

Intellectual Property Right Policy (2017)



All India Institute of Medical Sciences
New Delhi, India

(Implemented on 16th Dec 2017)

1. PREAMBLE

All India Institute of Medical Sciences, New Delhi (hereafter referred as 'AIIMS') was established in 1956 as an institution of national importance by an Act of Parliament with the objectives to develop patterns of teaching in Undergraduate and Post-graduate Medical Education in all its branches so as to demonstrate a high standard of Medical Education in India; to bring together in one place educational facilities of the highest order for the training of personnel in all important branches of health activity; and to attain self-sufficiency in Post-graduate Medical Education.

The Institute has comprehensive facilities for teaching, research and patient-care. As provided in the Act, AIIMS conducts teaching programs in medical and para-medical courses both at undergraduate and postgraduate levels and awards its own degrees. Teaching and research are conducted in more than 42 disciplines. AIIMS leads the Indian field of medical research having a large number of publications in peer reviewed journals by its faculty and researchers every year.

In keeping with global developments in the field of Medical Sciences, AIIMS is committed to research, development of technology and innovation in Medical Sciences. In order to encourage such innovations and their translation into patient care for the larger benefit of humanity, AIIMS has to preserve the fundamental spirit of academic research in Medical Sciences and be an engine for growth towards India becoming a knowledge economy.

Intellectual Property Rights (IPR) is an essential component to preserve the rights of the innovators/inventors and their parent institutions.

The present policy aims to facilitate Intellectual property protection for a novel product/process/work or to keep it in public domain as is deemed fit. The policy should motivate the Faculty/Scientists and researchers of AIIMS to get patent/IPR protection and facilitate technology transfer of their invention.

2. OBJECTIVES

The material put forward in this document relates to an IPR policy (and related administrative Procedures) with the following objectives:

- a) To enable AIIMS to discharge its responsibility of stimulating and encouraging creative/innovative activities in the area of Medical Sciences/Basic Sciences and Technology in the widest sense possible.
- b) To promote academic freedom and safeguard the intellectual property rights of all those who are involved in the creation/invention of intellectual property at the Institute.
- c) To provide an administrative system for ownership of the intellectual property created and owned by the institute.
- d) To establish a mechanism for technology transfer and proportionate share of revenue among valid stakeholders.

- e) To establish a policy for guarding the interests of its employees in their role as authors/editors for ownership of copyright and royalty etc.
- f) To promote fair use of traditional knowledge while recognizing local traditional knowledge stakeholders and benefit sharing.

3. DEFINITIONS

Academic freedom: The freedom of the academic staff of the Institute to conduct their own academic activities including teaching, training, basic and clinical research, and development. They should be free to choose their own research field, pursue self initiated research, and collaborate with others to achieve excellence in and maintain high standards of research.

Activity : Activities related to teaching, research, consultancy, generation and dissemination of information carried out by a person or an Institution independently, or collaboratively.

Associated Agreement: A document created with mutual consent of involved parties defining the rights, roles and responsibilities of each of the parties, for example, Memorandum of Understanding (MoU), Memorandum of Association (MoA), Research Agreement, Consultancy Agreement, Non Disclosure Agreement (NDA), Deed of Recordal, Research Contract, Grant Award Letter etc.

Biotechnology Inventions: Include recombinant products such as vectors, nucleotide sequences, micro-organisms.

Collaborator: Collaborator refers to any Government, quasi-government, public enterprise, non-government or private entities which are involved with AIIMS and its employees in the conduct of the research .The collaborator may or may not fund or part fund the study. The collaborator may be national or international

Faculty: Any person professionally qualified to carry out patient care, teaching, training, and/or research employed at AIIMS either as a whole time employee or as Emeritus or Visiting professor. (Note this definition of faculty is meant only for the purposes of this document and in not intended to replace the definition of faculty in the statutes or other documents of AIIMS).

Intellectual property: means any right to intangible property, including trade secret, trade mark, patent, design, and plant variety as defined under the Copyright Act, 1957, the Patents Act, 1970, the Designs Act, 2000, the Semiconductor Integrated Circuits Layout-Design Act, 2000, and the Protection of Plant Varieties and Farmers' Rights Act, 2001; (reference- The Protection and Utilization of Public Funded Intellectual Property Bill)

Inventor(s): A person or a group of persons responsible for creating an intellectual property (IP).

