



FRANCISCAN MISSIONARIES OF OUR LADY  
HEALTH SYSTEM

<b>RESPONSIBLE DEPARTMENT:</b> Human Resources	<b>SUBJECT:</b> Intellectual Property
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**SCOPE:**

Applies to Franciscan Missionaries of Our Lady Health System (“FMOLHS”) and its wholly owned subsidiary (“Sponsored Organizations”) Team Members (as defined below) and certain Other Individuals (as defined below) who are not Team Members but associated with FMOLHS or its Sponsored Organizations by contractual agreement.

**PURPOSE:**

To foster the creation, discovery and development of new technology and original works of authorship. It is *not* FMOLHS’ intent to assert any interest in new technology and original works of authorship that are:

- a) Developed without use of FMOLHS Resources (as defined below);
- b) Directly resulting from activities of an Author or Inventor (as defined below) outside the scope of the Author’s or Inventor’s employment with FMOLHS or a Sponsored Organization (FMOLHS and its Sponsored Organizations are sometimes referred to herein as a “FMOLHS Entity”) or other relationship with FMOLHS Entity, or activities expected to be performed while engaged in services for an FMOLHS Entity; and
- c) Unrelated to FMOLHS Entity, its operations or activities.

Nothing in this policy is intended (and should not be interpreted) to inhibit the free communication of ideas, knowledge and research results through collaborative research, publications, training and teaching.

**POLICY:**

It is the policy of FMOLHS and its Sponsored Organizations to foster innovation while continuing to focus on core clinical services. As an outgrowth of FMOLHS’ mission, vision and values, FMOLHS promulgates this Intellectual Property Policy (“Policy”) on the creation

of intellectual property by FMOLHS Team Members and certain other persons who are associated with a FMOLHS Entity by contractual agreement.

**DEFINITIONS:**

“*Author*” means Team Members and Other Individuals who create Works of Authorship.

“*Confidential Information*” means any confidential information regarding any FMOLHS Entity business methods, business policies, procedures, experimentation, techniques, services, research or development projects or results, or Intellectual Property of any FMOLHS Entity; historical or projected financial information, budgets, trade secrets, personnel information, patient information, or other knowledge or processes of or developed by a FMOLHS Entity; or any other confidential information relating to or dealing with business, operations or activities of a FMOLHS Entity, not lawfully known by, or readily accessible to, the general public.

“*Commercialization*” or “*Commercialized*” means to make, use license, assign, use as collateral or sell to a third party or otherwise exploit, some or all of the Intellectual Property for monetary consideration.

“*FMOLHS Resources*” include but are not limited to: facilities of FMOLHS or its Sponsored Organizations, services provided by Team Members or Other Individuals engaged by one or more FMOLHS Entities, equipment, information systems, ancillary services, training, documentation, supplies, data or biological samples obtained from patients of a FMOLHS Entity, brand name/trademark or reputation, funds from capital or operating accounts, grants and/or other resources of a FMOLHS Entity, and any other tangible or intangible asset of a FMOLHS Entity.

“*Intellectual Property*” means Inventions, Works of Authorship, Confidential Information and Trademarks (all as defined herein), and any other rights in same such as patents, copyright rights whether created or established by registration or operation of law.

“*Invention*” means any invention, discovery, concept, development, or written Work of Authorship, whether or not patentable, including, but not limited to, devices; machines; systems; circuits; algorithms; software; databases; composition of matter, chemical and biological material such as tissue, proteins, genes, DNA constructs, cell lines and transgenic animals; immunoassays; compounds and therapeutics; diagnostics; methods or processes; synthesis methods; research notebooks; data; know how; new plant varieties; and further includes improvements to existing discoveries and inventions and new uses of known articles or substances.

“*Inventors*” means Team Members and Other Individuals who create Intellectual Property.

