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## INTELLECTUAL PROPERTY POLICY

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### 1. OBJECTIVE

The purpose of this statement of policy is to clarify the rights and obligations of the ACIDF and Originators with respect to Intellectual Property and to provide guidelines for Intellectual Property practices.

The ACIDF aims to encourage and facilitate the commercialization of Intellectual Property and technology transfer created by the applicants to ACIDF. ACIDF recognizes that the Originators are entitled to an equitable share of any financial returns from such commercialization.

ACIDF may enter into specific intellectual property agreements with applicants on a case-by-case basis.

The statement of policy is of broad application, and it is recognized that issues could arise which this policy does not explicitly cover and with respect to which discretion may have to be exercised. Accordingly, ACIDF reserves the right to modify or add to this policy as may be needed from time to time.

### 2. DEFINITIONS

For the purpose of this policy:

- 2.1. "ACIDF" means the Alberta Crop Industry Development Fund Ltd.
- 2.2. "Intellectual Property" includes, but is not limited to, any proprietary rights arising by statute, common law, equity, contract or otherwise at law, concerning:
  - Patents under the *Patent Act*;
  - Information that is subject to an employee's duty of fidelity to the employer;
  - Copyright vesting by virtue of the *Copyright Act*, including in literary, artistic, dramatic, graphic, pictorial and musical works (including computer programs or software), films, sound recordings, broadcasts, published editions and performances and non-copyright protection for certain types of performances;
  - Trade marks under the *Trade-marks Act*;
  - Unregistered trade marks used or intended for use in businesses;
  - Designs registered under the *Industrial Design Act*;
  - New plant varieties under the *Plant Breeders' Rights Act*;
  - Circuit layouts (i.e. computer chips) under the *Integrated Circuit Topography Act*;

- Trade secrets and confidential information protected by equity or the common law; and
  - All other rights resulting from intellectual activity, invention or know-how in the agricultural, animal, livestock, agri-food, biotechnology, crop, feed, farming, ranching, breeding, plant, computer, industrial, commercial, food processing, medical, pharmaceutical, scientific, veterinary, and literary sectors.
- 2.3. “Intellectual Property Authority” means the employer, officer or committee of the Board of Directors appointed by ACIDF’s Board of Directors that has responsibility for making decisions relating to the commercialization of Intellectual Property on behalf of ACIDF.
- 2.4. “Interest” in relation to Intellectual Property includes full or partial ownership and may include a license in the Intellectual Property.
- 2.5. “Originator” includes an author, creator or inventor, as well as the person, corporation, institution, government or organization who employs the author, creator or inventor under a contract of employment or a contract for services.

### **3. OWNERSHIP PRINCIPLES**

- 3.1. Except as otherwise agreed between the ACIDF, the Originator and any other parties, and subject to section 3.2, the Originator owns all Intellectual Property created by the Originator in the course of fulfilling any contract with ACIDF or from funding or resources received from ACIDF. Ownership includes the right to control the commercial exploitation of the Intellectual Property and the distribution and use of resulting proceeds, income, royalties and fees.
- 3.2. Notwithstanding anything contained herein, except as otherwise agreed, as a condition of funding, the Originator or any other party with ownership interests shall grant to the ACIDF, without charge, a non-exclusive, royalty-free, world-wide and irrevocable licence to make use of and practise, reproduce, publish, perform, broadcast, disseminate and otherwise use the Intellectual Property for the purposes of ACIDF or its members.
- 3.3. Any license granted pursuant to section 3.2 will be subject to conditions as follows:
- the ACIDF or its members will not do anything to jeopardize the rights of the Originator including actions that could jeopardize the protection or enforcement of the Originator’s rights and commercial exploitation including but not limited to premature disclosure of a patentable invention;
  - the ACIDF or its members will not compete with the Originator in the commercialization of the Intellectual Property; and

- the ACIDF or its members will not assign, licence or sub-licence or otherwise create rights or obligations for the Intellectual Property without the express written consent of the Originator.
- 3.4. Where an Originator develops Intellectual Property in which ACIDF has an Interest, the Originator will notify ACIDF forthwith on a confidential basis and provide full and prompt disclosure of the Intellectual Property.
  - 3.5. Where ACIDF has an Interest in the Intellectual Property, the Originator will be required to cooperate fully with the ACIDF to preserve such Interest.
  - 3.6. Where the ACIDF requires documented evidence relevant to any entitlement that it may have, the Originator agrees to provide the relevant documentation upon request.
  - 3.7. Should the Originator cease to operate as a going concern by bankruptcy, insolvency or otherwise, all Intellectual Property will automatically revert to ACIDF, and ACIDF will be free to protect and exploit the Intellectual Property at its sole discretion.
  - 3.8. The Originator is not entitled to transfer or assign the Intellectual Property without obtaining the prior written consent of ACIDF.

