



Title: Intellectual Property		
Date first created: June 2008	Revised: May 2017	Approved By: Commercialization Committee

1.0 Policy Statement:

Baycrest is committed to enhancing the present and future care and well-being of its patients and clients. This Intellectual Property Policy (the “Policy”) is designed to assist Baycrest in achieving its mission of service to the community by promoting the needs of the elderly by assuring that the maximum public benefit and public use is gained from the Intellectual Property made by Baycrest Personnel. The intent of this Policy is to promote excellence in research and innovation and the application of new information and technology to the diagnosis and treatment of human disease in a manner consistent with academic excellence by encouraging the commercial development of Baycrest’s Intellectual Property and to ensure that individual inventors and departments appropriately share in the proceeds from the commercial developments of such Intellectual Property.

This Policy replaces Baycrest’s Intellectual Property Policy dated June 2008.

2.0 Objectives

This Policy has the following objectives:

- A. To ensure that Intellectual Property produced at or under the auspices of Baycrest is used for the greatest possible public benefit;
- B. To promote the dissemination and utilization of new knowledge;
- C. To encourage and promote creativity and innovation among the Baycrest Personnel, and between Baycrest and other organizations, by providing a favourable research environment for all stakeholders;
- D. To ensure fair recognition and compensation for the contributions of both the Inventor and Baycrest in the development of the Intellectual Property;
- E. To generate revenue to promote and support Baycrest’ research and mission;
- F. To protect the intellectual property rights that Inventors and Baycrest may have;
- G. To facilitate the commercialization of Intellectual Property, where appropriate, and to ensure that such commercialization occurs in a timely and efficient manner that supports the interests of Baycrest, the Inventor, and the broader community; and
- H. To translate research and innovation into benefits for the public both locally and globally.

3. Definitions

“**Baycrest**” means Baycrest Centre for Geriatric Care, The Jewish Home for the Aged, Baycrest Hospital, and The Baycrest Day Care Centre.

"Baycrest Personnel" means all members of the Baycrest staff and credentialed health professionals, including all employees, persons with appointments at Baycrest (physicians, dentists, status-only scientists), students and post-doctoral fellows, and volunteers **"Baycrest Resources"** means funds, facilities, equipment, Baycrest Personnel as applicable, and any other resources owned, operated or controlled by Baycrest.

"Commercialization" means the process of transforming the Intellectual Property into a business activity, which may include, but is not limited to, seeking legal protection for the Intellectual Property.

"Disclosure Form" means the form of disclosure in respect of Intellectual Property, attached to this Policy as Schedule "A".

"Intellectual Property" means all intangible and tangible works or creations that are unique and original; the rights arising from the legal protection of intellectual property (copyright, trademark, patents, industrial designs and integrated circuit topographies; and know-how and other trade secrets); and includes but is not limited to any new and useful art, process, machine, manufacture or composition of matter, technical information, formulae, computer software (in source code or object code form) and hardware, algorithms, documentation, drawings, graphics, designs, concepts, ideas, apparatus, processes, research tools and any improvements thereof, and all original literary, dramatic, musical and artistic works (including without limitation books, graphic works, musical works, audio visual works, performances, sound recordings and signals, choreographic works and cinematographic works), all print materials, multimedia electronic and audiovisual materials, manuals, program packages and educational materials.

"Inventor" means any member of the Baycrest Personnel who invents, conceives, develops, creates, discovers, makes or improves any Intellectual Property.

"Management Fee" means a fee for services provided by Baycrest in connection with Commercialization.

"Net Revenues" means any income, including but not limited to royalties, commissions, fees, licensing or other financial equivalent consideration received by Baycrest from the assignment or licensing of or other Commercialization of the rights to the Intellectual Property, less legal and other fees and expenses incurred directly in the process of establishing and maintaining the legal protection of those rights, Commercializing the IP, any Management Fees, as well as any third party payments determined by third party agreements related to the Intellectual Property.

4. Scope and Application

4.1 This Policy applies to all Baycrest Personnel and to all Intellectual Property developed by Baycrest Personnel, unless there are any overriding agreements to which Baycrest is a party and which limit Baycrest's ownership. All Baycrest Personnel must comply with the terms of any agreements entered into by Baycrest with respect to the protection of Intellectual Property, ownership and confidentiality. Baycrest Personnel will sign such further documentation as may be necessary to comply.

4.2 The period of application of this Policy and resulting benefit rights shall survive the termination of the Inventor's employment or association with Baycrest.