“*Net Proceeds*” means all cash proceeds received by an FMOLHS Entity from the commercialization or exploitation of the Intellectual Property, whether from licensing, optioning, securitization, selling, divestiture, liquidation or monetization, less all cumulative costs and expenses (“Direct Costs”) incurred by an FMOLHS Entity directly related to the development, commercialization, defense and protection of the Intellectual Property, including, but not limited to, all costs and expenses in evaluating, developing, protecting, prosecuting (e.g. filing and prosecuting patents or trademarks), defending, prototyping, validating, marketing and licensing the Intellectual Property.

*“Other Individuals”* means individuals who are not Team Members but who are associated with FMOLHS or a Sponsored Organization by contractual agreement, including, but not limited to, agents, physicians with admitting privileges, contractors, consultants, volunteers and temporary staff.

*“Prior Development”* means all Intellectual Property invented, authored, made, or conceived by the FMOLHS Team Member, alone or with others, before his or her employment with a FMOLHS Entity.

*“Sponsored Organization”* means an entity either wholly-owned by FMOLHS, or a subsidiary of an entity wholly-owned by FMOLHS.

*“Team Member”* means an employee of FMOLHS or a Sponsored Organization.

*“Trademarks”* shall mean all trademarks, service marks, logos, slogans, design marks and the like used, applied for and/or registered by, or licensed to, a FMOLHS Entity to designate goods or services provided by one or more FMOLHS Entities or on their behalf, together with all domain names containing such marks.

*“Work Made for Hire”* shall have the meaning ascribed to it in the U.S. Copyright Act as amended from time to time, currently:

- i. Work prepared by FMOLHS Entity Team Members within the scope of his or her employment; or
- ii. A work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

*“Works of Authorship”* means any original work of authorship, including a Work Made for Hire, fixed in any tangible medium of expression from which it can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device, whether or not copyrighted or copyrightable. Examples of Works of Authorship include but are not limited to manuscripts, books, journal publications, poems, compilations, computer software, computer programs, flow charts, web pages, databases, technical drawings, diagrams, designs, photographs, musical scores, video and audio materials and recordings, presentation slides and/or instruction materials and manuals.

## **PROCEDURES:**

### **General**

**1.1** This Policy applies to all Intellectual Property, including, for example, Inventions and Works of Authorship of Team Members and Other Individuals unless a provision of this Policy has been waived by FMOLHS as provided in Section 10.1

**1.2** This Policy provides that all Intellectual Property created by Team Members or Other Individuals that is: (a) created as a result of a request by a FMOLHS Entity to perform work, or under its direction, or (b) is derived from their activities while engaged in services for any FMOLHS Entity, or (c) is made, in whole or in part, with the use of FMOLHS Resources, or (d) otherwise related to any operations or activities of a FMOLHS Entity, is to be owned by (and, if it otherwise does not vest upon creation, is hereby assigned to) FMOLHS or the applicable Sponsored Organization.

**1.3** Team Members and Other Individuals will receive a certain percentage of Net Proceeds from the Commercialization of Intellectual Property developed by them but, as to Inventions or Works of Authorship, then only if such Inventions or Works of Authorship were *not* created as a result of an express request by a FMOLHS Entity to perform work, or under its direction, nor fall within the scope of employment or other activities expected to be performed by the Inventor or Author while engaged in services for a FMOLHS Entity.

**1.4** No Net Proceeds will be distributed to Inventors for Commercialization of Intellectual Property by a FMOLHS Entity other than as described in Section 11.

**1.5** If a FMOLHS Entity determines not to exploit an Intellectual Property, FMOLHS Entity may in its discretion assign the Intellectual Property back to the Inventor under an appropriate agreement.

**1.6** Scholarly Works are discussed in Section 12.

**1.7** FMOLHS Entity Intellectual Property shall not be removed from FMOLHS Entity premises, disclosed to third parties, or sold without the prior written consent of the applicable FMOLHS Entity. All FMOLHS Entity Intellectual Property is to be disclosed to the applicable FMOLHS Entity before publication or disclosure to third parties, so that it can be protected before publication or disclosure, as necessary.

