

Intellectual Property

1. Introduction

Description

Vancouver Coastal Health Authority (VCH)'s extensive acute and community health services offer rich environments for Staff to research new ideas, products and services that have the potential to benefit society.

This Policy promotes:

- the translation of research into practice to the benefit of patients;
- new knowledge to further academic research to maximize impact in the health care sector;
- contributions to local and regional economic development through building relationships with industry and entrepreneurs; and
- a culture of knowledge, innovation and research throughout VCH.

The underlying philosophy of this Policy is to:

- recognize the contributions of VCH, Staff and other parties in the creation of Intellectual Property (“IP”);
- ensure that created IP is commercialized by the appropriate party; and
- ensure that the benefits of any commercialized IP are shared fairly between all relevant parties.

Scope

This Policy applies to:

- all Staff; and
- all IP developed by an IP Creator while that person was a Staff member.

IP developed by an IP Creator affiliated with a Third Party or University will be governed by the provisions of Sections 2.2 and 2.3 (as applicable).

2. Policy

2.1. Disclosure of Intellectual Property

If an IP Creator creates IP using any one or more of the following:

- VCH Facilities;

- VCH Resources; or
- VCH Funding,

and if Section 2.2 or 2.3 (as applicable) does not apply to the created IP, the IP Creator must disclose the created IP to the VP Research no later than 30 days after the IP has been created and in any event prior to any public disclosure under Section 2.10. The disclosure of the created IP must be made using the [Intellectual Property Disclosure and Assignment Form](#). The IP Creator must provide any supplementary information requested by the VP Research in relation to the disclosure form or the created IP.

The VP Research will use the disclosure form and supplementary information (if applicable) to assess the ownership rights of all relevant parties involved in the creation of the IP. Such assessment will be undertaken by the VP Research in a reasonably timely manner.

2.2. Third Party considerations

2.2.1. Ownership rights

VCH recognizes that one or more Third Parties may potentially claim ownership rights to created IP. This may be because:

- the IP Creator is connected to a Third Party;
- (where the created IP is a modification or improvement to existing IP), the existing IP is owned or licensed by a Third Party; and/or
- in the creation of the IP, the IP Creator used any one or more of the following:
 - Third Party Facilities;
 - Third Party Resources; or
 - Third Party Funding.

In the above cases, ownership rights in the created IP as between the Third Party, VCH and/or the IP Creator will be governed by any relevant Third Party Partner Agreement(s) between VCH and the Third Party, any policies of the Third Party applicable to the IP Creator and this Policy.

2.2.2. IP disclosure

Where a Third Party may potentially claim ownership rights to the created IP as discussed above, the IP Creator must disclose details of the created IP to the VP Research in accordance with Section 2.1 and the VP Research will liaise with the IP Creator and the Third Party in relation to the ownership considerations.

2.2.3. Staff with multi-Health Authority appointments

If the IP Creator is a Staff member of VCH and is also either an employee of one or more other Health Authorities or holds a non-employee position at one or more other Health Authorities, any written disclosure made by the IP Creator in relation to the created IP pursuant to another Health Authority's intellectual property policies may suffice as sufficient disclosure of the created IP under this Policy.

In such cases, the IP Creator must provide a copy of the written disclosure pursuant to the other Health Authority's intellectual property policy to the VP Research as soon as possible. Upon receipt of a copy of such written disclosure, the VP Research will engage with the other Health Authority or Health Authorities to determine the ownership rights of VCH, the other Health Authority or Health Authorities and/or the IP Creator with respect to the created IP.

If no intellectual property policy exists or applies at such other Health Authority, the IP Creator must comply with the obligations set out in this Policy.

If Section 2.2 or 2.3 (as applicable) applies to the created IP, the IP Creator must comply with that relevant section.

2.3. *University considerations*

2.3.1. Ownership rights

VCH recognizes that many of its Staff are affiliated with a University and that research conducted by such Staff is governed by University policy. Accordingly, where:

- the IP Creator is affiliated with a University (e.g. a University faculty member, employee, student or fellow);
- the created IP is a modification or improvement to existing IP that is owned by a University or licensed to a University;
- in the creation of the IP, the IP Creator used any one or more of the following:
 - University Facilities;
 - University Resources; or
 - University Funding,

then, ownership rights in the created IP as between the University and the IP Creator will be governed by the policies of the University applicable to the IP Creator. VCH and the University will manage their interests in the created IP in accordance with applicable University Partner Agreement(s).

