

HARVARD PILGRIM HEALTH CARE INSTITUTE INTELLECTUAL PROPERTY POLICY

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I. INTRODUCTION

A. Scope

This Harvard Pilgrim Health Care Institute Intellectual Property Policy (this “Policy”) governs the ownership and disposition of intellectual property arising from or relating to research performed by Harvard Pilgrim Health Care Institute, LLC (the “Institute”) or embodied in publications, administrative or clinical programs, processes or products developed by the Institute. This Policy also addresses the transfer of intellectual property rights between the Institute and Harvard Pilgrim Health Care, Inc., the sole corporate member of the Institute (“Harvard Pilgrim”). This Policy does not address the ownership, use or license of any trade name or trade or service mark of Harvard Pilgrim or the Institute.

This Policy is applicable to all faculty, employees, students, postdoctoral fellows and non-employees who use Harvard Pilgrim's and/or the Institute's funds, facilities or other resources, or participate in research administered by the Institute or Harvard Pilgrim, including visiting faculty, consultants, collaborators and fellows, regardless of any obligations of such individuals to other companies, entities or institutions. For purposes of this Policy, these individuals will be referred to as “Participants” or “Participants covered by this Policy.”

Intellectual Property is considered to be a valuable corporate asset of Harvard Pilgrim. Harvard Pilgrim owns all Intellectual Property conceived, created, made or discovered by Participants arising from or relating to their work with the Institute or with Harvard Pilgrim, other than Academic Works.

It is the intent of this Policy to enable research results, discoveries and inventions to benefit the health of society through commercialization or widespread dissemination. In deciding how to proceed in regard to a particular development covered by this Policy, Harvard Pilgrim will consider the benefits and consequences for the public and Harvard Pilgrim and/or the Institute, as well as for individual Inventors and Authors (as defined herein).

In addition, where financial or other resources such as facilities, equipment, data or staff for research and/or for development of Intellectual Property have been provided or administered by or through Harvard Pilgrim and/or the Institute, Harvard Pilgrim or the Institute may have contractual commitments with external third parties that affect how the Intellectual Property is managed and commercialized.

This Policy requires all Participants to disclose discoveries, inventions and copyrightable works to Harvard Pilgrim in a timely manner.

This Policy will comply with applicable laws, regulations, and industry practices as may be amended or modified from time to time.

B. Additional Defined Terms

In addition to the defined terms set forth in Section A above, for purposes of this Policy, the following terms shall have the following meanings:

Academic Works. *Academic Works* shall mean works of an academic or scholarly nature authored by Participants to disseminate the results of customary clinical, research, and educational activities to an academic audience or to the general public. Such works include textbooks, course and curriculum materials, public presentations, articles published in scientific journals, and books or articles published in magazines for a lay audience, that:

1. are prepared at the Author's own initiative and not at the request or under the auspices of or for purposes of Harvard Pilgrim, the Institute, or any federal agency or funding institution, that are not created within the Participant's scope of employment with the Institute or Harvard Pilgrim as a Work Made for Hire (as defined herein), and that do not make "substantial use" of Harvard Pilgrim's, the Institute's or any federal agency or funding institution's resources. (An Author's mere receipt of salary support, or use of office space or computers for word processing provided by Harvard Pilgrim or the Institute shall not be considered "substantial use" of institutional resources" for the purposes of determining whether a work meets the criteria for an Academic Work.);
2. neither embody nor disclose (without prior written approval) Intellectual Property owned by Harvard Pilgrim and/or the Institute;
3. are not owned by or obligated to a third party through any Harvard Pilgrim or Institution agreement; and
4. are not Computer Software.

Any ambiguity as to whether a particular work of authorship is properly considered an Academic Work under this Policy will be reviewed on a case by case basis by Harvard Pilgrim consistent with Section C below.

Author. Any Participant covered by this Policy who creates a work of authorship qualifying for protection under U.S. copyright law.

Computer Software. Shall mean any computer program (including, without limitation, microcode, subroutines, and operating systems, in source or object code form), regardless of form of expression or object in which it is embodied, together with any users' manuals and other accompanying explanatory materials. Computer Software includes courseware or any aggregation of data or database.

Copyright. Copyright consists of a variety of rights in original works of authorship, as protected under the copyright laws of the United States and other nations.

RICO. RICO is the Research Integrity and Compliance Officer for the Institute.