**1.8** FMOLHS and its Sponsored Organization Trademarks are only to be used in accordance standards and practices set by the FMOLHS Communications team and this Policy.

## **2. Application**

**2.1 Ownership:** FMOLHS Entity shall own all Intellectual Property created by Team Members or Other Individuals that is:

**2.1.1** Created as a result of a request by a FMOLHS Entity to perform work, or under its direction;

**2.1.2** Derived from the activities of FMOLHS Team Members or Other

Individuals while engaged in services for a FMOLHS Entity;

**2.1.3** Made in whole or in part with the use of FMOLHS Resources;

**2.1.4** Is an improvement, addition or modification to existing FMOLHS Entity owned Intellectual Property; or

**2.1.5** Otherwise related to any operations or activities of a FMOLHS Entity.

## **2.2 Conflicts:**

**2.2.1 Written Agreements:** This Policy applies to Team Members and Other Individuals regardless of whether they have obligations to third parties and whether they separately execute an acknowledgment of same. Provisions in this Policy shall supersede any conflicting provisions in a written agreement executed between any FMOLHS Entity and FMOLHS Team Members or Other Individuals unless a provision of this Policy has been waived by FMOLHS as provided in Section 10.1.

**2.2.2 Other Policies:** The provisions of this Policy shall supersede conflicting provisions in the Team Member handbooks of FMOLHS or any Sponsored Organization, Conflict of Interest policy, Confidentiality policy or other FMOLHS or Sponsored Organization policies unless a provision of this Policy has been waived by FMOLHS as provided in Section 10.1.

## **3. Ownership of Intellectual Property/Assignment**

**3.1** FMOLHS or its Sponsored Organization shall solely own, upon creation, all Intellectual Property which falls within the provisions of Section 2.1, excluding Intellectual Property jointly developed by Our Lady of the Lake Regional Medical Center and LSU pursuant to research activities conducted on Our Lady of the Lake Regional Medical Center's campus, as described in Section 15 of the Cooperative Endeavor Agreement between OLOL and LSU.

**3.2** If by operation of law or contract, any FMOLHS Intellectual Property is not owned in its entirety by FMOLHS automatically upon its creation, then each FMOLHS Team Member and Other Individual will assign to FMOLHS or its designee all right, title and interest in the FMOLHS Intellectual Property.

## **4. Disclosures of Prior Intellectual Property and FMOLHS Intellectual Property**

**4.1** Each FMOLHS Team Member must, using a FMOLHS approved disclosure form, at the time he or she becomes employed by a FMOLHS Entity, or at such later time as approved by FMOLHS, disclose in writing, in sufficient detail to define clearly, all Prior Developments, including, without limitation, listing all papers, abstracts, patent applications, patents, together with the name of the owner of the Intellectual Property, and any confidentiality, noncompete, non-solicitation, assignment of Intellectual Property or other similar agreements or policies to which he or she is a party or otherwise is subject. Any Intellectual Property not disclosed will be presumed to have been created after its creator's employment with FMOLHS and will be subject

to this policy.

**4.2** Such disclosure shall be made to the applicable FMOLHS Entity Human Resources Department. FMOLHS shall determine, in its sole discretion, the ownership interest of all Intellectual Property disclosed and, if determined to be Prior Developments, such Prior Developments will not be deemed to be FMOLHS Intellectual Property.

**4.3** Each FMOLHS Entity Team Member and Other Individual hereby grants to the applicable FMOLHS Entity a nonexclusive, transferable, fully paid-up, royalty-free, irrevocable, perpetual, worldwide license (with the right to grant sublicenses) to use and develop all Prior Developments in connection with the creation, use, preparation, acquisition or promotion of the FMOLHS Entity Intellectual Property and otherwise in connection with the operations and activities of FMOLHS Entity.

