#1137-02)
 - *Conflict of Interest Bylaw*
 - *Copyright Procedure* (#1137-10)
 - *Dispute Resolution Procedure* (#1137-05)
 - *Intellectual Property Assessment Procedure* (#1137-01)
 - *Intellectual Property Confidentiality and Non-Disclosure Agreements Procedure* (#1137-03)
 - *Intellectual Property Disclosure Procedure* (#1137-04)
 - *Intellectual Property Disclosure Form Procedure* (1137-07)
 - *Material Transfer Agreements Procedure* (#1137-06)
 - *Trademark and Official Mark Registration Procedure* (#1137-08)
 - *Transfer of Ownership of the Intellectual Property Procedure* (#1137-09)
- Alberta Health Services Forms:
 - *Intellectual Property Disclosure Form*
- Non-Alberta Health Services Documents:
 - *Copyright Act* (Canada)
 - *Industrial Design Act* (Canada)
 - *Patent Act* (Canada)
 - *Regional Health Authorities Regulation* (Alberta)
 - *Trademarks Act* (Canada)

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