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CATEGORY: Part I - Ends
SUBJECT: **INTELLECTUAL PROPERTY**

1. Policy

This Intellectual Property Policy applies to all of HSN Person.

HSN recognizes in the course of its activities and practice that Intellectual Property may be developed by HSN Person on which intellectual property protection (for example patent protection) may be sought. This Intellectual Property Policy seeks to:

- a) Encourage and promote the disclosure of Intellectual Property.
- b) Provide a procedure whereby Intellectual Property can be protected and commercialized.
- c) Reward the ingenuity of HSN Person.

HSN shall manage all matters related to this Policy. However, HSN may enter into an agreement with a third party (e.g. HSNRI) to manage any matter related to this Policy including, but not limited to, review of invention disclosures, filing and management of patent applications, and commercialization activities (e.g. licensing to external parties).

2. Definitions

“HSNRI” refers to Health Sciences North Research Institute;

“Author” means a HSN Person who individually or jointly with others creates Intellectual Property other than an Invention;

“Direct Costs” means the costs which are directly attributable to the evaluation and commercialization of IP and include but are not limited to, government and professional fees incurred to obtain, maintain and enforce rights relating to the IP, as well as to payments made to other companies, firms or institutions to evaluate and/or commercialize IP;

“Gross Revenues” means all royalties, payments or benefits actually received in relation to an Intellectual Property, but shall not include any equity in any entity until such time as the equity is liquidated or converted to cash;

“HSN” refers to Health Sciences North;

“HSN Dependent IP” means IP (other than Institutional IP) that is conceived or reduced to practice by a HSN Person making use, directly or indirectly of HSN Resources, and that relates to Research Works;

“HSN Person” refers to any person with a contractual arrangement with HSN, or who otherwise has access to use HSN Resources, including without limitation, scientists, researchers, investigators, research associates, research technicians, management staff, administrative staff, support staff, students, graduate students, post-doctoral fellows, or any other employee, appointment, volunteer, Officer, Director or Member of HSN. In the case of more than one HSN Person, the term should be understood to be plural;

“HSN Resources” means any asset (e.g. tangibles, intangibles or individuals) that is controlled, owned, operated, employed, funded or administered by HSN. Non limiting examples include: HSN Person, stipends, funding, salary, student fellowships, research grants, facilities, equipment, reagents, tissue samples, cell lines, software, databases, business records, medical records, clinical data, research results, IP, and Confidential Information;

“Independent IP” means IP (other than HSN Dependent IP and Institutional IP) developed, conceived or reduced to practice by a HSN Person (whether alone or together with others) if conceived or reduced to practice, without the use, directly or indirectly, of HSN Resources;

“Institutional IP” means IP developed, conceived or reduced to practice by a HSN Person (whether alone or together with others) if conceived or reduced to practice in whole or in part:

- a) under or subject to a Research Contract; or
- b) related to Institutional Works;

“Institutional Works” means any item created by a person hired by HSN for a specific purpose (e.g. consultants, contractors, contract engineers, entities) or any item created by a HSN Person under specific HSN direction or under a Research Contract. Examples of Institutional Works include, without limitation, formulae, processes, ideas, algorithms, computer software, training programs, and any other direct or indirect results of the services performed by a person, including a HSN Person, for HSN (including, where applicable, all scripts, models, specifications, source code, design documents, creations, artwork, text, graphics photos, pictures and music), in-licensed projects, and research independent of HSN academic or sponsored research activities;

“Intellectual Property” (“IP”) means any and all of:

- a) inventions and discoveries (hereinafter "Invention"): any new and useful art, process, method, use, machine, manufacture or composition of matter or any improvements thereof, whether or not patentable, which may include without limitation, patents, formulae, plants, animals, animal models, tissues, organs, cell lines, antibodies and other biological materials, chemicals and medical devices, uses thereof, and methods or processes for the manufacture thereof;
- b) Copyright: any new literary, dramatic, musical or artistic work, including without limitation, computer software, drawings, designs;
- c) Industrial Design: features of shape, configuration, pattern or ornament and any combination of those features that, in a finished article, appeal to and are judged solely by the eye;
- d) Trade Secrets: a plan, program or process, tool, mechanism or compound, that is secret, capable of industrial or commercial application, and the possessor of which has an interest (e.g. an economic interest) worthy of legal protection;
- e) Trade-marks: any mark that is used for the purpose of distinguishing wares or services manufactured, sold, leased, hired or performed by one person from another;
- f) Rights in Data, whether or not registered, e.g., clinical data, medical records and research results (which may be of a scientific, technical, business, marketing or social nature);
- g) Rights in domain names, URLs, brands, and official marks;
- h) Rights in physical objects related to the Intellectual Property, e.g. digital media, databases, reports, cell lines, tools, prototypes, devices, machines; and
- i) information technology that does not fall within inventions or copyright;

"Inventor" means a HSN Person who individually or jointly with others develops or otherwise makes an inventive contribution (as defined in law) to the creation of an Invention. "Inventor" and "Author" are referred to in this Intellectual Property Policy in their singular form. However, in the case of more than one Inventor or Author, the term should be understood to be plural (i.e. Inventors, Authors).