2.3.2. IP disclosure

Where a University may potentially claim ownership rights to the created IP as discussed above, the IP Creator must:

- contact the University (see [University Contact Details](#));
- disclose details of the created IP to the University using any forms that may be prescribed by that University; and
- instruct the University to contact the VP Research in accordance with any applicable University Partner Agreement(s).

2.4. **VCH IP**

Subject to Sections 2.2 and 2.3, if the IP Creator created IP using any one or more of the following:

- VCH Facilities;
- VCH Resources; or
- VCH Funding,

then, the created IP automatically vests in VCH upon creation (“**VCH IP**”). In this regard, the IP Creator agrees to assign and hereby does assign all right, title and interest in the created IP to VCH.

In recognition of the IP Creator’s contribution to the created IP, the IP Creator will be entitled to share in the proceeds from the commercialization of the VCH IP as set out in Section 2.6.

Where VCH IP exists, the IP Creator may make a request for VCH to transfer the VCH IP back to the IP Creator pursuant to Section 2.5.

2.5. **Transfer of VCH IP to IP Creator**

2.5.1. Transferred VCH IP

The VP Research will consider requests from an IP Creator to transfer ownership of VCH IP to the IP Creator (“**Transferred VCH IP**”). Some of the circumstances in which the VP Research will consider such requests for Transferred VCH IP include (without limitation) where:

- VCH does not wish to commercialize the created IP;
- the IP was created by the IP Creator with minimal involvement of VCH Facilities, VCH Resources or VCH Funding; and/or
- the IP Creator has displayed a genuine commitment to commercialize the IP as evidenced by the following (non-exhaustive) list of factors:

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- having a detailed commercialization plan (including business plan) for the commercialization of the IP;
- setting up of a company or other legal entity to own and/or commercialize the IP (“**Start Up Company**”);
- investment by the IP Creator, family, friends or third parties in the Start Up Company; and/or
- licensing or other arrangements between the Start Up Company or the IP Creator and third parties in relation to the commercialization of the IP.

2.5.2. Requests for transfer

If an IP Creator wishes to make a request for Transferred VCH IP, such request must be specified in the [Intellectual Property Disclosure and Assignment Form](#) and set out:

- the reasons for the request;
- the relevant circumstances that apply which justify the transfer of the VCH IP from VCH to the IP Creator;
- a clear commercialization plan for the IP; and
- details of any other document or information that may assist the VP Research in assessing the request.

The request should also attach any relevant documentation.

2.5.3. Consideration of requests for transfer by the VP Research

The VP Research will review the request for Transferred VCH IP taking into account:

- the circumstances surrounding the IP creation;
- the commercialization plan for the IP;
- the extent to which VCH Facilities, VCH Resources and/or VCH Funding were used to create the IP;
- the current and/or previous role and duties of the IP Creator at VCH; and
- any potential interest a Third Party or University may have in the created IP in accordance with applicable Third Party Partner Agreements, University Partner Agreements or applicable policies of the Third Party or University.

All requests for Transferred VCH IP received by the VP Research will be considered in a reasonably timely manner.

Neither VCH nor the VP Research will be under any obligation to agree to a request for Transferred VCH IP and any decision to agree to, or reject a request for Transferred VCH IP is at the sole discretion of VCH and the VP Research.

2.5.4. Conditions of transfer

If the VP Research grants a request for Transferred VCH IP, any such transfer will be subject to the following conditions:

- the Transferred VCH IP will only relate to IP as at the date of the transfer. For the avoidance of doubt, the transfer will not extend to future modifications or improvements to the Transferred VCH IP that may be undertaken by or on behalf of VCH after the transfer date;
- VCH will not be obliged to provide any support (financial or otherwise) in respect of the Transferred VCH IP after the transfer date and the IP Creator will be solely responsible for all obligations and costs relating to the Transferred VCH IP with effect from the transfer date;
- unless otherwise determined by VCH, the IP Creator will grant VCH a perpetual, royalty-free, non-exclusive, sub-licensable and irrevocable license to use the Transferred VCH IP for VCH's scholarly, academic and other non-commercial purposes, including (without limitation), the provision of health care services, with the ability of VCH to grant sub-licenses of the Transferred VCH IP to third parties for non-commercial purposes (such as research). For clarity, the license to VCH will include a right to publish scholarly or academic works as long as such publication does not negatively impact the commercialization of the created IP;
- unless otherwise agreed in writing by the IP Creator and VCH, proceeds from the commercialization of the Transferred VCH IP will be shared between the IP Creator and VCH as detailed in Section 2.6.2; and
- unless otherwise agreed in writing by the IP Creator and VCH, the IP Creator will issue to "Vancouver Coastal Health Research Corporation as trustee for the Vancouver Coastal Health Research Trust", shares in any Start Up Company that owns the Transferred VCH IP, with such shares having, in all material respects, the same special rights and restrictions as those shares issued by the Start Up Company to the IP Creator and/or the founders of the Start Up Company. Usually, such share ownership ranges between 2% and 10% of the capital of the Start Up Company depending on the particular stage of development of the created IP.

2.6. **Commercialization proceeds**

2.6.1. Commercialization of VCH IP

Where VCH commercializes the VCH IP or engages another party/parties to commercialize the VCH IP on its behalf, unless otherwise agreed in writing between the IP Creator and

VCH, Net Income derived from commercialization of the VCH IP will be distributed such that the IP Creator will receive 50% of the Net Income and VCH will retain 50% of the Net Income. Of the VCH portion of the Net Income, 66.6% will be retained by VCH and 33.4% will be distributed to the VCH division/department(s) of the IP Creator at the time the IP was created.

2.6.2. Commercialization of Transferred VCH IP

Where the IP Creator commercializes the Transferred VCH IP or engages another party/parties to commercialize the Transferred VCH IP on its behalf, unless otherwise agreed in writing between the IP Creator and VCH, VCH will receive a percentage of the gross sales generated from the commercialization of the Transferred VCH IP. Usually this percentage ranges between 2% and 10%. Of the VCH portion of the gross sales, 20% will be distributed to the VCH division/department(s) of the IP Creator at the time the IP was created and 80% will be retained by VCH. For clarity, VCH's share of the gross sales is separate and in addition to the share ownership of VCH in any Start Up Company.

2.6.3. Third Party considerations

Proceeds relating to the commercialization of any IP where a Third Party is involved (refer to Section 2.2) will be distributed amongst VCH, the Third Party and the IP Creator pursuant to the terms of the applicable Third Party Partner Agreement and/or Third Party policies which apply to the IP Creator.

2.6.4. University considerations

Proceeds relating to the commercialization of any IP where a University is involved (refer to Section 2.3) will be distributed amongst VCH, the University and the IP Creator pursuant to the terms of the applicable University Partner Agreement and University policies which apply to the IP Creator.

2.6.5. Payments to VCH

Payments of amounts under this Section 2.6 for VCH must be made by cheque to:

“Vancouver Coastal Health Research Corporation as trustee for the Vancouver Coastal Health Research Trust”.

Cheques must be delivered to:

VCH Research Institute
Jim Pattison Pavilion North
Room 3665-910, West 10th Avenue
Vancouver General Hospital
Vancouver, BC V5Z 1M9
Attention: Vice-President, Research

2.7. No VCH obligation to protect or commercialize VCH IP

As owner of the VCH IP, VCH will be under no obligation to protect or commercialize the VCH IP. As such, VCH will not be liable to the IP Creator for any loss arising from any delay, error, fault or failure by VCH in relation to the protection and/or commercialization of VCH IP.

2.8. Multiple IP creators

If more than one IP Creator is involved in the creation of the IP:

- the IP Creators as between themselves must nominate a lead for the purposes of ensuring compliance with this Policy and liaising with VCH (typically this would be the creator who has provided the largest inventive contribution to the created IP);
- all references in this Policy to “IP Creator” will mean all IP Creators collectively; and
- any commercialization proceeds payable to the IP Creator under Section 2.6 will be shared amongst all the IP Creators in accordance with their relative inventive contribution to the created IP.