Material Transfer Agreement (MTA): A Material Transfer Agreement (MTA) is a contract that governs the transfer of tangible research materials between

two organizations, when the recipient intends to use it for his or her own research purposes.

Non-Disclosure Agreement (NDA)/Confidentiality Agreement: the agreement intends to protect proprietary or confidential information among the parties involved in executing a NDA.

Patentee: Patentee is a person who has been granted a patent.

Project staff: means a person employed temporarily on a contract under a research project in a defined capacity to support/carry out part of the research activity or any other activity at AIIMS for a defined period of time.

Revenue: means the amount derived from the technology transfer and commercialization of IP (by the inventor if commercialized by the inventor or by the institute if commercialized by AIIMS), net of taxes, expenses (which may be carried forward from year to year to offset gross revenue) incurred in the IP protection, maintenance and commercialization, and includes, without limitation, proceeds from royalties, profit-sharing, lump sum payments, and sale of rights as applicable.

Sponsor: Sponsor will refer to Government, quasi-government, non-government or private entity whether national or international which funds the research/study/survey conducted at or by AIIMS and its faculty.

Student: A person who has registered or enrolled as a full-time student, part-time student, casual student or exchange student from other universities/colleges for professional and research training.

Supporting Staff: A person, employed full-time or part-time in a research project under defined capacity to support/carry out part of the research activity or other ancillary activities.

Traditional knowledge: The knowledge developed by the indigenous or local communities for the use of a natural resource with respect to traditional practice, food, medicine etc. over a period of time and has been passed from one generation to another traditionally.

Visitor: a person either from India or abroad visiting under a collaborative activity or associated work at AIIMS, New Delhi. It is expected that the visit has been approved by competent authority of the Institute.

Work Commissioned/Outsourced - work commissioned by AIIMS to an consultant/author or group of consultants/authors either employed by AIIMS or invited from outside AIIMS with or without any consideration in cash or kind. Typical examples of AIIMS commissioned works are: a. Design work, b. Artistic Work, c. Medical/Engineering/Architectural Models, d. Computer Software e. Reports based on surveys and analysis, f. Video works.

Work for hire- the work (or a product) originated from AIIMS and is meant for the specific purpose of AIIMS and produced by (a) an consultant/author

during his/her employment at AIIMS or (b) non-employee under contracted work by AIIMS.

4. GENERAL PRINCIPLES

- a. Researchers and Faculty should maintain a laboratory note book while performing research that has the potential to be commercialized and should ensure that it is regularly signed and dated by a senior colleague wherever applicable. This may be required to be produced as evidence in a court of law in case of any dispute.
- b. Activities carried out jointly with other departments, institutions or agencies or under a sponsorship by an agency should be initiated after the governing terms are agreed upon mutually.
- c. IPRs which are barred / exempted under the governing laws of India shall not be taken / permitted for protection by the Institute. Inventors are requested to refer to the IP statutes and other related rules for further confirmation.

5. ADMINISTRATIVE MECHANISM

AIIMS shall establish an 'Intellectual Property Rights and Technology Transfer Division' (herein after referred to as IPR& TT Division) and an 'Intellectual Property management Committee (hereinafter referred to as IPMC)' as per provisions stipulated its Act to facilitate IPR Policy.

- 5.1 IPR & TT DIVISION** will take initiatives for the commercialization under the terms and conditions of the IPR policy and under the guidance of IPMC

5.2 INTELLECTUAL PROPERTY MANAGEMENT COMMITTEE (IPMC)

Intellectual Property Management Committee (IPMC) will be the core administrative body which will be responsible for evolving detailed procedures to facilitate implementation of the IPR policy of AIIMS and carry out related responsibility on behalf of AIIMS. This committee will have the following members:

Chairman	- Dean (Research)	- Ex-officio
Co-Chair	- Sub-Dean (Research)	- Ex officio
Members (4 Nos.)*	- To be nominated by the Director, AIIMS	
Member	- Accounts Officer (Research Section)	- Ex-Officio
Member	- Administrative officer (Research section)	- Ex-officio
Member Secretary	- As appointed by the Director, AIIMS	

***Members of the committee:** Would be selected from amongst the active researchers working in AIIMS in different areas to give a wide perspective and logical inputs to accelerate IPR related activities in AIIMS. One member should have legal background.