## **5. Restrictions on Use of Intellectual Property**

**5.1 Purpose.** The restrictions in this Section are necessary to provide FMOLHS or its designees the opportunity to take appropriate action, such as to file patent applications and execute appropriate confidentiality agreements to protect Intellectual Property rights in the Inventions and/or Works of Authorship. Public use and/or disclosure of an Invention or Work of Authorship before proper protective measures are in place can result in an inability to protect the Intellectual Property rights therein. Further, in certain circumstances, FMOLHS and its Sponsored Organizations have legal obligations to the federal government or third parties with respect to the reporting and protection of Intellectual Property.

**5.2 Restrictions.** Unless and until FMOLHS Entity provides express written permission, Intellectual Property owned in whole or in part by FMOLHS Entity shall not be:

**5.2.1** Removed from FMOLHS Entity premises;

**5.2.2** Disclosed to third parties; or

**5.2.3** Transferred, sold, assigned, mortgaged, used as security or licensed to third parties.

**5.3 Material Transfer.** In no event shall any materials be removed from FMOLHS Entity premises unless and until a material transfer agreement is approved by FMOLHS Entity and properly executed.

## **5.4 Publication.**

**5.4.1** Early publication of research results is a major objective of research. FMOLHS Entity does not intend for this Policy to impede FMOLHS Entity Team Member's ability to publish. However, public disclosure of a patentable invention prior to filing a patent application may preclude the availability of patent protection in the U.S., and will preclude the availability of patent protection in most other countries. A "public disclosure" includes any non-confidential written or oral disclosure that

describes the invention, e.g., at a scientific meeting, in a journal, online, or even in an informal discussion with outside colleagues, any public use of the invention, any offer for sale, or the invention was otherwise available to the public.

**5.4.2** Accordingly, for the reasons stated in this Section, in no event shall any Invention or Work of Authorship be published in any form, or disclosed in any form to any third party who is not FMOLHS Entity Team Member or Other Individual bound by a written confidentiality agreement with FMOLHS Entity, unless and until such Invention or Work of Authorship has been disclosed in writing to the Office of Research as provided in Section 7.2. below, and FMOLHS has provided written authorization for such publication or disclosure. FMOLHS Entity shall have the right to prohibit the oral or written disclosure of any Invention or Work of Authorship that contains Confidential Information. Further, Inventors and Authors may be required to enter into a confidentiality agreement with FMOLHS Entity with respect to any such Invention or Work of Authorship that contains Confidential Information that FMOLHS decides to exploit and for which a decision has been made by FMOLHS not to seek patent protection or publication.

**5.4.3** FMOLHS will make every effort to expedite the evaluation process when FMOLHS Team Member indicates a compelling need for rapid publication.

**5.4.4** The following notice is to be applied to Works of Authorship owned by FMOLHS or its Sponsored Organizations:

- Copyright © [Year] [Franciscan Missionaries of Our Lady Health System, Inc. or the legal name of the Sponsored Organization] All Rights Reserved.
- The date in the notice should be the year in which the work is first published.

## **5.5 Trademarks**

**5.5.1** FMOLHS Entity Trademarks may be used only as permitted in writing.

FMOLHS Entity Trademarks may not be used in connection with the transfer, dissemination, display, advertising, sale or gift of any goods or services provided by FMOLHS Entity Team Member or Other Individual on their own behalf.

**5.5.2** FMOLHS Entity Trademarks may not be used to indicate FMOLHS Team Member's affiliation except as otherwise permitted by FMOLHS.

## **5.6 Third Party Intellectual Property.** FMOLHS Team Members and Other

Individuals will respect the Intellectual Property rights owned by FMOLHS and third parties, and not infringe such Intellectual Property rights.

