

Complete Policy Title:

**Joint Intellectual Property Policy**

Policy Number (if applicable):

Approved by:

**Senate**

**Board of Governors**

**HHS Board of Directors/**

**SJHH Board of Trustees**

Date of Most Recent Approval:

**June 9, 2004**

**June 10, 2004**

**June 22, 2004/**

**June 17, 2004**

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**May 27, 1998**

Supersedes/Amends Policy dated:

Responsible Executive:

**Vice-President (Research and  
International Affairs)**

Enquiries:

[University Secretariat](#)

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## **1 Introduction and Objectives**

- 1.1 The purpose of McMaster University (hereinafter the “University”), Hamilton Health Sciences (“HHS”) and St. Joseph’s Healthcare Hamilton (“SJHH”) includes the discovery, communication, and preservation of knowledge. The vision of the University, HHS and SJHH includes the achievement of international distinction for creativity, innovation and excellence.
- 1.2 Discoveries are an objective of the University, HHS and SJHH (collectively the “Institutions”). As a part of their obligation to society in general, the Institutions and their members have a responsibility to communicate these discoveries to the public. Some of these discoveries may have commercial value which should be exploited to the mutual advantage of those concerned. If the use of these discoveries can be limited or controlled by physical or legal means, the discoveries may also be referred to as “intellectual property.”
- 1.3 The objectives of this policy are to:
  - (a) encourage any member of the Institutions who may have created or discovered intellectual property to disseminate that property to the public in a manner that benefits both the member and the Institutions;

- (b) recognize and uphold the principles of academic and research integrity in the possible commercialization of intellectual property;
- (c) develop a body of knowledge and expertise within the Institutions in order to permit the continued successful commercialization of intellectual property in the future;
- (d) outline clearly the ownership rights in any newly created or discovered intellectual property as between the Institutions and their members and the obligation for related costs and the division of related revenues;
- (e) provide for the rights and obligations of the Institutions and their members in protecting and exploiting any newly created or discovered intellectual property;
- (f) provide exclusions for certain types of intellectual property from this policy; and
- (g) provide for the rights and obligations of the Institutions among themselves for the responsibilities and benefits arising under this policy.

1.4 It is possible that, at times, the academic and research missions of the Institutions may conflict with the potential commercialization of intellectual property. As the academic and research missions of the Institutions should take priority, the following principles shall take precedence over any other aspect of this policy where applicable:

- (a) Academic Researchers, as defined in section 2.1, have the right initially to determine whether or not any new creation or discovery for which they are responsible should be commercialized. Prior to making such a decision, the Institutions may be asked to review any such creation or discovery and provide advice on the possible commercial value thereof. In spite of such a review, the Academic Researcher shall be solely responsible for the decision to proceed with commercialization;
- (b) Members of the Institutions who are involved in the commercialization of any creation or discovery may be asked to withhold publication of any material or not to make any presentation thereof only for a reasonable period of time not exceeding six (6) months from the time full disclosure is made. This period of time shall be used to assess the intellectual property and to allow for any applicable legal protection to be put into place;

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- (c) No member of the Institutions shall be required to engage in any work or research which prohibits the results of the work or research from publication or disclosure to the public unless:
- (i) that person is engaged in a position where it is contemplated that they would not normally be expected to publish the result of their work or research; or
  - (ii) that person provides their informed consent to engage in such work or research, and, in the case of any Student, their involvement in the work or research does not conflict or jeopardize the timely completion of any academic requirements and that the Institutional Student Affairs Office, as that term is defined in section 2.4 below, has agreed to such participation.

## **2 Definitions**

In this policy, the following terms, when capitalized, shall have the following meanings:

2.1 “Academic Researcher” means someone who is a Member of the Institutions and whose appointment contemplates that they will conduct research and be responsible for the publication or other dissemination of the results of that research or be responsible for teaching of Students. For greater certainty and without limitation, an Academic Researcher shall include:

- (a) a member of the University Teaching Staff; and
- (b) someone who holds an appointment to the medical staff of SJHH or HHS;

and shall not include:

- (c) a research technician;
- (d) a research nurse; or
- (e) any other staff member who works under the direct supervision of an Academic Researcher.