5.3. Powers of Intellectual Property Management Committee (IPMC)

Intellectual Property Management Committee (IPMC) will be the core administrative body which will be responsible for evolving detailed procedures to facilitate implementation of the IPR policy of AIIMS. The role of IPMC would be:

- a) to create and finalize procedures and guidelines for implementation of the IPR policy at AIIMS;
- b) to create and finalize draft agreements to facilitate IP protection by AIIMS. The chairperson of the IPMC will be authorized signatory on behalf of AIIMS to sign all agreements/power of attorney/MOU and all documents related to IPR & TT Division;
- c) to facilitate filling of IPs by both the Institute appointed body as well by individual faculty/Staff using their projects and other funding; and formulate programs for educating faculty/students/supporting staff/project staff/visitors about IPR and other associated issues;
- d) to decide on funding of any IPR application from Faculty /scientists/ students/ project staff/ supporting staff/ visitors of AIIMS;
- e) to redress any conflict, grievance regarding ownership of IP, processing of IP proposals, procedures adopted for implementation of IPR policy and interpretation of various clauses of IPR policy.
- f) to investigate the matter of violation/infringement of any intellectual property rights related to AIIMS and make recommendation to the Director for the resolution of such violation/infringement.
- g) to deal with any relevant issues arising out of promotion as well as implementation of IPR policy.
- h) any other task assigned by the appropriate authority (Director, Governing body or Institute Body of the Institute) from time to time.

5.4. Powers to Amend IPR Policy

AIIMS, on the recommendation of IPMC, through its Governing Body (GB), will have the full power to make changes to the IPR policy or bring out a new policy as and when it is felt necessary and also to keep its IPR policy updated in line with the National IPR policy. The changes or the new policy shall be applicable to all faculty/students/project staff/supporting staff/visitors.

6. SCOPE OF ASSERTION OF RIGHTS

- a. For purposes of this Policy, the governance terms will apply to all Intellectual Property (IP), potential IP and other technology or know-how having commercial application.

- b. It is advisable to disclose an invention to the IPR and Technology Transfer Division and seek assistance before the details of the invention are included in any grant application or published or disclosed to an industrial party.
- c. Any waiver of the Institute's rights shall only be effective in writing, signed by the Chairman of the IPR and Technology Transfer Division and approved by the Director, AIIMS before it is operable.
- d. Except as otherwise specified below in the policy, IP created by its employees in the course of their employment or study at AIIMS, commissioned by AIIMS or produced under the terms of a research grant or contract between AIIMS and an external third party shall belong to AIIMS.

7. OWNERSHIP OF IPR

There could be a number of scenarios when an IP is created. The policy will apply to them as follows:

A. VARIABLE-1: IP GENERATION BY INVENTORS AT AIIMS WITH OR WITHOUT AIIMS FUNDING AND IN THE ABSENCE OF ANY OTHER EXTERNAL SPONSOR

- a. Faculty / Scientists / Students / Project Staff / Supporting Staff / visitors of AIIMS can be a part of the invention and IP creation depending on their contribution.
- b. Where there is more than one inventor from AIIMS, the Principal inventor (investigator)/corresponding inventor/author must be a permanent staff of AIIMS.
- c. All Intellectual Property (IP) rights with respect to research carried out by Faculty / Scientists / Students / Project Staff / Supporting Staff / visitors of AIIMS with or without intramural support shall vest in and be the absolute property of the AIIMS.
- d. AIIMS can protect and/or commercialize such IP with its own mechanism or using a third party service provider through Govt. of India approved mechanisms.
- e. Inventors of AIIMS can also undertake protection and maintenance of IP in the name of AIIMS after the approval of IPMC with their own resources for fast track filing in order to get priority. However, for all other official purposes, it would be considered as patent owned by AIIMS.
- f. Steps for commercialization can also be initiated and effected by the AIIMS inventors if IPMC does not agree/does not support financially for technology transfer or if there is an urgency for such technology transfer. In the event of successful commercialization, the inventors shall share the Revenue as provided for hereunder the Section 10 with AIIMS. The expenses towards the protection/maintenance of the IP and technology transfer shall be reimbursed by AIIMS at the rate it would have protected

and maintained the IP with its own mechanism or using a third party service provider through Govt. of India approved mechanisms.