4.3 Any Intellectual Property arising from or through the use of Baycrest Resources shall be subject to this Policy. This Policy does *not* apply to Intellectual Property created or developed in the course of demonstrably private research or other work unrelated to the duties, functions or responsibilities at Baycrest of the Baycrest Personnel member, provided such private research or other work is conducted or developed without the use of Baycrest Resources and on the Baycrest Personnel member's own time.

4.4 This Policy does not modify or amend any agreement entered into by Baycrest and an Inventor prior to the date of the adoption of this Policy. All disclosures made by an Inventor prior to the effective date of this Policy continue to be governed by the policy in effect at the time of such disclosure. Inventors who update and re-submit their disclosures from and after the effective date of this Policy will be governed by the terms of this Policy.

5. Ownership of Intellectual Property

5.1 The rights to all Intellectual Property arising out of or connected with, in whole or in part, a person's position as a member of the Baycrest Personnel or work pursuant thereto, whether or not made using Baycrest Resources, are the property of Baycrest unless there is an overriding agreement(s) to which Baycrest is a party and which limits Baycrest's ownership. Similarly, the rights to all Intellectual Property made with Baycrest Resources are the property of Baycrest unless there is an overriding agreement(s) to which Baycrest is a party and which limits Baycrest's ownership. In the absence of a prior written agreement(s) to the contrary, when Intellectual Property is created or developed by an Inventor as described in this Section 5.1, Baycrest shall assume sole ownership of all such Intellectual Property, and any moral right contained therein shall be waived in favour of Baycrest. Baycrest Personnel shall execute all documents required by Baycrest to formalize and/or record Baycrest's ownership in such Intellectual Property, as well as those further documents which might be required for Commercialization of such Intellectual Property.

5.2 If Baycrest decides not to protect the Intellectual Property or assign its rights in such Intellectual Property to a third party or otherwise pursue Commercialization of such Intellectual Property, it will, at its option, either:

(i) assign the right to Commercialize or otherwise protect the Intellectual Property to the Inventor(s) subject to the Inventor(s) (a) providing Baycrest with indemnification for all future non-commercial use of the Intellectual Property and (b) entering into the revenue sharing agreement with Baycrest described in section 10.5 of this Policy; or

(ii) assign ownership of the Intellectual Property to the Inventor(s) subject to the Inventor(s) (a) providing Baycrest with the retained right to use that Intellectual Property for research (including research collaborations), care provision, teaching, and other not-for-profit activities at no cost and in perpetuity and (b) entering into the revenue sharing agreement with Baycrest described in section 10.5 of this Policy.

5.3 No publication or public disclosure, other than a publication or disclosure for academic purposes, by the Inventor of Intellectual Property for which Baycrest has assigned or otherwise transferred property rights to the Inventor, shall make reference to Baycrest unless Baycrest agrees in writing.

5.4 Baycrest does not claim any property right in Intellectual Property conceived and reduced to practice by an individual prior to that individual becoming a member of the Baycrest Personnel provided that such

Intellectual Property has been disclosed prior to, or contemporaneously with, that individual becoming a member of the Baycrest Personnel. To facilitate this process, upon becoming a member of the Baycrest Personnel, new members of the Baycrest Personnel shall complete the *New Baycrest Staff Confidential Intellectual Property Disclosure Form*, attached to this Policy as Schedule "B" [Under development].

5.5 All costs relating to the protection, development, marketing and/or licensing of Intellectual Property owned by Baycrest shall be borne by Baycrest. Notwithstanding the foregoing, or anything else contained in this Policy, Baycrest shall not be obligated to protect, develop, market, license or otherwise pursue Commercialization of any Intellectual Property, or to continue to do so, if Baycrest is of the opinion at any time, in its sole discretion, that such efforts are not warranted.

6. Disclosure

6.1 Upon becoming a member of the Baycrest Personnel, an individual shall promptly disclose to the Chief Human Resources Officer or delegate any prior agreement between such individual and any other party, including another institution such as a university or other hospital, affecting ownership of any Intellectual Property, which agreement may conflict with Baycrest's aforesaid proprietary rights. In the event of any such conflict or potential conflict, Baycrest, in consultation with the member, may negotiate with such other party the ownership of any such Intellectual Property or the apportionment between Baycrest and any such party of any income resulting from the commercial exploitation of such Intellectual Property. Baycrest shall inform such member of any agreement it has made with any such third party, and the member may be entitled to participate in negotiations relating to such agreement, subject to the agreement of such other party and Baycrest's Conflict of Interest Policy.