## **6. Collaborations and Sponsored Research**

**6.1 Collaborative Research.** Where a FMOLHS Entity participates in collaborative research (as opposed to sponsored research addressed in Section 6.3. below) with non-FMOLHS Entity investigators at universities, medical centers and other research institutions, or receives grants or other financial support from government agencies or private industry, other than LSU, the written agreements underlying these collaborations and sponsorships shall be treated as set forth below:

**6.1.1** All Confidential Disclosure Agreements, Non-Disclosure Agreements, Sponsored Research Agreements, Material Transfer Agreements, Laboratory Services Agreements, Research Service Agreements, License Agreements and other documents that propose agreements with research institutions, medical centers, private industry or universities involving Intellectual Property owned by FMOLHS Entity or the possibility of Intellectual Property being developed, must be approved in advance in writing by appropriate officers of FMOLHS in order to ensure protection of FMOLHS Entity Intellectual Property.

**6.1.2** FMOLHS Entity shall retain ownership of all documents, notebooks, records and other tangible evidence, whether in electronic or other format, of research conducted at any FMOLHS Entity, by FMOLHS Team Members or by Other Individuals.

**6.1.3** Publication of results is subject to the provisions in Section 5.4. Accordingly, the right to publish results of such research must be requested of FMOLHS sufficiently in advance of the publication to allow appropriate protection to be obtained for patentable Inventions.

**6.2 Proprietary Information of Third Parties.** Where written agreements provide that proprietary information of third parties collaborating with a FMOLHS Entity or sponsoring research is being provided to a FMOLHS Entity, such proprietary information shall be specifically identified in the written agreement, and FMOLHS Entity shall not assert ownership of the specifically identified proprietary information. Notwithstanding the foregoing, as between FMOLHS Entity and any FMOLHS Team Member or Other Individual, any and all Intellectual Property arising from such research, other than the proprietary information identified in the written agreement, shall be owned by FMOLHS Entity.

**6.3 Sponsored Research.** FMOLHS Entity may agree to assign its ownership of Intellectual Property to a third party according to the terms of a written research agreement approved by FMOLHS Entity and executed by the appropriate parties. An example of such an agreement might be a sponsored research agreement where the third party provides sufficient financial incentives for FMOLHS Entity to prospectively assign its Intellectual Property rights.

## **7. Author and Inventor Rights and Obligations**

Authors and Inventors shall:

**7.1 Confidentiality.** Maintain the confidentiality of, and refrain from oral and written disclosure of any Intellectual Property until disclosure to the Office of Research, which may grant written permission to proceed with any disclosure to third parties.

**7.2 Disclosure of Intellectual Property.** Thoroughly and accurately disclose all Intellectual Property to the Office of Research, including an identification of all Authors or Inventors, and a summary of the concepts, relevant data, observations and possible general claims, disclosure of all relevant prior art, manuscripts and drafts in a Publication Disclosure or Invention Disclosure form provided by the Office of Research, and submit same to the Office of Research within 30 days after discovery of the Invention or completion of the Work of Authorship, if not already submitted under Section 5.4.

**7.3 Documentation.** Execute any and all documents requested by FMOLHS or a Sponsored Organization to further memorialize the assignment of Intellectual Property affected by this Policy, or otherwise perfect title in the Invention or Work of Authorship, including any patent applications, patents, copyright applications or copyright registrations, to FMOLHS or its Sponsored Organization.

### **7.4 Assistance**

**7.4.1** Assist in the preparation and prosecution of all patent and copyright applications covering the Intellectual Property.

**7.4.2** Provide reasonable assistance to FMOLHS Entity or its designee for the marketing and Commercialization of the Intellectual Property.

**7.4.3** Assist in the defense of all Intellectual Property and comply with all applicable laws and regulations (both foreign and domestic), relating to FMOLHS Entity Intellectual Property derived from government sponsored research or commercially sponsored research agreements.