- g. In case of an unfavorable IPMC decision not to protect or maintain the IP, the inventors would have the liberty to treat the IP the way they mutually agree upon without any interference from AIIMS. AIIMS will convey such decision to the inventor in writing.

B. VARIABLE-2: IP GENERATION BY INVENTORS AT AIIMS WITH EXTERNAL SPONSOR

- a. Where IP arises out of research funded by an external Sponsor e.g. government agency or other agency/institution/private company but the work/research is conducted at AIIMS, the IPR of inventions arising out of such research projects in the absence a written arrangement shall be owned by AIIMS. AIIMS will meet the entire cost of filing and protection of IPR in the same manner as provided under **Section 7A** and Revenue sharing as provided under **Section 10**.
- b. If however, there is a written Associated Agreement between the inventor, AIIMS and the sponsor dealing with matters of ownership of Intellectual Property or between AIIMS and the sponsor, ownership will be determined by the express terms of such Associated Agreement and if the Associated Agreement is silent in this regard then it will be decided by the conditions under which funding of the research work is granted.

C. VARIABLE-3: IP GENERATION UNDER COLLABORATIVE RESEARCH

- a. All intellectual property jointly created, authored, discovered, or invented, during the course of collaborative research undertaken jointly by Institute with Collaborating entities (Collaborator), shall be jointly owned (proportion would be mutually decided between AIIMS and collaborator based on the quantum of intellectual input). The cost sharing for IPR protection and maintenance shall be as per the collaborative research agreement terms executed by the parties before initiating the work.
- b. In case the Collaborating Institutions are not forthcoming to bear fully the cost of filing and maintenance, if considered expedient by the Institute, the Institute will share the cost equitably with the Collaborating Institutions. Where the Collaborating Institutions are not forthcoming for filing joint IPR application, the Institute at its discretion may file the application with absolute ownership and Institute will meet the entire cost of filing and protection of IPR in the same manner as provided under **Section 7 A** and Revenue sharing as provided under **Section 10**.

D. VARIABLE-4: IP GENERATION UNDER RESEARCH PROJECTS THAT FORM A PART OF THE DEGREE PROGRAMMES AT ALL LEVELS

- a. Research projects that form a part of the degree programmes at both undergraduate and postgraduate level e.g. B.Sc., M.Sc., PhD, MBBS, MD, MS, DM, MCh etc., are usually initiated and proposed by members of teaching Faculty and will often be connected in some way to the concerned department's on-going research interests. In such cases, Students work on a specific project or join a team to investigate one particular aspect of a much larger research programme, thereby drawing on the considerable expertise, reputation and infrastructure of the supervising Guide and substantial use of AIIMS resources. The IP thus created is part of the whole IP portfolio developed by the research team and is considered to be based on advice of and/or otherwise based on confidential, proprietary or valuable information that already belongs to the research Guide (Supervisor) or team. AIIMS seeks to avoid a position where a small gap in its IP portfolio precludes successful commercialization.
- b. The student shall be the co-inventor of the IP if they have contributed significantly to the development of the research project and have worked for a significant period of time on the project from which the IP is created. The ownership of the IP (except copyright as provided under the **Section 10**) shall lie with AIIMS and will be managed in the same manner as provided under **Section 7 A** and Revenue sharing as provided under **Section 10**.
- c. The ownership rights of AIIMS will be subject to the conditions of organizations which have awarded fellowships or scholarships to the students and AIIMS shall enter into necessary Associated Agreement in this regard.
- d. The research Guide shall ensure that Students complete and sign a confidentiality and intellectual property agreement before commencing work on the project.
- e. This policy covers students while attending AIIMS and after they leave.
- f. The project staff which is employed in a research project other than those enrolled for a PhD will not have any IP right as they would be working on contract basis without any innovative contribution for IP creation.