6.2 All Inventor(s) shall disclose all Intellectual Property created or developed by the Inventor to Baycrest in a thorough and timely manner by filling out the Disclosure Form and submitting it to the Vice-President, Research or delegate.

6.3 Each member of the Baycrest Personnel shall disclose to Baycrest the amount, source and terms of all financial contributions, materials, other benefits or support provided to or for the benefit of such Baycrest Personnel member in regard to an Intellectual Property. Unless Baycrest consents in writing, or unless in accordance with an agreement to which Baycrest is a party, no member of the Baycrest Personnel shall disclose an Intellectual Property which is the property of Baycrest, or details thereof, to any party, including a party providing financial contributions or other benefits as aforesaid, and including any party, other than Baycrest, which employs the Baycrest Personnel or at which the Baycrest Personnel member holds an appointment.

6.4 Baycrest shall not own copyright in scholarly articles, papers or theses written by Inventors for the non-commercial purpose of publication in scientific journals or in pursuing an academic degree or career. However, it is important that any and all Intellectual Property contained in such papers is appropriately protected and that contractual commitments are complied with before any public disclosures occur, such as at a conference, in a paper or in any communication to a person or organization external to Baycrest. Accordingly, Baycrest retains the right to delay the Inventor's publication for a reasonable time period, not to exceed one hundred and twenty (120) days.

7. Approvals and Assessment of Intellectual Property

7.1 Baycrest shall evaluate disclosed Intellectual Property for technical and commercial potential within ninety (90) days of the receipt of a completed and signed Disclosure Form. The evaluation shall take into account perceived public benefit; commercial potential; scientific merit; patentability; need or possibility of further work or information; ownership of the Intellectual Property and Baycrest's interest in the Intellectual Property.

7.2 If Baycrest chooses to patent or otherwise protect an Intellectual Property that it owns, the approval for such decision rests with the Vice-President, Research. If the Vice President, Research is involved as an Inventor, the decision-making authority for approval rests with the President and Chief Executive Officer. If the President and Chief Executive Officer is involved as an Inventor, the decision-making authority for approval rests with the Chair of the Baycrest Board of Directors.

7.3 Baycrest shall not be responsible or liable for any real or perceived lost opportunity as a result of the review and approval process.

8. External Institutions and Students

8.1 In cases where the Inventor also holds a primary, secondary or "status only" appointment at the University of Toronto or other external institution, the determination of rights to an Intellectual Property and the allocation of Net Revenues arising out of its Commercialization shall be subject to the terms and conditions of applicable agreements between Baycrest and the University of Toronto or other external institution in force at the time of the disclosure of the Intellectual Property, or in the absence of such applicable agreements, to negotiation between the institutions involved. Timely disclosure of Intellectual Property to the University of Toronto and other external institutions should be made, in accordance with any agreements entered into with those institutions.

8.2 For the purpose of this Policy, undergraduate and graduate students, and clinical and research fellows who are Inventors will be treated in the same fashion as staff members holding appointments in both Baycrest and the University of Toronto in all respects. Students from other external institutions will be treated similarly, except where an agreement exists to the contrary.

9. Other Contractual Arrangements

9.1 Notwithstanding any statement elsewhere in this Policy, all contracts and agreements existing at the time of the adoption of this Policy between Baycrest and governments, corporations and other outside organizations that relate to Intellectual Property and/or Inventors shall remain in full force.

9.2 Grants, sponsorships, contracts and research agreements may be entered into by Baycrest, on its own behalf or on behalf of others, with government agencies, companies and other bodies. These agreements may contain provisions regarding Intellectual Property whereby rights are assigned or licensed to the agencies, companies and/or other bodies, or which are otherwise at variance with this Policy. Baycrest retains the right to enter into such agreements and shall require that all parties to the agreement live up to any provisions in such grants, sponsorships, contracts or agreements. Please also refer to Baycrest Policy X-160: Research Contracts.

10. Commercialization and Revenue

10.1 This section 10 applies to Intellectual Property owned by Baycrest or assigned by Baycrest pursuant to Section 5 of this Policy.

10.2 The Vice President, Research shall have the primary responsibility on behalf of Baycrest for all activities pertaining to the Commercialization of all Intellectual Property, except for Intellectual Property assigned to the Inventor in accordance with Section 5.2 of this Policy.