The determination of who is an Academic Researcher shall be the responsibility of the IP Board;

2.2 “Disclosure Form” means the form established under section 7 hereof;

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- 2.3 “HHS” means Hamilton Health Sciences Corporation incorporated under the laws of the Province of Ontario.
- 2.4 “Institutional Student Affairs Office” means the office of the institution (which may include institutions such as hospitals, universities and community colleges other than SJHH, HHS and the University) that is responsible for the academic progress of a student. For a University Student that is enrolled in a graduate program it is the School of Graduate Studies; for a University Student that is enrolled in an undergraduate program it is the Dean’s office of the relevant Faculty. The determination of which is the correct office shall be the responsibility of the IP Board;
- 2.5 The “IP Board” means the Joint Institutional Intellectual Property Board created herein and comprises the membership described in section 3.5;
- 2.6 “IP Creator” has the meaning defined in section 5.1 hereof;
- 2.7 “Intellectual Property” means databases, audio-visual material, electronic circuitry, biotechnology and genetic engineering products, computer software recorded in any format, inventions, discoveries and all other products of research (which inventions, discoveries or other products are capable of protection pursuant to any law of Canada or any other country or which may be otherwise licensable) where any of the foregoing are created, whether by discovery, invention or otherwise by an IP Creator as hereinafter defined;
- 2.8 “Member of an Institution” or “Member of the Institutions” or any similar phrase means anyone who:
- (a) holds any appointment as a member of the medical staff of any of the Institutions;
  - (b) is a member of the University Teaching Staff’
  - (c) is an employee of any type of any of the Institutions;
  - (d) holds any other type of office or privileges at any of the Institutions; or
  - (e) is a Student at any of the Institutions.
- 2.9 “ORCIP” means the Office of Research Contracts & Intellectual Property of the University;
- 2.10 “SJHH” means St. Joseph’s Healthcare Hamilton, a division of the St. Joseph’s Health System;

2.11 “Student” includes:

- (a) a University Student;
- (b) a person following a program at any of the Institutions as a Post-Doctoral Fellow, Clinical Fellow, Medical Intern or Medical Resident; and
- (c) anyone else who is engaged in a course of study at any of the Institutions or at any other institution (which may include institutions such as hospitals, universities and community colleges other than the Institutions).

The determination of who is a Student shall be the responsibility of the IP Board;

2.12 the “University” means McMaster University created under the *McMaster University Act, 1976*;

2.13 “University Student” has the same meaning as the term “student” is defined in the *McMaster University Act, 1976*;

2.14 “University Teaching Staff” has the same meaning as the term “teaching staff” is defined in the *McMaster University Act, 1976*;

**3 Responsibility for this Policy**

3.1 ORCIP is responsible for providing the administrative needs of this policy.

3.2 The Executive Director of the ORCIP is responsible for the administration of this policy and shall be responsible to the Vice-President (Research and International Affairs) of the University

3.3 The Vice-President (Research and International Affairs) of the University shall consult as necessary with the Vice-President Research and Corporate Development of HHS and the Vice-President Research of SJHH on the operations of the ORCIP (the three Vice-Presidents being the “Institutional Vice-Presidents”).

3.4 The Intellectual Property Board of the University existing at January 1, 2005, is continued as the Joint Institutional Intellectual Property Board.