2.9. Existing and future innovation and research centres

VCH currently has a number of innovation or research centres (on or off VCH sites) to encourage innovation and the development of new technologies. Many of these centres involve collaborations and partnerships with third parties such as Universities. VCH may establish new innovation or research centres in the future (on or off VCH sites), with or without collaboration and partnership with third parties. For clarity, while these existing or future centres may have their own terms and conditions applicable to their users, this Policy will apply to all Staff using such centres and any IP developed by an IP Creator while at such a centre.

2.10. Publication of created IP

As a publicly funded body, VCH supports the dissemination of knowledge and information for the benefit of society as a whole. VCH has a strong interest in maintaining complete academic freedom and the unrestricted dissemination of knowledge and information produced by an IP Creator through publication. The IP Creator should, however, be aware that publication may introduce deadlines for the proprietary protection of IP or may even jeopardize an application for protection generally. Accordingly, where Section 2.1 applies, before disclosing details in relation to any created IP, the IP Creator must provide details of the created IP to the VP Research using the disclosure form referred to in Section 2.1 so that the VP Research can consider the implications of disclosure and determine appropriate confidentiality arrangements that should be implemented prior to such disclosure. (For the avoidance of doubt, this reporting requirement does not apply to created IP that is subject to Section 2.3).

2.11. Records relating to IP creation

The IP Creator must keep records of the IP created in accordance with generally accepted scientific practice. Such records must be made available for review by the VP Research if requested. All records relating to VCH IP will automatically be the property of VCH and must be delivered by the IP Creator to VCH upon request.

2.12. Further assurances

The IP Creator will, in an expedited manner, perform all acts, execute and deliver all documents and instruments, and do all such things as may be reasonably necessary or desirable to give effect to this Policy.

2.13. Reasonable assistance of IP Creator

The IP Creator must provide all reasonable assistance to VCH in connection with any transaction, protection procedures, litigation, interference, opposition or any other proceeding or event involving VCH IP or Transferred VCH IP.

2.14. Conflicts of interest

It is acknowledged that conflicts of interest may arise from time to time between VCH and the IP Creator as a result of the created IP. Any such actual or perceived conflict of interest that arises will be dealt with in accordance with the Conflict of Interest Policy.

2.15. VCH's name, logo and trademarks

The IP Creator must not use VCH's name, logo or trademarks in any publication or in the commercialization of the created IP without obtaining the prior written approval of the VP Research.

2.16. Agents acting on behalf of VCH

VCH may engage the services of patent agents, lawyers or other consultants in respect of its rights under this Policy.

VCH may also engage the University of British Columbia (UBC's) University-Industry Liaison Office (UILO), Provincial Health Services Authority (PHSA's) Technology Development Office (TDO) or any other third party to act on behalf of VCH in relation to its rights under this Policy.

2.17. Moral rights waiver

The IP Creator hereby waives any and all moral rights the IP Creator has or will have in the VCH IP and the Transferred VCH IP (as the case may be).

2.18. Responsibilities

2.18.1. Staff

Staff members are responsible for complying with this Policy, and for all other VCH policies that govern their activities and behaviour.

2.18.2. Management

Management is responsible for supervising Staff compliance with this Policy, and with any other VCH policies that govern the activities and behaviour of Staff, within the scope of their responsibilities.

2.18.3. VCH Research Institute

VCH Research Institute is responsible for the maintenance and administration of this Policy.

2.19. Compliance

Departure from this Policy by Staff without prior written approval may lead to disciplinary action up to and including termination of employment, services or privileges.

3. References

Tools, Forms and Guidelines

- [Intellectual Property Disclosure and Assignment Form](#)
- [University Contact Details](#)

Related Policies

- [Conflict of Interest Policy](#)

Keywords

Conflict of Interest, commercialization, disclosure, IP, IP Creator, innovation centres, Intellectual Property, license, Partner Agreement(s), publication, research, research centres, Start Up Company, University Facilities, University Funding, University Resources, VCH Facilities, VCH Funding, VCH Resources, VP Research.

Definitions

“**Health Authority**” means Providence Health Care Society, Fraser Health Authority, Provincial Health Services Authority, Vancouver Island Health Authority, Interior Health Authority, Northern Health Authority and First Nations Health Authority.

