

Policy on Intellectual Property and Technology Transfer
(Revised June 1, 2005)

1. POLICY

The Children's Memorial Medical Center (CMMC) (further defined in section 2 below) is dedicated to pediatric treatment, research and education. Although CMMC does not undertake research or developmental work principally for the purpose of developing Intellectual Property and commercial applications, Intellectual Property sometimes results from the research activities carried out wholly or in part with CMMC funds, facilities or other CMMC Resources. It is the policy of CMMC to assure the utilization of such Intellectual Property for the common good and, where necessary, to pursue suitable protection and licenses to encourage Intellectual Property development.

This policy applies to all CMMC Personnel and CMMC Contractors.

2. DEFINITIONS

- a. **Children's Memorial Medical Center (CMMC)** includes, but is not limited to the following: Children's Memorial Medical Center, Children's Memorial Research Center, Children's Memorial Hospital, Children's Memorial Foundation, Children's Memorial Medical Group, Children's Memorial Home Health, LLC, the Pediatric Faculty Foundation and any entities which may be owned or controlled in the future by Children's Memorial Medical Center.
- b. **CMMC Personnel** all persons who use CMMC Resources, (other than CMMC Contractors), including but not limited to: all medical staff members, employees, residents, fellows, students, graduate assistants, technicians, appointees, volunteers, visitors and other persons, whether compensated or not, by CMMC or any of its corporate affiliates.
- c. **CMMC Contractors** include any persons who contract with CMMC and use CMMC Resources including, but not limited to, employees of the following entities: Children's Surgical Foundation and Children's Pediatric Anesthesiology Association.
- d. **CMRC** means Children's Memorial Research Center.
- e. **Intellectual Property** includes inventions, discoveries, know-how, show-how, processes, unique materials, copyrightable works, original data and other creative or artistic works which may have value. Intellectual Property includes that which is protectable by statute or legislation, such as patents, copyrights, trademarks, service marks, trade secrets, mask works, and plant variety protection certificates. It also includes the physical embodiments of intellectual effort, for example, models; machines; devices; designs; apparatus; instrumentation; circuits; computer programs and visualizations; biological materials, including proteins, genes, gene products, DNA probes, cell lines, and transgenic animals; chemicals; other compositions of matter; plants; and records

of research, including research notebooks; data; databases; photographs, original drawings and diagrams.

For the purposes of this policy, the term specifically excludes books and chapters which are not work products of any grant, contract, or sponsored agreement.

- f. **CMMC Resources** include all property or resources funded or otherwise provided by CMMC, including but not limited to: staff, patients, space (such as, but not limited to, office, operating room, and laboratory space), equipment, computers and networks, and financial support (such as, but not limited to, salary or other monies controlled or disbursed by or through CMMC through philanthropic, government, or industry gift, grant, contracts or otherwise).
- g. **Creator** refers to an individual or group of individuals who make, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of Intellectual Property. "Creator" includes the definition of "inventor" used in U.S. patent law and the definition of "author" used in the U.S. Copyright Act.
- h. **Disclosure Form** shall identify the source(s) of funding and the name of the Creator(s). For inventions, the disclosure shall be sufficiently complete in technical detail and appropriately illustrated by sketch or diagram to convey to one skilled in the art to which the invention pertains, a clear understanding of the nature, purpose, operation, and, to the extent known, the physical, chemical, biological, or electrical or electronic characteristics of the invention.

3. **OBJECTIVES**

CMMC has established the following policies and procedures with respect to inventions, patents, and technology transfer in order to:

- a. Promote CMMC's policy of encouraging scientific research and scholarship;
- b. Serve the public interest by providing an organizational structure and procedures through which Intellectual Property that arises in the course of CMMC research may be made readily available to the public through established channels of commerce;
- c. Encourage, assist, and provide tangible reward to CMMC Personnel and CMMC Contractors who make Intellectual Property processed under this policy;
- d. Establish principles and uniform procedures for determining the rights and obligations of CMMC, Creators, and sponsors, with respect to Intellectual Property arising during the Creator's association with CMMC;
- e. Enable CMMC to enter into institutional agreements with federal research funding agencies; and
- f. Produce funds for further scientific investigation and research and for the overall needs of CMMC.