3.5 The Joint Institutional Intellectual Property Board shall consist of the following members:

- (a) Vice-President (Research & International Affairs) of the University, who shall act as Chair of the Board;

- (b) Vice-President, Research and Corporate Development of HHS, who shall act as a vice-Chair of the Board;
- (c) Vice-President, Research of SJHH, who shall act as a vice-Chair of the Board;
- (d) The Executive Director of the ORCIP, who shall act as Secretary of the IP Board;
- (e) Five (5) members of the University Teaching Staff appointed by the President of the University, after consultation with the Vice-President (Research & International Affairs) and the President of the McMaster University Faculty Association;
- (f) Three (3) other persons who have experience in the commercialization of intellectual property appointed by the Board of Governors of the University on the recommendation of the President of the University;
- (g) Two Academic Researchers of HHS appointed by the President of HHS, after consultation with the Vice-President, Research and Corporate Development of HHS;
- (h) One (1) other person who has experience in the commercialization of intellectual property appointed by the Board of Directors of HHS on the recommendation of the President of HHS;
- (i) Two Academic Researchers of SJHH appointed by the President of SJHH, after consultation with the Vice-President, Research of SJHH;
- (j) One (1) other person who has experience in the commercialization of intellectual property appointed by the Board of Trustees of SJHH on the recommendation of the President of SJHH.

Terms for those described in paragraphs (e) through (j) above shall be for a term of up to three (3) years which may be extended for no more than two (2) additional terms.

- 3.6 The IP Board shall from time to time establish its own rules of procedure which shall be consistent with practices within the Institutions. Such rules shall also provide that when the IP Board is acting in a quasi-judicial fashion in making decisions that rules of natural justice shall be applied.

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- 3.7 Quorum of the IP Board shall be a simple majority thereof provided that there shall be at least two members present from an Institution when dealing with any matters arising from that Institution.
- 3.8 The duties of the IP Board shall include:
- (a) the specific decisions referred to in sections 2.1, 2.4, 2.11, 3.6, 4.3(d), 4.4, 6.4, 6.6, 7.1, 10.2, 10.3, 11.2, 12, 13.3, 14.3, 14.4, 14.8, 15.2 and 16 hereof;
  - (b) preparing an annual report to the Senate and Board of Governors of the University, the Board of Directors of HHS and the Board of Trustees of SJHH on intellectual property and its commercialization;
  - (c) the recommendation to the Senate and the Board of Governors of the University, the Board of Directors of HHS and the Board of Trustees of SJHH of any revisions required to this or any other Institutional Policy relating to intellectual property;
  - (d) the resolution of issues of disputed discovery among two or more IP Creators of the same intellectual property, the entitlement to any portion of Net Revenues of any IP Creator or the division of Net Revenues as between IP Creators; and
  - (e) the resolution of any other issues relating to the commercialization of intellectual property at the Institutions including, without limitation, the decision whether or not to proceed with commercialization in the case of joint IP Creators where there is no unanimous agreement among them as to commercialization.
- 3.9 The IP Board has exclusive jurisdiction over the application, interpretation and administration of this policy. Any claim made by any IP Creator or anyone making any claim hereunder shall be submitted to the IP Board for final determination.
- 3.10 Every order, decision or proceeding of the IP Board is final and shall not be questioned, reviewed, prohibited or restrained by any court or be made the subject of any proceedings in or any process of any court, whether by way of injunction or certiorari or otherwise on any ground, including the ground that the order, decision or proceeding is beyond the jurisdiction of the IP Board.

#### **4 *Intellectual Property Covered by this Policy***

- 4.1 Intellectual Property has the meaning defined in section 2.7 hereof.

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- 4.2 In the case of members of the Institutions who are not Academic Researchers, Intellectual Property shall include anything created or discovered by them when the terms of their employment require them to engage in the activity that resulted in the creation or discovery;
- 4.3 Intellectual Property shall not include:
- (a) copyright in traditional academic materials such as, without limitation, lecture notes, laboratory manuals, articles, books, artifacts, works of visual art, maps, charts, plans, photographs, engravings, sculptures and music, no matter in which format any of the foregoing materials may have been recorded or embodied including, without limitation, a computer readable format, where any of the foregoing material has been created by someone who is an Academic Researcher unless they have otherwise agreed to treat any such material as Intellectual Property hereunder;
  - (b) computer software that is either ancillary to or the functional equivalent of any of the items described in paragraph (a) hereof where such material has been created by someone who is an Academic Researcher;
  - (c) anything created or discovered by a member of the Institutions in the course of demonstrably private research outside of their normal Institutional duties or in the course of activities as a consultant to outside persons when such consulting activities otherwise comply with applicable Institutional policies on such activities and have been properly reported as required by those policies;
  - (d) provided that there has not been a significant use of Institutional resources (the level of which shall be determined by the IP Board) and provided that the work otherwise complies with applicable Institutional policies, anything independently created or discovered by a Student as part of the academic requirements of a program or course of study; or
  - (e) any material which is in the public domain.
- 4.4 Any member of the Institutions can seek a binding opinion from the IP Board as to whether or not any particular matter is or is not Intellectual Property within the scope of this policy.