"Net Revenues" means Gross Revenues less Direct Costs;

"Research Contract" is a legal agreement between HSN and an entity (including for-profit and non-profit entities) by which HSN carries out non-clinical or clinical research for such entity and/or where such entity participates in research with HSN, HSN Person, or otherwise utilizes HSN Resources, where the entity reserves or is granted rights with respect to the Intellectual Property arising from the contracted research. Non-limiting examples of Research Contract include Sponsored Research

Agreements and (Research) Service Agreements, but do not include Research Grants from any grant funding agencies (e.g. CIHR, NIH).

“Research Works” means documented outcomes or tangible materials created by HSN Person arising from independently conceived experimental work, studies or other discovery activities. For clarity, Research Works excludes Institutional Works.

3. Obligation to Disclose

HSN Person shall disclose, in confidence and in writing, to HSN each Independent IP and HSN Dependent IP created by said HSN Person through a disclosure document as prescribed by HSN.

4. Ownership:

- a) HSN shall own, and HSN Person hereby assigns to HSN, all of his/her right, title and interest in an Institutional IP and a Dependent IP.
- b) Upon review of the disclosure document described in Article 3, HSN will:
 - i. Determine whether the IP disclosed is an Independent IP, HSN Dependent IP or Institutional IP, and, in the case of Institutional IP, shall further determine who are the Inventors of said Institutional IP.
 - ii. Where HSN determines that the disclosed IP is Independent IP, ownership of the Independent IP shall remain with its creator and the HSN Person shall have the right to make his/her own arrangements at his/her own expense to protect, register and commercialize the Independent IP.
 - iii. Where HSN determines that the disclosed IP is HSN Dependent IP and where the HSN Person that created the HSN Dependent IP wishes to protect, register and/or commercialize the developed IP at his/her own expense, then prior to any such protection, registration or commercialization, said HSN Person shall enter into an agreement with HSN, which agreement shall include terms providing that:
 - A. HSN will assign (subject to any rights that may be granted to HSN as required by this policy), all right, title and interest in the HSN Dependent IP to the HSN Person that created it, and HSN shall be entitled to the equal sharing of Net Revenues;
 - B. the HSN Person shall inform HSN, in writing, about the filing of any application to protect or register said IP within three (3) months of its filing; and

- C. the HSN Person shall inform HSN, in writing, about any revenue obtained from the commercialization of the assigned HSN Dependent IP.
- iv. Where HSN determines that the disclosed IP is HSN Dependent IP and where the HSN Person that created the HSN Dependent IP wishes to have HSN assume the responsibility and expense of protecting, registering and/or commercializing said HSN Dependent IP, and where HSN agrees to assume said responsibility, then said HSN Person shall enter into an agreement with HSN, which agreement shall include terms providing that:
 - A. said HSN Person has assigned all right, title and interest in the HSN Dependent IP to HSN, and said HSN Person shall be entitled to the equal sharing of Net Revenues; and
 - B. said HSN Person shall agree to waive all moral rights to any Intellectual Property that is assigned to HSN.
 - C. HSN shall own, and HSN Person hereby assigns to HSN, all right, title and interest in Institutional Works.
 - D. HSN Person agrees, at no cost, to execute and deliver, upon request by HSN, its successors and assigns, all lawful papers; and to provide all reasonable assistance to HSN, its successors and assigns, in obtaining and enforcing proper title in and protection for IP owned by HSN under Article 4.

5. Collaborations

Prior to starting collaboration or when maintaining collaboration initiated prior to becoming a HSN Person with a non-HSN person (i.e. a person with no appointment to, employment at, or any affiliation with, HSN), a HSN Person shall:

- a) notify the non-HSN person of the terms of this Intellectual Property Policy;
- b) request the same information of the non-HSN person;
- c) notify HSN of the collaboration; and
- d) query if HSN has an agreement that deals with intellectual property with the non-HSN person or the institution to which the non-HSN person is affiliated, appointed or employed.

If the response to item (d) is "No", then the HSN Person and HSN shall negotiate the terms of an agreement dealing with Intellectual Property with the non-HSN person and the institution to which the non-HSN person is affiliated, appointed or employed.

If the response to item (d) is “Yes”, then the HSN Person may proceed to collaborate with the non-HSN person.

6. Research Contract

No Research Contract (such as Sponsored Research Agreements or Service Agreements) may be entered into by any HSN Person with any Research Partner, unless it is formalized in writing and signed by the HSN Chief Executive Officer (or designate).