4. ADMINISTRATIVE RESPONSIBILITY

- a. **President and Scientific Director of Children's Memorial Research Center** shall be responsible for administrative matters relating to Intellectual Property and technology transfer and shall represent CMMC in all matters of policy affecting CMMC's relations with Creators, government, private research sponsors, industry, and the public. The President of CMMC may designate the Director of Research or other administrative official to carry out these responsibilities in whole or in part.
- b. **Intellectual Property Administrator**, as needed, shall be appointed by the President of Children's Memorial Research Center and may be a full- or part-time employee of CMMC or a recognized patent management organization. The Intellectual Property Administrator shall:
- (1) Establish liaison with appropriate faculties and researchers to monitor research and to assist in the identification of potentially protectable discoveries and in the reporting of such discoveries;
 - (2) Establish liaison with federal and private sponsors of research and ensure compliance with any provisions in sponsored research agreements regarding Intellectual Property;
 - (3) Receive all disclosures of Intellectual Property submitted under this policy;
 - (4) Determine the ownership of and equities involved in Intellectual Property, in accordance with Section V below;
 - (5) Determine whether Intellectual Property in which CMMC has an equity interest is protectable;
 - (6) In consultation with the Creator, evaluate potential commercial use and investigate possible courses of action for protecting and/or marketing Intellectual Property in which CMMC has an equity interest;
 - (7) Negotiate licensing and technology transfer agreements;
 - (8) Maintain complete records on all disclosures and other Intellectual Property matters of interest to the CMMC administration;
 - (9) Serve as an ex-officio member of the Intellectual Property Committee in the capacity of Secretary, and prepare an annual report to the committee; and
 - (10) Promote the cross-fertilization of ideas within the CMMC scientific community consistent with the need for confidentiality of potentially protectable subject matter until the appropriate applications and registrations have been filed.

- c. **Intellectual Property Committee** shall be appointed by the President and Scientific Director of Children's Memorial Research Center, or other designated CMMC administrative official and shall consist of up to seven members, to consist of the following: Deputy Director for Administration, General Counsel (or his or her designee) and such other members as shall be appointed by the President and Scientific Director of CMRC. At the discretion of the President and Scientific Director, the committee may be established as an ad hoc or a standing committee.

The Intellectual Property Committee shall:

- (1) Receive and review the periodic reports of the Intellectual Property Administrator, and consult with the Intellectual Property Administrator when requested;
- (2) Report to the President and Scientific Director on the implementation of this policy, and recommend such new or different policies or guidelines as may be more suitable for the achievement of its objectives;
- (3) Sit as a tribunal for the resolution of specific disputes involving the ownership of and equities involved in inventions, on appeal from decisions of the Intellectual Property Administrator; and
- (4) Receive requests for interpretations of this policy and, after deliberation, recommend to the President and Scientific Director such interpretations as it considers appropriate.

5. INTELLECTUAL PROPERTY MANAGEMENT

- a. For all Intellectual Property owned by CMMC under this policy, CMMC will, at no expense to the Creator, make reasonable efforts to evaluate the interest of others in commercializing the Intellectual Property, seek licenses and options for licenses, have applications for Intellectual Property filed and prosecuted, and otherwise manage the Intellectual Property or arrange for their management by recognized Intellectual Property management organizations. CMMC may assign such Intellectual Property to a foundation or corporation organized by CMMC for the purpose of Intellectual Property management.
- b. CMMC will normally evaluate potential commercial use of Intellectual Property prior to the filing of an application or registration. Options to license and other contractual arrangements appropriate in the circumstances will normally be sought as early as possible as a validation of potential commercial use. If CMMC determines that neither commercial possibilities nor the potential contribution to the public good warrants proceeding further, the Intellectual Property will be returned to the Creator and shall belong to him or her unless such action is precluded or restricted by prior agreement with sponsors. CMMC shall make such determination within a reasonable time, in no event longer than one year from the date of disclosure.

- c. In licensing, sale, or other disposition of rights to Intellectual Property, CMMC will seek to guard against repressive practices. Royalty rates shall be reasonable with the goal of CMMC effectively to transfer technology in the public interest.

6. REPORT OF INTELLECTUAL PROPERTY

CMMC Personnel and CMMC Contractors who create Intellectual Property shall cooperate with CMMC in defining the rights to such Intellectual Property by promptly reporting to the Intellectual Property Administrator on CMMC's Disclosure Form.