8. TECHNOLOGY TRANSFER

- a. Whether the invention or technology or know-how developed by faculty at AIIMS has been formally protected by patent(s) or not, AIIMS shall have the right to monetize or commercialize them through transfer of technology.
- b. Whether the invention or technology or know-how has been formally protected by patent(s) or not, the IPR and Technology Transfer Division of AIIMS or the AIIMS inventors/Faculty can jointly or severally identify potential licensee(s) or transferee(s) for the same subject to the Revenue sharing mechanism as provided under **Section 10**.

- c. In case of presence of an Industrial Partner, which has sponsored the activity, the industry will have the first right to commercially utilize the technology know-how emanating from the collaboration activity only if it has been pre-specified in the agreement between AIIMS and industry partner before hand.
- d. The licensing/sub-licensing for commercialization would be on the terms and conditions duly executed by the Parties (Inventors, AIIMS and the Industrial Partner) which may involve technology transfer fee and/or royalty payment or any other form of benefit sharing.
- e. In the event of the above Industry not undertaking the commercialization within a period of two years from the first date of license or transfer of the technology, AIIMS reserves the right to transfer the said know-how to a Third Party for its commercialization and use.
- f. In the presence of any non-commercial collaborating research organization which has contributed to the development of technology know-how, then AIIMS shall have the sole right on the Revenue from such commercialization unless agreed otherwise before the commencement of the project as provided for under **Section 10**.

9. RESPONSIBILITY OF THE INVENTOR AND/OR THE IPR&TT DIVISION

- a. While the process of obtaining IPR protection is ongoing, sending abstracts, research articles to public domain, presenting work in public interfaces like conferences, news papers are strictly prohibited. However, after filing IPR either in provisional or in full, innovators would be able to bring their innovation to public domain.
- b. Inventors and/or the IPR&TT Division shall enter into Non Disclosure Agreement (NDA)/Confidentiality Agreement before sharing proprietary or confidential information with any third party apart from inventors.
- c. Inventors and/or the IPR&TT Division shall enter into Material transfer agreement with any third party apart from inventors to govern the transfer of tangible research materials. MTAs should define the rights, obligations and restrictions for both the provider and recipient with respect to the materials and any derivatives, and any confidential information exchanged with the material, publication of recipient research results, permitted use of the material, and other associated legal issues that the provider and recipient may wish to specify in the transaction.
- d. Inventors should make Data protection agreement as part of Collaborative research agreement to primarily deal with the obligations to protect Sensitive Personal Data or Information (“SPDI”) and compensation for negligence in implementing and maintaining reasonable security practices and procedures in relation to SPDI.

- e. Inventors and/or the IPR&TT Division shall allow third party use of the technology, know-how or IP only after due execution of Tech-Transfer or License Agreement respectively.
- f. Innovations and practices associated with use and application of traditional knowledge and biological resources shall abide by the provisions of the Biological Diversity Act, 2002.

10. REVENUE SHARING

The revenue arising out of licensing of IPR/technology/Know-how/royalty/ or any other form of benefit sharing in favour of AIIMS would be allocated in the ratio as given below.

- Institute Share - 30%
- Inventor's share - 70%

For the above purpose, Revenue is defined as all financial benefits in connection with a single project or venture in excess of the direct commercialization costs incurred, including but not limited to costs of securing legal protection and third party intellectual property rights, the enforcement and commercial exploitation of the IP. Such costs will be reclaimed prior to any distribution taking place. In the event that two or more pieces of IP are combined in a single project or venture, then an agreement defining the distribution of Cumulative Net Financial Benefit to the contributing parties must be concluded before the start of the commercialization process. Where more than one inventor contributes to the creation of IP, the inventor share of the Revenue will be divided in the ratio of 50% to the principal inventor/investigator and the remaining 50% among other inventors/investigators unless there is a signed written agreement to the contrary. In case there is any co-principal investigator/inventor, the share will be 40% to the principal inventor corresponding to the IPMC, 30% to the co-principal investigator/inventor and the remaining 30% for other co-investigators.