Intellectual Property. Shall mean any and all intellectual property rights arising at law or in equity, other than trade or service marks, or other forms of corporate or product identification,

including all of the following: (i) Inventions and all classes or types of patents (including, without limitation, originals, divisions, continuations, continuations-in-part, extensions or reissues), and applications for these classes or types of patent rights in all countries of the world on a world-wide basis; (ii) works of authorship, Copyrights and other rights in works of authorship, including Computer Software; (iii) data and databases, including without limitation laboratory notebooks (whether or not in digital format); (iv) tangible materials of any nature, including without limitation, biological materials (such as, but not limited to, cell lines, antibodies, and tissue samples), chemicals, catalysts; and (v) know-how, show-how and trade secrets.

Invention. Shall mean any patentable invention as defined by the patent laws of any relevant jurisdiction, and any potentially patentable or useful idea, creation, innovation, enhancement, improvement, algorithm, alteration, discovery, formula, new approach, or new process, and shall include any and all associated or supporting technology that is required for development or application of such patentable or potentially patentable Invention.

- a. *Supported Invention.* Shall mean an Invention conceived or reduced to practice by a Participant covered by this Policy (whether alone or together with others) if conceived or reduced to practice in whole or in part:
 1. Under or subject to an agreement between Harvard Pilgrim or the Institute and a third party; or
 2. With use of direct or indirect financial support from Harvard Pilgrim or the Institute, including support or funding from any outside source awarded to or administered by Harvard Pilgrim or the Institute; or
 3. With use (other than incidental use) of space, facilities, materials or other resources provided by or through Harvard Pilgrim or the Institute.
- b. *Incidental Invention.* Shall mean an Invention that is conceived or reduced to practice by a Participant making only an incidental use of space, facilities, materials or other resources of Harvard Pilgrim or the Institute related to the conception or reduction to practice of such Invention.

Inventor. With respect to an Invention that is or may be patentable, shall mean a Participant covered by this Policy who individually or jointly with others makes, conceives, reduces to practice or generates an Invention and who meets the criteria for inventorship under United States patent laws and regulations and/or under the patent laws and regulations of other jurisdictions in which protection for the Invention is pursued. With respect to an Invention that is not patentable, an Inventor shall be the individual(s) who makes, conceives or reduces to practice the Invention.

Sponsored Activity. Shall mean any activity that is subject to a grant, contract or other arrangement between Harvard Pilgrim or the Institute and a third party, such as the federal government, a foundation or corporate research sponsor.

Sponsored Computer Software. Shall mean Computer Software that is not a Work Made for Hire and that is developed:

1. Under or subject to agreement between Harvard Pilgrim or the Institute and a third party; or
2. With use of direct or indirect financial support from Harvard Pilgrim and/or the Institute, including support or funding from any outside source awarded to or administered by Harvard Pilgrim and/or the Institute.

Sponsored Software Invention. Shall mean Sponsored Computer Software which is an Invention as defined under Section I of this Policy.

Work Made for Hire. A copyrightable work that is created within the scope of employment by Participants who are employees of the Institute shall be a “work made for hire” under the U.S. Copyright Act of 1976 (17 USC §101 et seq.). The Institute may also commission copyrightable works from Participants who are not employees of the Institute. A commissioned work falling within the “work made for hire” definition of the U.S. Copyright Act (17 USC 101 et seq.) shall also constitute a Work Made for Hire. A "Work Made for Hire" is not an Academic Work.

C. Administration of the Policy

1. *Harvard Pilgrim Health Care Institute Board of Managers Chair (the "Institute Board Chair").* The Institute Board Chair, who is an officer of Harvard Pilgrim Health Care, Inc. shall have general responsibility for overseeing this Policy.
2. *Office of Sponsored Programs ("OSP").* The Research Integrity and Compliance Officer ("RICO") shall have the day to day responsibility for the administration of this Policy.
3. *Harvard Pilgrim's Intellectual Property Committee ("IP Committee").* Consistent with Harvard Pilgrim policies and procedures, the Harvard Pilgrim IP Committee, shall be responsible for reviewing Harvard Pilgrim/Institute Intellectual Property disclosure forms, resolving disputes regarding ownership of Intellectual Property and regarding distribution of licensing income, and generating recommendations to the *Institute Board Chair* or designee regarding disposition of Intellectual Property or any other matters that arise under this Policy.
4. *Obligations to Third Parties under Grants and Contracts.* In many cases, Intellectual Property created at the Institute or by Participants is subject to the terms and conditions of grants, contracts and other agreements entered into by Harvard Pilgrim or the Institute and third parties, such as the United States government and/or other research sponsors. These agreements include sponsored research, clinical trial and material transfer agreements, license agreements, federal grants and contracts, etc.