## **5 *Persons Covered by this Policy***

- 5.1 In this policy, the term “IP Creator” means an individual who:
- (a) creates or discovers any Intellectual Property; and



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- (b) is any one of:
- (i) a member of any of the Institutions; or
  - (ii) a person who is permitted to use any facilities of any of the Institutions in a manner which is normally not available to a member of the general public except on special request.
- 5.2 Acceptance of the terms and conditions of this policy shall be a condition of appointment, employment, enrolment, or use as the case may be, of:
- (a) every member of any of the Institutions; and
  - (b) every person who is permitted to use any facilities of any of the Institutions in a manner which is normally not available to a member of the general public except on special request.
- 5.3 This policy shall come into force on January 1, 2005. All matters related to Intellectual Property at any of the Institutions shall be governed by this policy after this date.
- 6 *Decision to Commercialize***
- 6.1 An IP Creator who is an Academic Researcher may make the decision to commercialize any newly created or discovered Intellectual Property. The decision and the disclosure of the creation or discovery must be made and communicated to the Institutions at least six (6) months prior to any publication or presentation that would have the effect of putting the new Intellectual Property in the public domain.
- 6.2 In the event that a decision to commercialize any newly created or discovered Intellectual Property has the effect of requiring any Student to be delayed in the presentation of any material required for the successful completion of the Student's academic requirements, the delay cannot be more than six (6) months from the time that the Student first advises the Institutional Student Affairs Office and the ORCIP of the Student's ability to make such a presentation.
- 6.3 A decision to commercialize any Intellectual Property shall bind the IP Creator to the procedure established by this policy.
- 6.4 In the event that any newly created or discovered Intellectual Property is the result of the joint effort among more than one IP Creator, the decision to commercialize may proceed with the unanimous consent of the joint IP Creators failing which the matter will be referred to the IP Board for a decision.
- 6.5 In the case of any newly created or discovered Intellectual Property created by someone who is not an Academic Researcher, the decision to commercialize

shall be made by that person's supervising Academic Researcher or the Vice-President of the relevant administrative unit of the applicable Institution.

- 6.6 In the case of any newly created or discovered Intellectual Property created by a Student, the decision to commercialize may proceed with the unanimous consent of:
- (a) the Student;
  - (b) the Student's academic supervisor;
  - (c) any other collaborators; and
  - (d) the senior officer of the applicable Institutional Student Affairs Office.

In the event that there is no unanimous agreement the matter shall be referred to the IP Board for a decision.

- 6.7 In the event that a decision is made not to commercialize any newly created or discovered Intellectual Property, such Intellectual Property shall be, for the purposes of this policy, considered to have been dedicated to the public domain from the date of the first publication describing the Intellectual Property.

## **7 Disclosure**

- 7.1 A disclosure to the Institutions of the creation or discovery of any new Intellectual Property shall be made in the form established by the IP Board from time-to-time (hereinafter the "Disclosure Form.") The ORCIP shall provide reasonable assistance to the IP Creator in the completion of the Disclosure Form.
- 7.2 A copy of the Disclosure Form shall be sent to the appropriate Departmental Chair.
- 7.3 In some cases, an IP Creator may wish to provide limited disclosure of the creation or discovery of any new Intellectual Property to third parties. Such disclosure shall be permitted only if the IP Creator has arranged for the third parties receiving such information to have signed a non-disclosure agreement in form and substance satisfactory to the Institutions.
- 7.4 In some cases, a member of the Institutions may wish to provide material or products (such as, without limitation, biological or genetic samples) to third parties. Such material or products may be transferred only if the member of the Institutions has arranged for the third parties receiving such material or products to have signed a material transfer agreement in form and substance satisfactory to the Institutions.

