1.0 Purpose

The Hospital for Sick Children (the Hospital) is recognized as one of the world’s foremost paediatric health-care institutions and is Canada’s leading centre dedicated to advancing children’s health through the integration of patient care, research and education. Integral to this mission is the sharing of knowledge generated by individuals who consistently pioneer advances in child health care. The purpose of this policy is to create a framework around ownership and commercialization of the remarkable discoveries made at the Hospital in order to encourage and facilitate knowledge transfer for the benefit of the Hospital, its collaborators, the creators, and the public.

2.0 Definitions

2.1 Intellectual Property

“Intellectual Property” (IP) shall mean:

2.1.1 the intangible or intellectual nature of works or creations that are new, inventive, useful and/or otherwise original;

2.1.2 any tangible expressions thereof;

2.1.3 the rights arising from the legal protection of intellectual property (copyright, trademarks, patents, industrial designs and integrated circuit topographies);

2.1.4 know-how and other trade secrets; and

2.1.5 “Institutional Works”, which means all tangible materials and work product generated by Creators or other persons hired, commissioned, retained or otherwise engaged by the Hospital for a specific purpose and under specific institutional direction. Examples of Institutional Works include, but are not limited to, manuals, reports, processes, software, devices, programs or services whether or not such works are subject to intellectual property protection.

With the exception of copyright to academic and scholarly works, which are expressly excluded from this definition and are not owned by the Hospital, Intellectual Property includes but is not limited to technology, lab notebooks, technical information, formulae, computer software and hardware, drawings, graphics, designs, concepts, ideas, apparatus, processes, and compositions of matter, research tools (including without limitation, biological materials and other tangible research property and devices), and all original literary, dramatic, musical, and artistic works (including without limitation, books, architectural works, choreographic works, and cinematographic works), computer programs, all print, multimedia electronic and audiovisual parent/patient information materials, manuals, program packages, and educational material.
2.3 Industry Partnerships and Commercialization

Industry Partnerships and Commercialization Office (IP&C) is the office responsible for managing the Hospital’s IP. This includes reviewing IP disclosures, protecting IP rights, and having the authority to make decisions on all issues relating to IP, including, but not limited to, patenting, industrial designs, copyright, securing trademark protection, licensing marketing and Commercialization. IP&C resolves issues arising from the application of this policy.

2.4 Commercialization

Commercialization is the process of transforming the Hospital’s IP into a business activity. This process includes, but is not limited to, seeking legal protection of the IP, and/or marketing, licensing, assignment, creation of start-up companies, manufacturing, publishing and sales activities, whether for profit or not.

2.5 Creator

Creator is anyone:

a) who participates in work, study, research or development, teaching, administrative or other activities at or under the auspices of the Hospital, and

b) who invents, conceives, makes, discovers, develops, improves or is an author of any IP:

i) using, in any way, resources owned, operated or administered by the Hospital and/or funds of, or administered by, the Hospital; or

ii) while acting within the scope of such Creator’s role, duties or employment, whether or not using Hospital resources.

For greater certainty, a person is a Creator of IP subject to the terms of this Policy whether or not he or she is Hospital Staff, is Hospital Staff on study leave or seconded to another institution, has a contractual arrangement with the Hospital, is a student registered in a training program at the University of Toronto or other educational body with which arrangements have been made for training within the Hospital, is a volunteer, or is visiting staff on leave or seconded from another institution.

2.6 Gross Income

Gross Income means license fees, annual fees, royalty or milestone payments, or other income generated pursuant to a Commercialization Transaction received by the Hospital, calculated before any expenses are deducted.

2.7 Net Income

Net Income means, in respect of particular IP the amount by which:

a) Gross Income (but only to the extent that (i) the Gross Income is received in the form of cash or (ii) Gross Income which is received in the form of Non-Cash Consideration is disposed of for cash proceeds (in which case the value of the Gross Income shall be deemed to be the amount of the cash proceeds received on the disposition of such Non-Cash Consideration)), exceeds

b) all expenses incurred by the Hospital and/or any entity that has served as the Hospital’s commercialization agent in connection with the commercialization of the IP including but not limited to patenting and legal expenses.

2.8 Ownership

Ownership means the exclusive right to make, construct, use, sell, produce, reproduce, publish, distribute, publicly perform, publicly display, or prepare derivative works of the IP as applicable.
2.9 Staff
Staff means all Hospital employees, members of the medical, dental, professional or scientific staff of the Hospital, as well as nurses and housestaff, all as defined in Hospital Bylaws, Part II, Articles 12 and 16.

2.10 Non-Cash Consideration
Non-Cash Consideration means securities or any other form of non-cash consideration received by the Hospital as consideration or partial consideration in a Commercialization Transaction.

2.11 Commercialization Transaction
Commercialization Transaction means a contract pursuant to which IP rights are licensed or transferred in return for cash and/or Non-Cash Consideration.

3.0 Policy
This policy applies to all Creators of IP. For greater certainty, the period of application of the IP ownership and resulting benefit rights shall survive the termination of the Creator’s employment or association with the Hospital.

3.1 Ownership of IP
3.1.1 In the absence of a prior written agreement to the contrary and except as set out in section 3.1.2 herein, all IP that is invented, conceived, made, discovered, developed, improved or authored by Creators, within the scope of their role as a Creator (as defined in this Policy), is owned by the Hospital, and any moral rights contained therein shall be waived in favour of the Hospital.