7. OWNERSHIP OF INTELLECTUAL PROPERTY AND SUPPORTIVE TECHNOLOGY

- a. Intellectual Property resulting from research or other work conducted by CMMC Personnel or CMMC Contractors using CMMC Resources shall be considered the property of CMMC. CMMC Personnel or CMMC Contractors shall, upon request, assign to CMMC all rights and title to such Intellectual Property and shall make known and available to CMMC all supportive technology related to the same. Supportive technology is intended to include any nonprotectable Intellectual Property that would assist CMMC in achieving the goals of this policy. If CMMC decides not to request assignment of all rights and title to such Intellectual Property, and if there are no restrictions by any outside sponsor of the research, CMMC may release its proprietary interest to the Creator.
- b. Intellectual Property resulting from research or other work conducted by CMMC Personnel or CMMC Contractors using resources other than CMMC Resources shall be considered the property of the Creator (or, as applicable, the non-CMMC third party provider of any resources) and may be protected and/or commercialized by that individual at that individual's expense. It is recognized that when the Intellectual Property is within the specific subject area of the Creator's current and ongoing research activities, disputes may develop concerning whether the work was conducted using CMMC Resources. In order to reduce the possibility of such disputes, it shall be the responsibility of the CMMC Personnel or CMMC Contractor to provide his/her division and/or departmental chairman notice that he/she is engaging in research activities independently within the subject area of his/her current research, and describe in such notice the focus of these independent research activities, with a copy to the CMMC's Director of Research. Determinations as to whether CMMC Resources are utilized shall be made by the President and Scientific Director of CMRC.
- c. Intellectual Property resulting from research or other work conducted by CMMC Personnel or CMMC Contractors wholly on their own time, but involving some but not significant use of CMMC Resources, shall be considered the property of the individual and may be protected and/or commercialized by the individual at the individual's expense. A percentage of gross returns to the Creator shall be remitted, to CMMC, as provided in section 8.c. Generally, an invention, software, or other copyrightable material, mask work, or tangible research property will not be considered to have been developed using "significant" CMMC Resources if:

1. the invention, software, or other copyrightable material, mask work, or tangible research property has been developed outside of the assigned area of research of the inventor/author under a research assistantship or sponsored project; and
 2. only a minimal amount of time has been spent using significant CMMC Resources or only insignificant CMMC Resources have been utilized. Use of office, library machine shop facilities, and traditional desktop personal computers are examples of facilities and equipment that are not considered significant; and
 3. the development has been made on the personal, unpaid time of the inventor/author.
- d. Intellectual Property arising from research financed in whole or in part by the U.S. Government or other governmental entity is controlled by the terms of the applicable grant or contract. CMMC is obligated to report to the appropriate government agency all such Intellectual Property or discoveries for definition of the government's rights and interests. In cases where the government claims no Intellectual Property rights or waives its rights, CMH Intellectual Property policies will control, subject to such limitations as the government may impose.
- e. Intellectual Property resulting from research or other work sponsored by nongovernmental entities is controlled by the terms of the funds or other agreements related thereto, if applicable, and if not, by CMMC Intellectual Property policies.
- f. Where mutually agreeable between the Creator and CMMC, and on terms and conditions acceptable to both, CMMC will accept by assignment, bequest, or other appropriate instrument, title to intellectual property falling in sections 7.b. and 7.c. above.
- g. Any dispute between the Intellectual Property Administrator and the Creator as to the determination of equities in Intellectual Property shall be resolved by the Intellectual Property Committee. The decision of the Intellectual Property Committee may be further appealed to the Director of Research of Children's Memorial Research Center, or upon the Director of Research referral, to the President of CMMC.
- h. Any use of CMMC's name or any CMMC's affiliate's name or names of institutes contracting with CMMC in connection with the commercialization of Intellectual Property by an individual shall be approved in advance by CMMC.

8. DIVISION OF INCOME

- a. All inventions falling within paragraph 7.c. above shall be protected and/or commercialized, if at all, under a simple agreement between CMMC and Creator which shall provide for periodic reports of sales subject to royalties and for payment to CMMC of ten percent (10%) of gross income derived by the Creator as royalties on the invention. The Intellectual Property Committee may recommend that such payment be reduced or eliminated if it appears that a 10% contribution is excessive under the circumstances.

- b. All income derived from Intellectual Property falling within paragraph 7.b. above shall belong to the Creator (or Creator's heirs, successors, and assigns). If there are joint Creators, the net income shall be divided equally among them absent a mutual agreement to the contrary.
- c. All income derived from inventions falling within paragraph 7.a. above shall be distributed in accordance with the following rules:
 - i. CMMC will first deduct any direct expenses incurred by it in connection with the initial patenting or registration, development, and commercialization of the Intellectual Property. Any such expenses incurred by the Creator with the prior approval of the Intellectual Property Administrator will also be deducted and paid to the Creator.
 - ii. CMMC will next distribute to the Creator 30% of the net income. At the discretion of the Creator, the income may be distributed either directly to the Creator as personal income or retained in a separate CMMC fund for the use of the Creator to support the activities of the Creator's research or a combination thereof.
 - iii. CMMC will distribute 30% of the net income to CMRC to promote and advance its research mission.
 - iv. The remaining 40% will be retained by CMMC.
- d. Income from Intellectual Property falling within paragraph 7.d. above, where the government claims no Intellectual Property rights or waives such rights, shall be distributed in accordance with paragraph 8.c. above, unless the waiver or other agreement between CMMC and the government provides for a different distribution.
- e. In the case of inventions falling within paragraph 7.e. above, any royalties received by CMMC shall be distributed in accordance with paragraph 8.c. above, unless the contract between CMMC and the sponsor provides for a different distribution.
- f. Income from inventions falling within paragraph 7.f. above, shall be distributed in accordance with the agreement between the Creator and CMMC.