## **8. FMOLHS Entity Rights and Obligations**

**8.1** After disclosure of Works of Authorship by an Author to Office of Research, FMOLHS Entity shall:

**8.1.1** Within thirty business days of submission of a *Publication Disclosure* pursuant to Section 7.2, notify the Author that:

**8.1.1.1** Publication is approved; or

**8.1.1.2** Further review under Section 5.4 is necessary to protect a potentially patentable Invention from disclosure.

**8.2.** After disclosure of Intellectual Property (other than Works of Authorship) by an Inventor, to the Office of Research, FMOLHS Entity shall, within a reasonable period of time of said Invention Disclosure, pursuant to Section 7.2, notify the Inventor of FMOLHS Entity's intention to file a patent application or otherwise protect, retain title and commercialize the Intellectual Property. FMOLHS Entity in making its determination shall include in its consideration the following:

**8.2.1** Benefits to the community, FMOLHS Entity and the Inventor;

**8.2.2** Whether it can be patented;

**8.2.3** The estimated costs (including but not limited to attorneys' fees and official government fees) of applying for and prosecuting patent application(s) and whether such costs shall be borne by licensees or other third parties;

**8.2.4** The estimated costs of any further development required; and

**8.2.5** Whether there are any other third parties who may claim rights to the Intellectual Property.

FMOLHS Entity may seek professional advice, including legal advice, from such sources as it deems proper in making such determination. If FMOLHS Entity determines that a patent application should be pursued, FMOLHS Entity shall proceed as soon as practicable with the patent application.

**8.3** Where FMOLHS Entity elects not to exploit or to terminate exploitation of the Intellectual Property, FMOLHS Entity shall notify the Inventor in writing as soon as practicable. FMOLHS Entity may in its discretion, waive, transfer or license to the Inventor(s) the Intellectual Property, in which case the Inventor shall then be free at his or her own expense to pursue the exploitation of Intellectual Property as further provided herein, except that the Inventor and the Invention shall be subject to Section 9, "Assignment Back to Inventor."

**8.4** FMOLHS Entity shall distribute Net Proceeds to the Inventor as set forth in Section 11.

**8.5** FMOLHS Entity may Commercialize FMOLHS Entity Intellectual Property directly or with the help of affiliates or third parties by, for example, contracts or by establishing or expanding corporations, partnerships, or other commercial enterprises. In such cases, FMOLHS Entity and/or other third parties may receive and hold equity shares in companies as vehicles for the Commercialization or investment of FMOLHS Entity Intellectual Property.

**8.6** Nothing in this Policy shall be construed to prevent FMOLHS Entity from having the right to make, use, license, assign or sell to a third party (including another FMOLHS Entity) some or all of FMOLHS Entity's rights in any Intellectual Property.

**8.7** FMOLHS will determine who is to prepare and prosecute all patent, trademark, or copyright applications, as well as any matter related thereto. Upon disclosure of FMOLHS Entity

Intellectual Property to the Office of Research, FMOLHS will determine whether to file a patent, trademark, or copyright application, publish a paper or abstract, or maintain the property or information as a trade secret. The FMOLHS Legal Services Department or its designee will select the attorney or law firm that is to prepare and prosecute all patent, trademark or copyright applications. A FMOLHS Entity Team Member may not select outside consultants, attorneys, accountants, or any other service provider, without the express written permission of FMOLHS.

**8.8** FMOLHS reserves the right to determine whether all Author(s) and/or Inventor(s) are in fact legally inventors or authors for statutory Intellectual Property protection purposes. If counsel determines any one or more of the creators are not legally an inventor or author, FMOLHS reserves the right to exclude such person(s) from the statutory Intellectual Property protection, and in the case of Inventors, to redistribute the claimed percentage share of the Net Proceeds from such excluded person(s) to legal Inventors in accordance with this Policy.

**8.9** All decisions of and review by a FMOLHS Entity may be delegated to a FMOLHS Entity committee or designee chosen by FMOLHS Entity.