3.1.2 As per the definition of Intellectual Property in section 2.1, the Hospital shall not own copyright to academic or scholarly works, including articles, papers, or theses written by Creators for publication at conferences, in scientific journals or in pursuing an academic degree. However, it is important that all Intellectual Property contained in such literary works is appropriately protected and that contractual commitments are complied with before public disclosure occurs, such as at a conference, in a paper or in any communication to a person or organization external to the Hospital. The Hospital retains the right to delay the Creator’s publication (or oral presentation) for a reasonable time period not to exceed ninety (90) days and such delay is separate and apart from any delays permitted or required by contractual commitments.

3.1.3 All Creators and Staff must obtain permission prior to using, disseminating, providing, transferring or purporting to transfer or grant rights to IP owned by the Hospital. All requests must be addressed in writing to the Executive Director, IP&C.

3.2 Decision not to commercialize IP
Where the Hospital decides not to continue to commercialize or otherwise protect IP, upon request by the Creators it will assign the Hospital’s interest in the IP to the Creator(s) on terms and conditions to be negotiated, subject to any third party rights and provided that:

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### 3.3 Decision to commercialize IP

#### Responsibility of Creators

3.3.1 Creators shall disclose all Hospital IP to the IP&C in a thorough and timely manner.

3.3.2 Creators shall assist the IP&C as necessary in the Commercialization of the IP and sign at IP&C’s request any documents including assignments and waivers that are necessary to give effect and confirm Hospital’s ownership of IP.

3.3.3 Creators shall keep proper documentation with respect to the IP, maintain complete, accurate and dated records, and shall arrange for the retention of all records and documents necessary for the protection of the Hospital’s interest in the IP. Records should be witnessed wherever possible.

3.3.4 Creators shall comply with the terms and conditions of all contracts with third parties related to the IP (e.g. sponsored research agreements) and with applicable laws.

3.3.5 Creators shall disclose all Conflicts of Interest as described in the hospital “Conflict of Interest Policy”

3.3.6 Creators shall fully disclose the identity and contribution of all creators and shall give appropriate recognition to the contribution of all individuals who contributed to the IP (e.g. co-creator status or recognition through acknowledgement or citation where applicable).

### 3.4 Revenue Sharing

3.4.1 All Gross Income derived by the Hospital in respect of Institutional Works shall be retained by the Hospital. No Net Income will be shared with the Creators of Institutional Works.

3.4.2 With the exception of Gross Income derived by the Hospital in respect of Institutional Works, which is subject to section 3.4.1 above, any Gross Income generated from the Commercialization of IP by the Hospital in the form of cash proceeds (including Non-Cash Consideration which is disposed of, directly or indirectly, for cash proceeds) will be distributed as follows:

3.4.2.1 The Hospital shall firstly, and in priority to the entitlements of any other parties, receive an amount equal to the expenses incurred in connection with the Commercialization of the IP including but not limited to patenting and legal expenses.
3.4.2.2 After payment of the amount referred to in section 3.4.2.1, the Creator(s) shall receive 50% of the Net Income annually. If there is more than one Creator, the 50% shall be shared between the Creators as agreed upon among themselves. The Hospital retains the remaining 50%.

3.4.2 These provisions for the distribution of Net Income will be reviewed periodically by the Hospital and are subject to being altered, replaced or deleted by the Hospital, at its sole discretion, upon notice to all persons bound by the terms and conditions of the policy. For greater certainty, any such alteration, replacement or deletion may expressly provide that it affects all future entitlements to Net Income, including entitlements associated with IP which has previously been the subject of a Commercialization Transaction.

3.4.3 Subject to the provisions of Section 3.4.2, Creators who are no longer Hospital Staff will continue to receive their portion of the Net Income personally as described above. In the case of the death of a Creator, the portion of his/her Net Income will be directed to his/her estate. Notwithstanding anything contained herein, any entitlement of a Creator to receive payments hereunder after such person has for any reason ceased to be employed by the Hospital shall no longer be based upon the employment relationship.

3.4.4 The provisions for the distribution of Net Income (Revenue Sharing) in this version of the IP policy apply only to income derived from Commercialization Transactions executed after the IP policy was revised in December 2016. Income derived from Commercialization Transactions executed before the IP policy was revised in December 2016 will be governed by the Revenue Sharing provisions of the IP policy that was in effect at the time such Commercialization Transaction was executed. Income derived from an amendment of a Commercialization Transaction will be governed as follows: if new IP is commercialized by the amendment, then the Revenue Sharing provisions of the IP Policy in effect at the time the amendment is executed will apply to income derived from Commercialization of such new IP. In all other cases, income derived from an amendment of a Commercialization Transaction will be governed by the Revenue Sharing provisions of the IP policy that was in effect at the time the original Commercialization Transaction was executed. For the purposes of such prior IP policy, the definition of “Net Income” contained herein shall apply. For greater certainty, no Creator shall be entitled to any amount in respect of Non-Cash Consideration received until such time as the Non-Cash Consideration (or any non-cash consideration received in the case of the sale, transfer or exchange of such Non-Cash Consideration) is disposed of for cash.

3.5 Non-Cash Consideration

3.5.1 The Hospital may, in its sole discretion, acquire Non-Cash Consideration.

3.5.2 The sale, transfer or exchange of Non-Cash Consideration (including, without limitation, the timing, price and all other terms and conditions under which such transaction will be effected) will be at the sole discretion of the Hospital.