9. CONSULTING AGREEMENTS

CMMC Personnel and CMMC Contractors utilizing CMMC Resources and engaged in external consulting work or business are responsible for ensuring that agreements emanating from such work are not in conflict with this policy. Such CMMC Personnel and CMMC Contractors should make their obligations under this agreement known to others with whom they make such agreements and should provide other parties to such agreements with copy of this document. Copies of any consulting agreements which contain provisions relating to ownership of Intellectual Property and which are entered into in connection with research or

other work in which CMMC Resources are utilized shall be provided promptly to the Deputy Director for Administration of CMRC.

10. PUBLICATION

Inasmuch as publication prior to the filing of a U.S. patent application is a bar to the grant of certain foreign patents and can bar the grant of a U.S. patent if it occurred a year earlier than the filing date, it may be necessary in some circumstances to temporarily restrict publication for short periods of time. Accordingly, CMMC may require CMMC Personnel and CMMC Contractors to delay the publication date of any publication which discloses an invention made within the scope of their duties to CMMC until after a U.S. patent application has been filed on the invention. Such application shall not be unreasonably delayed.

11. INTERPRETATION

Questions of interpretation concerning this policy shall be submitted to the Intellectual Property Committee and resolved, after consideration of the Intellectual Property Committee's recommendations, by the President or, upon the President's referral, by the CMMC Board of Directors.

12. TERMINATION OR REVISION OF POLICY

This policy may be changed or discontinued at any time by action of the CMMC Board of Directors. Such changes or discontinuance shall not affect rights accrued prior to the date of such action.

13. AGREEMENTS

The policy as amended from time to time shall be deemed to a condition of initial or continuing employment or engagement of all CMMC Personnel and CMMC Contractors and a condition of involvement of every student who works on any research project under CMMC. All such CMMC Personnel, CMMC Contractors, and students will be expected to sign agreements incorporating the terms of this policy; but failure to sign shall not affect the applicability of the policy nor relieve any CMMC Personnel, CMMC Contractor or student from the obligations imposed by it. Any use of CMMC Resources after the effective date of this policy shall be subject to this policy.

13.a.

INTELLECTUAL PROPERTY AGREEMENT

THIS AGREEMENT IS MADE BY ME with Children's Memorial Medical Center (CMMC) in consideration of my employment and/or my utilization of CMMC facilities and/or Resources.

I agree to notify CMMC (or any individual, corporation or governmental agency which CMMC may specify) promptly of any Intellectual Property which I believe to be protectable and which I conceive or develop while employed by CMMC or while using any CMMC facilities and/or Resources, in order that determination of the rights and equities in such invention may be made in accordance with the CMMC Policy on Intellectual Property and Technology Transfer.

In the event CMMC desires to seek protection on such Intellectual Property that has been determined to be CMMC property, I agree to assign to CMMC all my rights, title, and interest in and to such Intellectual Property and to supply all information and execute all papers necessary for the purpose of prosecuting applications thereon. I understand that expenses of making such assignments and procuring such Intellectual Property shall be paid by others. I also understand that CMMC reserves the right not to pursue protectable Intellectual Property and to abandon the prosecution of any application.

If CMMC receives revenue from Intellectual Property assigned by me pursuant to this Agreement, I understand I will share in these funds according to the distribution schedule set forth in the CMMC Policy on Intellectual Property and Technology Transfer.

I further agree to do all things necessary to enable CMMC to fulfill its obligations to any person, corporation, or other agency sponsoring the particular research projects in which I am or may be engaged.

I understand that this Agreement is part of the terms of my employment and/or my utilization of CMMC facilities and/or Resources and that any contract of employment heretofore or hereafter entered into among me and CMMC, CMMC affiliates and CMMC contracting institutes shall be deemed to include this Agreement except to the extent that an express provision of such prior contract is inconsistent therewith.

Signature

Printed Name

Department and/or Division

Date