

	<h2>Intellectual Property</h2>	Corporate Policy & Procedures Manual
		Policy No. III-50
		Date Approved November 24, 2011
Approved by: President and Chief Executive Officer		Date Effective December 5, 2011
		Next Review (3 years from Effective Date) December 2014

- Purpose**
- To outline the rights and obligations of Covenant Health and Intellectual Property (IP) creators in the disclosure, ownership, transfer, commercialization, and revenue sharing of IP.
 - To support and foster a culture of knowledge, research, and innovation throughout Covenant Health.

Policy Statement Covenant Health 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 This policy applies to all Covenant Health facilities, staff, physicians, volunteers, students and to any other persons acting on behalf of Covenant Health.

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

Responsibility The Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research is responsible for the administration of IP in accordance with this policy. The Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research may delegate his/her duties in this policy to another Covenant Health employee.

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

Covenant Health recognizes that other organizations and/or third parties may have a claim to rights associated with joint IP resulting from collaborations or contracts that Covenant Health has entered into, or from the provision of another party's facilities, materials, or resources that have contributed to the development of the IP.

- Policy Elements**
1. **Ownership Considerations**
 - 1.1 IP innovated as part of a collaboration or contractual arrangement between Covenant Health 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, Covenant Health 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 Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and 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 Covenant Health 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 Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and 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 Covenant Health 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 Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and 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, IP is owned by Covenant Health when the IP is created;
 - a) primarily within a Covenant Health facility;
 - b) through substantial use of Covenant Health resources or facilities;
 - c) using research grants administered by Covenant Health;
 - d) as a result, in whole or in part, of work undertaken as part of an employee's relationship and/or contract with Covenant Health;

- e) in the performance of a contract for service, agreement, or commission in which the Covenant Health and the IP creator have agreed that the IP shall be owned by Covenant Health; or
 - f) in the course of a sponsored research agreement or collaborative agreement in which the IP rights are to be assigned to Covenant Health.
- 2.2 Unless otherwise indicated in Section 1 and Section 2, IP creators own the rights to IP when none of the above circumstances for Covenant Health 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 Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research where the work undertaken by the IP creator is owned by Covenant Health 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 Covenant Health has had a reasonable opportunity, not to exceed thirty (30) days, to identify commercially sensitive material. If Covenant Health 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 (90) days, to enable Covenant Health 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 Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and 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 Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research.

4. Acceptance of Research or Innovation Agreements

- 4.1 The Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research shall sign off on all external innovation or research agreements on behalf of Covenant Health, and agreements whereby Covenant Health discloses its IP or whereby Covenant Health receives information about a third party's IP.

- 4.2 Covenant Health employees, and other persons acting on behalf of Covenant Health, are subject to the Covenant Health “Conflict of Interest” and “Relationships with Industry” policies/procedures and shall not accept any offer of financial support for the research/innovation, development, or commercialization of IP from a source other than Covenant Health without obtaining prior written consent of the Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research.
- 4.3 Consultancy fees or separate payments in lieu of IP, including but not limited to honoraria, shall not be accepted without the written consent of the Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research.

5. Assessment of Intellectual Property

- 5.1 The Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and 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 research and innovation to be performed by the IP creator or others at Covenant Health;
 - 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 Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and 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 Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and 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 Covenant Health-owned IP.
- 6.2 The Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research shall periodically report to IP creator on the commercialization of their IP.

- 6.3 Where the Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research determines that Covenant Health no longer wishes to continue commercialization of the IP, Covenant Health 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.
- 6.4 The Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research, in consultation with the Vice President of Communications, shall approve the publication of Covenant Health's name, logo, or trademarks used in any commercialized IP.

7. Transfer of Covenant Health Owned Intellectual Property

- 7.1 The IP creator may request the Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research transfer ownership of Covenant Health-owned IP to the IP creator provided that Covenant Health has completed an assessment of the IP. The Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research shall consult with 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. Covenant Health is not obligated to transfer IP to the IP creator.
- 7.2 Covenant Health is not obligated to provide any support after a transfer, as described in Section 7.1, has occurred. Once transferred, the IP creator is solely responsible for all obligations and costs for the IP, unless otherwise agreed to between Covenant Health and the IP creator.
- 7.3 Covenant Health shall maintain a perpetual, royalty free, non-exclusive, and irrevocable license to make, use, and modify any IP transferred back to the IP creator solely for use by Covenant Health for not-for-profit activities or for the provision of health care services. Covenant Health shall not sell or sub-license IP that has been assigned back to the IP creator.

8. Revenue Sharing

- 8.1 When Covenant Health 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 Covenant Health for research and innovation administration and other purposes.
 - c) 33.33% to support ongoing research and innovation in the IP creator's Covenant Health department.

- 8.2 All revenues from Covenant Health owned IP shall be paid directly to Covenant Health and distributed by the Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research to the appropriate areas.
- 8.3 Before Covenant Health commercializes the IP, Covenant Health and the IP creator shall enter into an agreement which shall specify how net revenues shall be distributed when the relationship between Covenant Health 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 Covenant Health 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 Covenant Health for research and innovation 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 Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research. The Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research shall consider the dispute and advise the parties of his/her decision.
- 9.2 An appeal of the Vice President, Covenant Health, Rural Health Services and Executive Lead for Professional Practice and Research's decision shall be made in writing to the Vice President and Chief Financial Officer. The Vice President and Chief Financial Officer shall recommend a resolution.
- 9.3 Should one or more party reject the Vice President and Chief Financial Officer 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

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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 Covenant Health 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 a Covenant Health employee, an individual working in association with a Covenant Health employee, an individual using Covenant Health resources, or a partnership of one of 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 revenues 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 Covenant Health or those acting on behalf of Covenant Health, or academic collaborators at other organizations.

Related Documents References

- Covenant Health P/P #III-15, *Conflict of Interest*
 Covenant Health P/P #III-20, *Relationships with Industry*
- o *Copyright Act* (Canada)
 - o *Trade-Mark Act* (Canada)
 - o *Patent Act* (Canada)
 - o *Industrial Design Act* (Canada)

Revisions

N/A