- a) HSN shall review and approve all Material Transfer Agreements (MTAs) involving the transfer of research reagents, clinical samples, equipment or data to any external academic/research organization or private sector Research Partner.
- b) HSN shall review and approve all Confidential Disclosure Agreements / Non-Disclosure Agreements (CDA/NDA) governing the disclosure of any HSN Confidential Information to non-HSN external parties for whatever purpose.
- c) For purposes of clarity, HSN Persons may not negotiate or accept any arrangement or offer of financial or other support from a source, other than HSN for the development, protection, patenting or licensing of Intellectual Property, or in respect of the transfer of any HSN materials or HSN Confidential Information to a non-HSN third party without first obtaining the written consent of HSN through the HSN Chief Executive Officer (or designate).
- d) Unless a contractual obligation to a Sponsor contains provisions to the contrary, all research results produced by an HSN Person in the course of conducting a Sponsored research project shall be the property of HSN.

7. License to HSN

For Intellectual Property that is owned by a HSN Person pursuant to this Intellectual Property Policy, said HSN Person shall grant, and hereby does grant, to HSN a non-exclusive, free, irrevocable, indivisible, and non-transferable right to use the Intellectual Property that is owned by said HSN Person pursuant to this Intellectual Property Policy, whether registered or not, or any product derived there from, for non-profit research, educational and administrative purposes. In the case of Copyright, the Author waives his/her moral rights to the licensed Copyright.

8. Commercialization

HSNRI shall have the primary responsibility for negotiating and formalizing all licenses and/or other agreements pertaining to the commercialization or exploitation of IP that is owned by or assigned to HSN.

9. Division of Net Revenues between HSN Person and HSN:

- a) In the case of HSN Dependent IP assigned to HSN, the Inventor or Author of the HSN Dependent IP shall be entitled to receive 50% of the Net revenues accruing from the commercialization of the HSN-dependent IP. If an Inventor or Author of IP leaves HSN, his/her portion of revenues will follow him/her. For clarification, in the case of multiple Inventors or Authors, the Inventors or Authors share is 50% of the Net Revenues to be divided amongst the Inventors or Authors, and HSN share is 50%.
- b) In the case of HSN Dependent IP not assigned to HSN, HSN shall be entitled to receive 50% of Net Revenues accruing from the commercialization of the HSN Dependent IP.
- c) In the case of IP re-assigned to Inventors or Authors, HSN's share of any Net Revenues shall be 50%, except that any revenue from the re-assigned HSN Dependent IP shall first be used to pay any Direct Costs assumed by HSN.
- d) In the case of Institutional IP, HSN shall be entitled to 100% of the Gross Revenue.

10. Publications

- a) Subject to Article 9 (b), HSN Person are free to publish their research results (e.g. in a grant application, thesis, or journal articles). Prospective Inventors should be aware that patent legislation in most jurisdictions consists of a first-to-file system requiring novelty and uniqueness. Generally speaking, an invention cannot be made public (through oral or written communication) before the effective filing date of a patent application (certain limited exceptions may exist in a few jurisdictions). HSN Person are strongly advised to be diligent about ensuring that the filing of a patent application precedes publication or public disclosure (e.g. discussion with prospective companies or colleagues).
- b) With respect to IP that is owned by, or has been assigned to, HSN, a HSN Person who developed said IP shall notify HSN at least four (4) weeks in advance of any public disclosure (e.g. manuscript, oral presentation) of said IP, or any improvements thereof. Moreover, HSN Person shall take exemplary measures to protect the patentability (or any other mechanism of protection) of the developed IP or any improvements. Exemplary measures include, without limitation, redacting the publication or presentation to conceal the inventive concept of the invention, filing a provisional patent application prior to presentation or publication, ensuring that grant reviewers, committee members or any other third party that may review said IP sign confidentiality/non-disclosure agreements.

11. Disputes

If a dispute should arise between a HSN Person and HSN with regard to any of the matters outlined herein, including, without limitation, where IP was made or the ownership of IP developed in the course of normal working activities or using HSN Resources, and if this cannot be resolved amicably, then the issue shall be referred for decision to a single mutually agreed upon Arbitrator whose decision on the matter shall be final and binding, in accordance with the provisions of the *Arbitration Act, 1991, S.O. 1991, c.17*, as amended from time to time. Each party involved in this dispute shall be in charge of his/her/its own expenses, including legal expenses, regardless of the decision of the Arbitrator. The non-successful party to the arbitration, however, shall be responsible for paying the cost of the Arbitrator.

12. Changes

This Intellectual Property Policy may be revised at a future time. Intellectual property and patent agreements entered into under the existing guidelines will be maintained and honoured.

13. Force of Policy

Unless otherwise provided for in this Intellectual Property Policy or specifically confirmed in writing by the HSN Chief Executive Officer, no agreement shall override this Intellectual Property Policy.