11. COPYRIGHT ON SCHOLARLY MATERIALS

- a. As a tradition to encourage literary inputs of researchers of AIIMS, their Scholarly Materials will be exempt from the assertion of rights of AIIMS ownership including the contributions towards books, book chapters, articles, conference papers and presentations, theses and dissertations, novels and poetry, monographs, art works, electronic media creations etc. except such work which is Commissioned/Outsourced or it is a work for hire.
- b. Copyright would be exempted from revenue sharing and 100% of the royalty will be for the author(s) or originator(s) of the scholarly material(s). However, the royalty received towards such activities must be reported to IPR and Technology Transfer Division for information and Finance department for tax calculation if applicable. In the event of joint authorship, the revenue sharing must be decided among the authors before the start of the work, even if the co-author is a student/project staff.

- c. AIIMS shall retain a free, non-exclusive, perpetual, irrevocable license to use, copy, and modify such works for teaching and research purposes and will respect the moral rights of originator in such material, where asserted. The originator of Scholarly Materials will ensure that where they have been produced in collaboration with non-AIIMS entities, the collaborators will also grant license to AIIMS in the same way.

12. APPOINTING THIRD PARTY AS SERVICE PROVIDER FOR IPR AND TECHNOLOGY MANAGEMENT

Any third party which would be engaged as a third party service provider for IPR and technology transfer management will not be assigned any IPR but will be governed by specific terms of license fees structure and Specific Power of Attorney.

13. IPR PROTECTION FOR COUNTRIES OTHER THAN INDIA

- a. The decision to file Patent Cooperation Treaty (PCT) and filing patent in other countries would be reviewed and decided by the IPMC from time to time based on the scope of invention.
- b. If committee decides that the invention has a merit for international patent then the cost may be borne by the institute.
- c. Inventors of AIIMS can also undertake protection and maintenance of IP in the name of AIIMS after the approval of IPMC with their own resources for fast track filing in order to get priority. However, for all other official purposes, it would be considered as patent owned by AIIMS. The expenses towards the protection/maintenance of the IP shall be reimbursed by AIIMS at the rate it would have protected and maintained the IP with its own mechanism or using a third party service provider through the Govt. of India approved mechanisms.
- d. In case of an unfavorable IPR&TT Division's decision not to file or protect or maintain the IP in any country; the inventors have the liberty to treat the IP the way they mutually agree upon without any interference from AIIMS.

14. INFRINGEMENTS, DAMAGES, LIABILITY AND INDEMNITY

- a. As a matter of policy, AIIMS shall, in any contract between the licensee and AIIMS, seek indemnity from any legal proceedings including but not limited to validation issues, manufacturing defects, production problems, design guarantee and up-gradation obligation.
- b. AIIMS shall also ensure that AIIMS personnel have an indemnity cover built into the agreements with licensee(s) while transferring technology, know-how or IP.
- c. AIIMS shall retain the right to engage in or desist from becoming a party in any litigation concerning IP and license infringements.

15. CONFLICT OF INTEREST

The inventor(s) are required to disclose any conflict of interest or potential conflict of interest. If the inventor(s) and/or their immediate family have a stake in a licensee-company, then they are required to disclose the stake they and /or their immediate family have in the company, and license or an assignment of rights for a patent to the licensee/company in such circumstances, shall be subject to the approval of the IPR and TT Division.

16. DISPUTE RESOLUTION

- a. In case of any disputes between IPR&TT Division and the Inventor(s) of AIIMS regarding the implementation of the IPR policy and Technology management which shall include the apportionment of the cost and the expenses payable by each of them, the inventor(s) may appeal to the Director of AIIMS. The Director's decision in this regard would be final and binding on both.
- b. Disputes arising from Collaborative research or from externally sponsored research out of or relation to the construction, meaning, scope, operation or effect of IP ownership and exploitation shall be governed by the Associated Agreement.

Provided, in the absence of any written Associated Agreement and if parties thereto agree, Director AIIMS shall refer the dispute to an independent expert who shall conciliate and pass an award that shall be final and binding on all the relevant parties. The seat of conciliation shall be New Delhi and the proceedings shall be conducted in English Language.

Please note that researchers entering into any such associated agreement should strive to incorporate the above stated Dispute Resolution Mechanism, therein unless the sponsor is governed by any other prescribed mode of Alternative Dispute Resolution Mechanism.

17. JURISDICTION

As a policy, all agreements to be signed by AIIMS will have the jurisdiction of the Courts in Delhi and shall be governed by appropriate laws in India.