“**IP**” or “**Intellectual Property**” means:

- a) all inventions, methods, processes, discoveries, designs, ideas, concepts, works of authorship, creations, developments, algorithms, formulae and formulations, data,

databases, information, compilations of information, know-how, techniques, technology, drawings and graphics, analysis, experiments, products, samples (biological or otherwise), tools, machines, software and all documentation thereof, flowcharts, specifications and source code listings (regardless of whether any of the foregoing is suitable for or subject to legal protection), including any modifications or improvements thereto, in any medium whatsoever; and

- b) any and all rights in respect of, in or to the works referred to in paragraph (a) above, whether pursuant to statute, common law, or other law or custom, including without limitation all:
- i. rights in respect of trade-marks, trade and domain names;
 - ii. copyrights and the benefit of any waivers of moral rights;
 - iii. database rights;
 - iv. rights in respect of industrial designs, integrated circuit topographies, and mask works;
 - v. patents and patent applications;
 - vi. rights and obligations in respect of trade secrets;

and all applications, registrations, renewals, extensions, continuations, divisions, reissues, and restorations relating to any such rights (where applicable), now or hereafter in force and effect throughout the world including any rights in any of the foregoing.

“IP Creator” means the person that created the IP.

“Net Income” means gross revenue generated by the commercialization of the IP less all direct expenses incurred in pursuing such commercialization of the IP including, but not limited to, costs for protecting, marketing, manufacturing, licensing, publishing or selling the IP, or products or services derived from the IP (or such other definition as agreed between VCH and the IP Creator).

“Staff” means all employees (including management and leadership), medical staff (including physicians, midwives, dentists and nurses), residents, fellows, trainees, health care and Allied Health professionals, students, volunteers, contractors, researchers and other services providers engaged by VCH.

“Start Up Company” has the meaning given in Section 2.4.

“Third Party” means any party other than VCH or a University.

“Third Party Facilities” means premises owned, leased or sub-leased by a Third Party and used in the creation of the IP.

“Third Party Funding” means funds held in the name or on behalf of a Third Party and used in the creation of the IP.

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“**Third Party Partner Agreement**” means any applicable agreement between VCH and a Third Party relating to the management or sharing of IP.

“**Third Party Resources**” means any equipment (owned, leased or sub-leased by the Third Party), biological samples, patient information, data, database, specifications, plans, drawings, prototypes, models, documents, recordings, instructions, manuals, papers, or other materials of any nature whatsoever, that is under the care or control of the Third Party and used in the creation of the IP.

“**Transferred VCH IP**” has the meaning given in Section 2.4.

“**UBC Academic Space**” means space designated as “Academic Space” pursuant to the Academic Space Protocol dated October 2002 between the University of British Columbia, VCH and the Ministry of Health and any subsequent replacement agreements.

“**University**” means a university or other post-secondary academic research institution.

“**University Facilities**” means premises owned, leased or sub-leased by a University and in the case of the University of British Columbia, includes UBC Academic Space.

“**University Funding**” means funds held in the name of or on behalf of a University and includes without the foregoing, research funds provided to a University from third party funders.

“**University Partner Agreement**” means any applicable agreement between VCH and a University relating to the management or sharing of IP.

“**University Resources**” means any equipment (owned, leased or sub-leased by the University or otherwise under the care and control of the University), biological samples, patient information, data, databases, specifications, plans, drawings, prototypes, models, documents, recordings, instructions, manuals, papers, or other materials of any nature whatsoever, that is under the care or control of the University and used in the creation of the IP.

“**VCH Facilities**” means premises owned, leased or sub-leased by VCH and used in the creation of the IP.

“**VCH Funding**” means funds held in the name of or on behalf of VCH and used in the creation of the IP.

“**VCH IP**” has the meaning given in Section 2.4.

“**VCH Resources**” means any equipment (owned, leased, sub-leased by or otherwise under the care and control of VCH), biological samples, patient information, data, databases, specifications, plans, drawings, prototypes, models, documents, recordings, instructions, manuals, papers, or other materials of any nature whatsoever, that is under the care or control of VCH and used in the creation of the IP.

“**VP Research**” means the Vice-President, Research, VCH Research Institute or his/her designate.

Questions

Contact: VCH Research Institute

Issued by:			
Name:	<u>Glen Copping</u>	Title:	<u>CFO & VP, Systems Development & Performance</u> Date: <u>July 20, 2015</u>
			:
	Signature of issuing official		