## **9. Assignment Back to Inventor**

**9.1** In the event that FMOLHS Entity elects not to exploit, or to terminate exploitation of an Invention, and has elected to assign, transfer or license such Invention to the Inventor(s), FMOLHS Entity shall send written notice thereof to the Inventor(s), after which the Inventor(s) is (are) free to file or continue to prosecute a patent application at his/her own expense, provided that the Inventor promptly notifies the Office of Research of his/her intent to pursue the Intellectual Property. In this case, FMOLHS Entity shall assign and transfer all right, title and interest to the Inventor(s) under an appropriate agreement subject to:

- 9.1.1** Any rights or interests that a third party may have acquired in the Intellectual Property prior to such transfer;
- 9.1.2** Any restrictions or conditions imposed by agreements with third parties under whom the Intellectual Property was created;
- 9.1.3** Any obligation that the Inventor may have to reimburse or pay FMOLHS Entity for any past or future use of FMOLHS Resources for the exploitation of the Intellectual Property;
- 9.1.4** Granting FMOLHS and its Sponsored Organizations an irrevocable, perpetual, non-exclusive, nontransferable, worldwide, fully paid-up license to make, use, license, sell, and prepare derivative works based on the Intellectual Property or to have a third party make, use, license, sell, and prepare derivative works based on the Intellectual Property for a FMOLHS Entity in the course of activities for a FMOLHS Entity;
- 9.1.5** Licenses held by FMOLHS Entity in any Prior Development(s);

**9.1.6** Reimbursing FMOLHS Entity, subject to a payment schedule, for expenses incurred up to the point of assignment and transfer, in the event that revenue is realized from any such assigned Intellectual Property by the Inventor(s) subsequent to the assignment and transfer; and

**9.1.7** Any additional restrictions or conditions that FMOLHS Entity may impose.

## **10. Waivers and Disputes**

**10.1 Waivers.** Waivers of any part of this Policy shall be considered in compelling circumstances where such request is submitted in writing to the Office of Research, identifies the provision of this Policy to be waived and is supported by detailed reasons for such request. The request should identify the benefits to FMOLHS of such waiver, how the waiver shall advance the mission and vision of FMOLHS as well as all potential effects, positive and negative, which such waiver could have on FMOLHS and its research and other activities. Waivers under this Policy shall be considered by FMOLHS, and shall be subject to approval by the chief executive officer of FMOLHS or his designee, whose decision shall be final. A waiver of any provision of this Policy shall not be construed or interpreted as a waiver of any other provision of this Policy and all other provisions shall be maintained.

**10.2 Disputes.** Disputes arising from the administration or interpretation of this Policy shall be resolved by a review committee of three appointed by FMOLHS Chief Executive Officer. The decision reached by this committee shall be final and binding and subject only to approval by the FMOLHS Chief Executive Officer.

## **11. Fee Schedule**

**11.1 Disbursements of Net Proceeds.** FMOLHS shall disburse Net Proceeds only to Inventors or Authors whose Intellectual Property was *not* created as a result of a request by a FMOLHS Entity to perform work, or under its direction, nor falls within the scope of employment or other activities expected to be performed by the Inventor or Author while engaged in services for a FMOLHS Entity. Such distributions shall occur once per year, based on Net Proceeds received during the prior 12 months (the “Proceeds Period”).

### **11.2 Distribution.**

**11.2.1** Net Proceeds for Inventions or Works of Authorship described in Section 11.1 shall be distributed to the Inventor or Authority for those Inventions or Works of Authorship commercialized by The Innovation Institute:

Inventor or Author
40%

**11.2.2** In the event that there is more than one Inventor or Author, each Inventor

or Author's share shall be an equal proportion of the total Inventor or Author share, unless otherwise agreed to in writing by all of the co-Inventors.