The rights of Participants covered under this Policy shall be subject to any applicable conditions and any rights granted to third parties under grants and agreements undertaken by Harvard Pilgrim and/or the Institute. Harvard Pilgrim and/or the Institute shall retain the right to perform their obligations with respect to Intellectual Property under all such arrangements.

5. *Research Participation Agreement.* Participants are required to execute a Research Participation Agreement at the time of employment, research appointment, or prior to commencement of work involving Harvard Pilgrim or Institute resources or participation in research administered by Harvard Pilgrim or the Institute.
6. *Other Agreements.* Participants are not authorized to sign and should not sign confidentiality agreements, material transfer agreements, research agreements or any other agreements that may restrict, commit or affect Harvard Pilgrim's rights in Intellectual Property.

II. INVENTIONS AND PATENTS

A. *Participant Obligations*

Invention Reporting. Participants are required to notify the DOSP of each Invention through a Harvard Pilgrim/Institute Intellectual Property disclosure form prior to any proposed publication of the Intellectual Property or disclosure outside Harvard Pilgrim and the Institute. Patent benefits may be lost if an Invention is discussed in a publication or public presentation prior to certain patent filings being made. Participants should consult with the DOSP before publication to avoid inadvertent loss of patent benefits.

B. *Determination of Ownership*

Harvard Pilgrim owns and, in consideration of their participation in Harvard Pilgrim or Institute research, each Participant hereby assigns and shall assign to Harvard Pilgrim all of his/her right, title, and interest in any Invention. Each Participant shall, at Harvard Pilgrim or the Institute's request, execute appropriate documentation confirming such assignment. Inventors of a specific Invention may request a determination from Harvard Pilgrim that such Invention is an Incidental Invention. If, after consideration of such request, Harvard Pilgrim determines that an Invention is an Incidental Invention, or if Harvard Pilgrim makes such a determination in its own discretion, ownership of an Incidental Invention will remain with its Inventor(s), subject to any rights that may be granted to Harvard Pilgrim as required by this Policy. Harvard Pilgrim may approve mechanisms under which ownership rights are transferred or licensed to individuals or other different institutions.

1. *Harvard Pilgrim Intellectual Property Committee.* The IP Committee or other party designated by Harvard Pilgrim will be asked to review Harvard Pilgrim/Institute Intellectual Property disclosure forms to determine whether any Invention described therein is a Supported Invention or an Incidental Invention. The IP Committee may make a recommendation to the COO that Harvard Pilgrim either pursue patent

protection at Harvard Pilgrim's expense, or release its rights in the Invention to the Inventor or to a third party, whichever is appropriate. As needed, the IP Committee may consult with individuals having a particular expertise or knowledge of the field associated with the disclosed Invention to assist their review.

2. *Harvard Pilgrim Chief Operating Officer.* The COO or designee may be asked to consider the recommendations of the IP Committee, or other party designated by Harvard Pilgrim to review Inventions and make a timely determination about ownership and patent protection.

The RICO shall be responsible for receiving Harvard Pilgrim/Institute Intellectual Property disclosure forms from Inventors and for the prompt transmission of such forms to the IP Committee. The RICO will inform the IP Committee of the due date for the final ownership determination, which, in most instances will be within 20 business days of the IP Committee's receipt of an Intellectual Property disclosure form.

C. Filing of Patent Applications

Harvard Pilgrim shall be solely responsible for determining whether it shall file a patent application on an Invention. Filing determinations may be made on the basis of commercial potential, obligations to and rights of third parties, or for other reasons which Harvard Pilgrim, in its discretion, deems appropriate. Inventor(s) shall cooperate, without expense to the Inventor, in the patenting process in all ways reasonably required by Harvard Pilgrim or its agent or designee.

D. Commercialization

Harvard Pilgrim shall have sole discretion with respect to the commercialization of a Supported Invention, but shall take into account the public interest. Where a Supported Invention is subject to an external agreement with a third party (for example, the federal government or other funding sponsor), Harvard Pilgrim shall make decisions consistent with that agreement. Harvard Pilgrim shall make decisions concerning commercialization as it deems appropriate and shall make reasonable efforts to keep Inventor(s) involved and informed of its commercialization efforts.