#### **4. COMMERCIAL EXPLOITATION WHERE ACIDF HAS AN INTEREST**

- 4.1. Where the Originator of Intellectual Property takes steps or seeks to negotiate with a third party for the commercial exploitation of Intellectual Property in which ACIDF has an Interest, the Originator must notify the Intellectual Property Authority.
- 4.2. Once the Intellectual Property Authority is notified under section 4.1 of Intellectual Property that the Originator is seeking to exploit commercially, the Authority must decide within 90 days whether or not ACIDF wishes to become involved in the process of commercial exploitation.
- 4.3. In making a decision under section 4.2, the Intellectual Property Authority must consult in confidence with the Originator and any other relevant parties.
- 4.4. In making a decision under section 4.2, the Intellectual Property Authority will take into account:
  - the nature of the Intellectual Property and the extent of patent or other protection desirable;
  - whether the securing of patent or other protection will assist in the development and subsequent commercial exploitation of an invention;
  - whether it would be desirable for the ACIDF to maintain an Interest in the quality and technical efficiency of production;

- the potential benefit to the ACIDF and its members arising out of further funding and development; and
  - the cost of protecting and maintaining protection of Intellectual Property and the probable commercial returns to the ACIDF.
- 4.5. Where the ACIDF has an Interest in the Intellectual Property, the ACIDF may enter into an agreement with a third party following consultation, where possible, with the Originator of the Intellectual Property.
- 4.6. Further where ACIDF has an Interest in the Intellectual Property, the Originator shall provide ACIDF with all reasonable assistance and cooperate fully in the exploitation of the Intellectual Property, and will provide information promptly and execute and deliver appropriate documents as may be required by ACIDF.
- 4.7. Where the Originator owns the Intellectual Property, the Originator agrees to assign its rights and Interest in and further to release the Intellectual Property to ACIDF if:
- the Originator decides not to proceed with or become involved in the commercial exploitation of the Intellectual Property;
  - the Originator has not shown interest in or refuses to incur further expense in the development of the Intellectual Property;
  - the Originator determines that the Intellectual Property does not merit or warrant exploitation;
  - the Originator fails to adequately protect, develop or exploit the Intellectual Property as is required and on terms consistent with this policy;
  - the Originator fails diligently pursue the commercialization of the Intellectual Property in a timely manner and in any event not longer than 180 days after a request by ACIDF to do so; or
  - there are mutually agreed upon terms reached between the Originator and ACIDF in respect of their rights to the Intellectual Property.

## 5. DISPUTE RESOLUTION

- 5.1. If a dispute arises as to the operation of this policy, or as to any matter on which the operation of this policy hinges, the Intellectual Property Authority must appoint a mediator who can assist the parties in resolving their dispute.
- 5.2. If such a dispute cannot be resolved through the assistance of a mediator, the Intellectual Property Authority must appoint an arbitrator to investigate and decide the matters in dispute in accordance with the Alberta Arbitration Act.
- 5.3. The arbitrator must adopt procedures that ensure that each party is given a fair hearing. The decision of the arbitrator will be final and binding on all parties.
- 5.4. In selecting a mediator or arbitrator, the Intellectual Property Authority must choose a person who is acceptable to all parties. If the parties cannot agree within 30 days,

the Director of the Alberta Arbitration and Mediation Society will be requested to assist the parties with the appointment of a person as mediator or arbitrator, as the case may be.

## 6. THE ROLE OF THE INTELLECTUAL PROPERTY AUTHORITY

### 6.1. The Intellectual Property Authority will be required to:

- oversee the implementation and administration of this policy;
- conduct a review of this policy at periodic intervals, or as circumstances demand, and make recommendations as to appropriate changes; and
- provide advice and support to the ACIDF on Intellectual Property issues generally.

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