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## **8 Receiving Disclosures and Materials**

- 8.1 In some cases, members of the Institutions may wish to receive disclosure from third parties of the creation or discovery of intellectual property of those third parties. The receipt of such disclosure shall be permitted if the IP Creator has entered into appropriate arrangements in form and substance satisfactory to the Institutions with the third parties providing such disclosure.
- 8.2 In some cases, members of the Institutions may wish to receive material or products (such as, without limitation, biological or genetic samples) from third parties. Such material or products may be received only if the member has entered into appropriate arrangements in form and substance satisfactory to the Institutions with the third parties providing such materials or products.

## **9 Initial Ownership of Intellectual Property**

- 9.1 Subject to section 15.4 hereof, the University shall be the nominal owner of all newly created or discovered Intellectual Property arising at any of the Institutions.
- 9.2 An IP Creator shall only deal with newly created or discovered Intellectual Property in accordance with this policy.
- 9.3 Notwithstanding sections 9.1 and 9.2 hereof, certain agreements (such as grants, sponsorships, research and affiliation agreements) have been or will be entered into by the Institutions with third parties. Such agreements may contain provisions whereby Intellectual Property is transferred, assigned, licensed or otherwise disposed of to such third parties. The provisions of such agreements shall supersede this policy:
- (a) when the agreement involves the work of a Student, when the senior officer of the applicable Institutional Student Affairs Office has approved that the agreement shall so supersede; and
  - (b) when the applicable Institutional Vice President, and any member who is an Academic researcher who may be affected by such agreement have approved that the agreement shall so supersede;

failing which this policy shall continue to apply in precedence to such agreement.

## **10 Retention of Ownership Right**

- 10.1 After a Disclosure Form has been received by the ORCIP, a review will be conducted which will include an assessment of the potential commercial value of the Intellectual Property.

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- 10.2 With respect to any Intellectual Property, the IP Board may decide that:
- (a) the Institutions are interested in proceeding with the protection and commercialization of the intellectual Property; or
  - (b) the Institutions have no further interest in the Intellectual Property.
- 10.3 In the case where the IP Board has decided that the Institutions have no further interest in the Intellectual Property, the Intellectual Property may:
- (a) at the request of the applicable Institution other than the University, be transferred to that Institution on such terms and conditions as the IP Board may prescribe; or
  - (b) failing such an Institutional request, and at the request of the original IP Creator, and subject to section 12, be transferred to the IP Creator on such terms and conditions as the IP Board may prescribe.

## **11 *Transfer of Institutionally-Owned Intellectual Property***

- 11.1 An IP Creator who is an Academic researcher may request that ownership of Intellectual Property be transferred to the IP Creator. Such a request may only be made with respect to Intellectual Property for which a Disclosure Form has been filed. A decision by the IP Board on the IP Creator's request shall be made within six (6) months provided that the Institutions and IP Creator may agree in writing to further extensions of this time as may be required.
- 11.2 The IP Board shall not unreasonably withhold approval of the IP Creator's request. The IP Board's approval shall be subject to such reasonable terms and conditions that the IP Board may establish at the time of such approval and subject to section 12. Such terms and conditions shall take into account the provisions of section 14 providing for the sharing of revenues.
- 11.3 No resources of the Institutions shall be available to an IP Creator to whom Intellectual Property has been transferred except by means of an appropriate research contract. For greater certainty and without limitation, the IP Creator shall be solely responsible for any accounting or reporting requirements and the costs related to any professional advice required relating to Intellectual Property so assigned.