10.3 The Inventor and Baycrest shall share any Net Revenues derived from the Commercialisation of the Intellectual Property, whether or not patented, according to the revenue sharing structure identified in Section 10.

10.4 Any Net Revenues generated by the Commercialization of Intellectual Property owned by Baycrest shall be distributed as follows:

- 50% of Net Revenues shall be distributed to the Inventor(s); and
- 50% of Net Revenues shall be distributed to Baycrest.
- The Baycrest Executive Team may, in its discretion, distribute a portion of its Net Revenues to the applicable research department/program at Baycrest and/or for further Commercialization activity.

If Baycrest has entered into an agency agreement with a third party commercialization agency, Baycrest may be obligated to distribute a portion of gross income prior to any distribution to Inventor(s), and such agency fees will be deducted as costs prior to the calculation and distribution of Net Revenues.

10.5 Where the Inventor(s) is assigned Commercialization rights or ownership of an Intellectual Property by Baycrest as described in Section 5.2, the Inventor(s), at his or her discretion, will choose whether to undertake the registration and licensing of the Intellectual Property and, if so, will cover all related expenses. If the Inventor(s) decides to pursue Commercialization of the Intellectual Property, the Inventor(s) shall repay all expenses incurred by Baycrest for the protection of the Intellectual Property, including but not limited to all legal fees and Management Fees. Repayment of the expenses shall be made according to a schedule agreed to by the parties. The Inventor(s) will also enter into a royalty agreement with Baycrest pursuant to which Baycrest will receive 15% of any Net Revenues from the assigned Intellectual Property. The Inventor(s) shall be required to provide to Baycrest an annual report of all activities pertaining to the Commercialization of the assigned Intellectual Property. Baycrest shall have the right to annually audit, at its sole discretion and expense, the financial books and records pertaining to the Intellectual Property so assigned. The Inventor(s) shall require the written approval of Baycrest prior to selling the assigned Intellectual Property.

10.6 Inventors who are discharged, resign or retire from Baycrest will continue to receive their portion of the Net Revenues described above in Section 10.4, excluding the option to use their portion of the Net Revenues to support their Baycrest work. The percentage allocated to support their research program may be redistributed at the sole discretion of Baycrest.

11. Other Rights and Responsibilities of Inventors and Baycrest

11.1 An Inventor shall have the right to publish the results of his or her research in accordance with the customary standards of academic practice and applicable policies and procedures of Baycrest and the University of Toronto and to use his or her Intellectual Property solely for non-commercial research, clinical, scholarly and academic teaching purposes. An Inventor shall not, however, use an Intellectual Property for any Commercial Purpose, without the express, written consent of Baycrest. “**Commercial Purposes**” include, but are not limited to, the sale, lease, license, or other transfer of the Intellectual Property to or for the benefit of a non-Baycrest party or organization, performance of contract research or the production or manufacture of products intended for sale.

11.2 When an Inventor wishes Baycrest to support choosing an open-source method of dissemination or a non-revenue mechanism of benefits (e.g., provision of training programs at cost or for free), such requests shall be submitted to the Vice- President, Research, together with a plan detailing the support requested, the non-revenue benefits of the Intellectual Property, the resources of Baycrest that will be impacted and any risks to Baycrest as a result of the plan. The Vice-President, Research must approve such plan in writing before an Inventor engages in such open-source or non-revenue method of dissemination.

11.3 In respect of Intellectual Property subject to this Policy, the Inventor(s) shall assist Baycrest and its advisors in the preparation, filing and prosecution of applications for patent, industrial design or copyright and shall sign all necessary legal documents relating to the foregoing. Each of Baycrest and the Inventor(s) will provide to the other reasonable notice of all matters which come to their respective action and may affect the preparation, filing and prosecution of any such applications. The Inventor(s), at the request of Baycrest, shall assist Baycrest in the development, marketing and licensing of the Intellectual Property. Inventor(s) shall assist Baycrest as necessary in the Commercialization of an Intellectual Property, but shall not be obligated to provide assistance to such extent that it compromises the primary responsibility of the Inventor to their research, academic or clinical program.

11.4 Inventors shall keep proper documentation with respect to Intellectual Property, maintain complete and accurate records and shall arrange for the retention of all records and documents necessary for the protection of Baycrest’s interest in the Intellectual Property. The Inventor shall provide such records to Baycrest at Baycrest’s request to assist in the preparation and prosecution of patent applications.

11.5 Inventors shall comply with the terms and conditions of all contracts with third parties related to the Intellectual Property (e.g., sponsored research agreements) and with all applicable legislation.