**11.2.3** An Inventor or Author leaving the employment of a FMOLHS Entity or ceasing to be affiliated with FMOLHS or a Sponsored Organization as Other Individual prior to any actual distribution of Net Proceeds for the Proceeds Period, shall receive 30% of the Inventor or Author share of the Net Proceeds to which they otherwise would have been entitled from the Intellectual Property for which they are the Inventor or Author.

**11.2.4** In the event of the Inventor or Author's death prior to any actual distribution of Net Proceeds for the Proceeds Period, the amount allocated to him or her shall not be reduced and shall be considered part of the decedent's estate.

**11.2.5** FMOLHS Entity reserves the right to suspend distribution of the Net Proceeds or certain Net Proceeds where there is reason to believe that substantial deductible Direct Costs will be incurred in the near future. FMOLHS shall inform the Inventor(s) or Author(s) of such decision and provide an annual accounting of gross revenues and Net Proceeds to the Inventor(s) or Author(s).

**11.2.6** For clarity, only Inventors or Authors whose Inventions or Works of Authorship fall within the provisions of Section 11.1 are entitled to any distribution of Net Proceeds under this Policy (and not creators of any other Intellectual Property, for example, the following would not receive distributions: Authors whose works are Works Made for Hire under the Copyright Law; creators of Trademarks or Confidential Information; Inventors or Authors whose Inventions or Works of Authorship were created as a result of requests or direction from a FMOLHS Entity or which otherwise fall within the Inventor's or Author's scope of employment or other activities expected to be performed while engaged in services for a FMOLHS Entity.)

**11.3** If contracts or other arrangements with third parties provide for a definition of or distribution of Net Proceeds contrary to this IP Policy, this IP Policy shall override and govern. For the purposes of clarity, all payments to third parties (including companies described in Section 8.5) shall be deducted from Net Proceeds prior to distribution pursuant to Section 11.2.

## **12. Scholarly Works**

**12.1** All original Works of Authorship including works made for hire are intended to be covered by this policy, provided, however, it is not the intent of this policy to affect the tradition of scholarly and purely academic composition by the Author of such work. As such Non-FMOLHS Scholarly Works shall be exempt from this Policy. FMOLHS shall review and determine the claim of any Author that a particular work of authorship qualifies for exception

from this Policy on the basis that it is a Non-FMOLHS Scholarly Work. Within 30 business days of submission of a request to publish by an Author, FMOLHS shall advise the Author that such Work of Authorship is a Non-FMOLHS Scholarly Work, publication is approved or that further review under Section 5.4 of this Policy is necessary to protect a potentially patentable invention from disclosure.

**13. Confidential Information**

**13.1** Neither Team Members nor Other Individuals will use for their own personal benefit, nor disclose, communicate, publish, or divulge to, or use for the direct or indirect benefit of any person or entity, or authorize anyone else to disclose, communicate, publish, divulge or use, any Confidential Information, except (i) as specifically required to conduct business of a FMOLHS Entity, or (ii) as expressly authorized in writing by FMOLHS Entity. The provisions of this Section will apply during and after FMOLHS Team Member or Other Individual’s employment or affiliation with FMOLHS or a Sponsored Organization and will be in addition to (and not a limitation of) any legally applicable protection of FMOLHS Entity’s interest in Confidential Information.

**13.2** Team Members and Other Individuals shall comply with the **FMOLHS Code of Conduct**.

**14. Termination or Amendment of Policy**

**14.1** This Policy may be amended or terminated, in whole or in part, at any time by FMOLHS. Upon reasonable notification, such amendments or termination shall be binding upon FMOLHS Team Member and Other Individual.

**15. Severability**

**15.1** If any court of competent jurisdiction holds any provision of this Policy invalid or unenforceable, the other provisions of this Policy will remain in full force and effect. Any provision of this Policy held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

**STATUTORY/REGULATORY AUTHORITY:**

N/A

**ATTACHMENTS:**

N/A