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## **12    *Assignments from Institutions***

In the event that ownership of any Intellectual Property is being assigned away from the Institutions, the IP Board shall normally include the following terms and conditions in any such assignment:

- (a)    A royalty free non-exclusive perpetual licence for non-commercial academic and research purposes for the Intellectual Property in favour of the Institutions and all of the members of the Institutions while working at the Institutions;
- (b)    The right to reasonably consent to any further assignments or transfers of the Intellectual Property; and
- (c)    A Provision acknowledging that no resources of the Institutions shall be available to further develop the Intellectual Property without an appropriate research agreement.

## **13    *Commercialization of Intellectual Property***

- 13.1    The IP Creator shall be consulted in the commercialization by the Institutions of Intellectual Property. Such consultation will include exploring the opportunities for further research to be performed by the IP Creator or others at the Institutions, the potential revenues which may arise and the payment of costs related to patent applications and other aspects of commercializing the Intellectual Property.
- 13.2    The IP Creator shall have no responsibility for the payment of any costs relating to the commercialization by the Institutions of Intellectual Property.
- 13.3    The actual method of commercializing Intellectual Property shall be the determination of the IP Board.
- 13.4    In the event that the IP Board determines that the Institutions no longer wish to continue to commercialize any Intellectual Property, the Institutions may discontinue such efforts provided that there are no outstanding contractual commitments relating thereto, and further provided that sections 10.3 and 12 are complied with.
- 13.5    ORCIP will report periodically to the IP Creator on the commercialization of Intellectual Property created by the IP Creator and the revenues arising therefrom.

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## **14 Revenue Sharing with IP Creators**

- 14.1 In this section, the term Gross Revenues (when used in its capitalized form) shall mean all revenue or other consideration generated by the commercialization of Intellectual Property.
- 14.2 In this section, the term Net Revenues (when used in its capitalized form) shall mean Gross Revenues less:
- (a) all out-of-pocket direct expenses of the person pursuing such commercialization including any patent application fees or fees reasonably paid to third parties for any relevant purpose; and
  - (b) all deductions normally made according to generally accepted accounting practices in Canada including an appropriate allocation of any indirect costs or other direct costs of any of the Institutions relating to the generation of the Intellectual Property.

The actual determination of the components of Net Revenues in any particular case shall be the determination of the IP Board.

- 14.3 With respect to any Intellectual Property commercialized by the Institutions the IP Board shall decide that the Net Revenues shall be paid in the following fashion:
- (a) 50% of Net Revenues shall be retained by the Institutions; and
  - (b) 50% of Net Revenues shall be paid to the IP Creators or reinvested in further research. The actual proportion to be paid to the IP Creators or reinvested in further research shall be decided by the IP Board based on any representations that the IP Creator wishes to make.

Provided that the IP Board may decide in the case of IP Creators that are not Academic Researchers and at the request of the Institution or Institutions involved that some other lesser portion of Net Revenues shall be paid to the IP Creators the actual percentage of which shall be the sole determination of the IP Board based on any representations that the Institution involved or the IP Creator wishes to make.

- 14.4 With respect to any Intellectual Property commercialized by the IP Creator, the Institutions shall normally require that they be paid twenty-five percent (25%) of the Net Revenues arising from the commercialization of the Intellectual Property. The IP Board, based on any representations that the IP Creator wishes to make, shall decide what proportion of the Net Revenues accruing to the IP Creator shall be paid to the Institutions.

The actual percentage to be used in a particular case shall be the decision of the IP Board and shall take into account the nature of the Intellectual Property and its likely method of commercialization and whether the Institutions have the potential for generating further research contracts relating to the Intellectual Property.

- 14.5 In the event that any return on Intellectual Property that is commercialized is in the form of an equity investment, the foregoing percentages shall be considered in determining an equitable sharing of such equity between the Institutions and the IP Creator.
- 14.6 Any monies to be paid to an IP Creator shall, if in excess of \$10,000 per year, be reported on and paid semi-annually and otherwise reported on and paid annually.
- 14.7 Prior to payment of any monies to an IP Creator, the Director shall ensure that a plan for the reimbursement of costs incurred by any of the Institutions is in place.
- 14.8 In the event that there is more than one IP Creator for any Intellectual Property, the IP Board, after consultation with the IP Creators, shall approve the list of IP Creators and the division of any revenues among them which shall be commensurate with their relative contributions to the Intellectual Property. Any dispute relating to either the relative contributions of multiple IP Creators or their revenue entitlement shall be decided in accordance with any applicable existing procedure or, in the event that no such procedure exists, by the IP Board in accordance with rules and procedures established by the IP Board.