11.6 Inventors shall disclose all conflicts of interest pursuant to Baycrest’s Conflict of Interest Policy.

11.7 Inventors shall give appropriate recognition to the contribution of all individuals who contributed to the Intellectual Property (e.g., co-creator status or recognition through acknowledgement or citation applicable).

12. Company Creation to Commercialize Intellectual Property

12.1 Unlike licensing, start-up company creation for the commercialization of Intellectual Property requires further investment (financial, administrative or both) from Baycrest and confers more risk to Commercialization of Intellectual Property. Accordingly, start-up company creation will be considered by the Vice-President, Research, who shall consult with advisors as he or she deems appropriate. Inventor(s) may

be asked to advise on company creation options. All company creation activities by Baycrest Personnel which involve the use of Baycrest Intellectual Property and/or Baycrest Resources must be approved in writing by the Vice-President, Research. Should Baycrest determine that creating a company is the best means to commercialize Intellectual Property, it will act diligently to enable the creation of such a company and Baycrest shall license Intellectual Property to the company on fair market commercial terms. Baycrest is under no obligation to license Intellectual Property to companies created by Inventor(s) and any such request by an Inventor(s) will be reviewed and considered in comparison to other commercialization options.

12.2 If a start-up company is created for the purposes of Commercialization of the Intellectual Property, the equity in the start-up company, including but not limited to all shares, stocks and stock options, shall be negotiated as between Baycrest and the Inventor(s). Inventor(s) may participate as founding equity holders in a start-up company. In so participating, however, such Inventor(s) will forfeit their participation in the Inventor's portion of any Net Revenue to Baycrest that might result from the licensing of that Baycrest Intellectual Property to the start-up corporation. Baycrest Personnel will formally choose whether or not to participate as founding equity holders in a start-up corporation at the incorporation of that company, and any such decision will be considered final. If an election is made to become a founding equity holder, Baycrest will retain the portion of the Net Revenues that would otherwise have gone to the Inventor(s). For clarity, where all equity in the start-up company is held by Baycrest, the Inventor(s)' share will be distributed in accordance with the formula set out in Section 10.4 of this Policy, when proceeds of disposition of equity are received by Baycrest. However, where a start-up company is or has been created and an Inventor holds equity in the company directly for any reason (other than the purchase of shares for cash or the receipt of shares as consulting compensation) and where Intellectual Property is licensed to the start-up company, the distribution of revenue as set out in Section 10.4 of this Policy shall not apply and Baycrest will not share any revenue with the Inventor.

12.3 Nothing in this Policy restricts an Inventor (independent of whether or not the Inventor is a founding equity holder of the start-up company) from entering into a subsequent contractual relationship with that start-up company in a personal capacity. Any such contractual relationship, however, will be at the exclusive direction of the start-up company, and will remain subject to all other relevant Baycrest policies including Baycrest's Conflict of Interest Policy.

12.4 Baycrest reserves the right to enter into further agreements with other entities for the purpose of advancing the commercialization of specific opportunities, with due consideration being given to the above principles.

13. Dispute Resolution

13.1 Other than (i) a dispute regarding ownership of an Intellectual Property referred to in Section 5 of this Policy or (ii) the royalty sharing provisions as set out in Section 10 of this Policy, the terms of which shall not be subject to negotiation, Baycrest and the Inventor(s) shall use reasonable attempts to resolve any other dispute arising out of or relating to this Policy informally and amicably. In the event that any such dispute cannot be so resolved, the dispute shall be referred for decision to the Vice-President, Research, for mediation. In the event that any such dispute cannot be so resolved following mediation with the Vice-President, Research, the dispute shall be referred for decision to an arbitrator with suitable expertise in the City of Toronto and selected jointly by the parties. In the absence of agreement by the parties on an arbitrator, either party may apply to a judge of the Superior Court of Ontario to appoint an arbitrator with written notice to the other party. The decision of the arbitrator shall be final and binding.

14. Education

14.1 It is important that Baycrest Personnel understand the importance and rationale for this Policy. As such, the Vice-President, Research is committed to ensuring that an active education program is in place to advise and educate Baycrest Personnel on matters related to Intellectual Property and this Policy and to encourage the submission of IP Disclosure forms. If a member of the Baycrest Personnel is uncertain of any aspect of this Policy or its application, he or she should contact the Vice-President, Research.

Schedule A – IP Disclosure (Internal)
Schedule B – IB Disclosure (New Staff)