## **15 Institutional Sharing**

- 15.1 For the purposes of this section, the following words shall have the following meanings:
  - (a) “Jointly-appointed Personnel” means members of the Institutions who hold appointments to more than one of the Institutions;
  - (b) “HHS facilities” means research or other facilities that are clearly identified as being the responsibility of HHS;
  - (c) “SJHH facilities” means research or other facilities that are clearly identified as being the responsibility of SJHH; and
  - (d) “University facilities” means research or other facilities that are clearly identified as being the responsibility of the University.
- 15.2 The Institutions shall share the Net Revenues arising under section 13 hereof as follows:

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- (a) In the case of Intellectual Property arising from work done by someone who is a member of the University and is not Jointly-appointed Personnel and that work does not involve the use of HHS facilities or SJHH facilities, the University shall receive 100% of the Institutional share;
  - (b) In the case of Intellectual Property arising from work done only in University facilities by someone who is Jointly-appointed Personnel, the University shall receive 50% of the Institutional share and, if the person holds only one additional appointment, the Institution to which the person holds the additional appointment shall receive 50% of the Institutional share or, if the person holds appointments to both HHS and SJHH, HHS and SJHH shall each receive 25% of the Institutional share.
  - (c) In the case of Intellectual Property arising from the use of HHS facilities alone or only in combination with University facilities, the University shall receive 50% of the Institutional share and HHS shall receive 50% thereof;
  - (d) In the case of Intellectual Property arising from the use of SJHH facilities alone or only in combination with University facilities, the University shall receive 50% of the Institutional share and SJHH shall receive 50% thereof; and
  - (e) In the case of Intellectual Property arising from the use of facilities at both of HHS and SJHH, the University shall receive 50% of the Institutional share, and SJHH and HHS shall each receive 25% of the Institutional share.
- 15.3 All of the costs related to the operation of ORCIP shall be paid by the University and only applied against the commercialization of any Intellectual Property as provided for in Section 14 hereof.
- 15.4 In the case of Intellectual Property arising from the use of either SJHH facilities or HHS facilities alone by someone who is only a member of SJHH or HHS and is not Jointly-appointed Personnel, SJHH or HHS, as the case may be, may, on a case-by-case basis agree with the University as represented by ORCIP that section 9.1 shall not apply and that SJHH or HHS, as the case may be, shall be the initial nominal owner of the Intellectual Property.
- 15.5 If any dispute arises among the Institutions either relating to any matter in this section 15 or with respect to any other matter under this policy, the Institutions agree to work in good faith to resolve their differences amicably. The Institutions agree to the following series of steps in the event that they are not able to resolve any such dispute:



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- (a) Initially, the Institutional Vice-Presidents in person shall meet to attempt to resolve the issue;
  - (b) If the foregoing meeting fails to resolve the issue, a meeting shall be convened including the Presidents of the Institutions and the Chairs of the University Board of Governors and the Board of Trustees of SJHH and the Board of Directors of HHS all in person and without delegates to attempt to resolve the issue;
  - (c) If the foregoing meeting fails to resolve the issue, the matter shall be arbitrated by a panel of three arbitrators pursuant to the *Arbitrations Act* (Ontario) each Institution choosing one of the three arbitrators. Any such arbitral decision will be final and not subject to any further review.

## **16 Quinquennial Review**

This policy shall be reviewed by the IP Board prior to January 1, 2010. The IP Board shall, as part of such review, provide recommendations for the improvement of this policy.

### **REVISION HISTORY**

#### Original University Policy

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