E. Royalty Sharing

Where royalties are received by Harvard Pilgrim as a result of commercializing a Supported Invention, royalties will be shared with the Inventor(s) as described in Section V ("Royalty Sharing") of this Policy. Harvard Pilgrim shall have the right to modify the Royalty Sharing section of this Policy.

F. Release of Inventions

Where Harvard Pilgrim determines that it will not file a patent application on an Invention, abandons a patent application on an Invention prior to issuance of the patent or abandons an issued patent on an Invention, Harvard Pilgrim, subject to its obligations to third parties, may, if

requested by the Inventors, agree to assign the Invention to the Inventor(s), provided that such assignment of the Invention to the Inventor(s) does not and will not violate the terms of an external funding agreement and is in the best interests of Harvard Pilgrim, the Institute and the public. In such case, Harvard Pilgrim will assign all interest which it holds or has the right to hold in the Invention to the Inventor(s) as equal joint owners. Assignment of Inventions may be conditioned upon, among other things, agreement by the Inventor(s) to the following:

1. To reimburse Harvard Pilgrim and/or the Institute for all out-of-pocket legal expenses and fees incurred associated with pursuing and/or obtaining patent protection by Harvard Pilgrim and/or the Institute.
2. Upon request, to report to Harvard Pilgrim and/or the Institute regarding efforts to develop the Invention for public use and, at Harvard Pilgrim and/or the Institute's request, to assign or license to Harvard Pilgrim, or to a third party identified by Harvard Pilgrim or the Institute, those Inventions which the Inventor(s), their agents or designees are not developing for the benefit of the public.
3. To fulfill any obligations that may exist to sponsors of the research that led to the Invention.
4. To grant back to Harvard Pilgrim and the Institute an irrevocable, perpetual, royalty-free, nonexclusive, worldwide right and license to use the Invention for its research, education or clinical care purposes.
5. To indemnify Harvard Pilgrim and/or the Institute from liability with respect to third party claims that may arise in the future or that may have arisen during a period when Harvard Pilgrim and/or the Institute owned or used the Invention.

G. Exceptions

Harvard Pilgrim may grant exceptions to this Policy at its sole discretion.

III. COPYRIGHTS

A. Ownership

Copyright consists of a variety of rights in original works of authorship. The Copyright in works (including Computer Software) that are Works Made for Hire by Participants who are Institute employees shall initially vest in the Institute. The Institute hereby assigns its Copyrights in all Works Made for Hire to Harvard Pilgrim and shall, at Harvard Pilgrim's request, execute appropriate documentation confirming such assignment. With the foregoing assignment Harvard Pilgrim owns all Copyrights of all Works Made for Hire of Institute.

The Copyright for any other works (including Computer Software) Authored by employee and non-employee Participants arising from or relating to the Participant's work with Harvard Pilgrim or the Institute, other than Academic Works, are also owned by Harvard Pilgrim and each Participant Author hereby assigns and shall assign to Harvard Pilgrim all of his/her right,

title, and interest in any such Copyright, and shall, at Harvard Pilgrim's request, execute appropriate documentation confirming such assignment.

Authors of Academic Works are entitled to retain ownership of the Copyright in Academic Works. It is expected that when entering into agreements for the publication and distribution of Academic Works, Authors will make arrangements that best serve the public interest and will make any reasonable effort to ensure that Harvard Pilgrim and the Institute are granted and/or allowed to retain a royalty-free unrestricted license to copy, create, derivative works, distribute, perform and display the Academic Works for institutional purposes, and to sublicense to third parties the foregoing rights. This Academic Work concept is intended to recognize and facilitate the traditional academic freedoms of faculty who have academic appointments and of fellows and students to publish and disseminate their scholarly work. Harvard Pilgrim shall have the authority to clarify and modify the definition of Academic Works and develop guidelines for its interpretation from time to time. New developments in academic publishing, among other factors, can be taken into account through this process.

Copyrights in Computer Software shall be subject to Section IV ("Computer Software") of this Policy.

B. Exceptions to Ownership of Copyright

Whenever research or a related activity is subject to an agreement between Harvard Pilgrim or the Institute and a third party that contains obligations or restrictions concerning Copyright or the use of copyrighted materials, those materials shall be handled in accordance with the agreement. In negotiating with third parties, Harvard Pilgrim and the Institute should strive to protect and advance the public interest as well as obtain the greatest latitude and rights for the individual Author(s) and Harvard Pilgrim and the Institute, consistent with the public interest and this Policy.

In circumstances where Harvard Pilgrim and/or the Institute's involvement in the creation and development of copyrighted materials is more than incidental, including, but not limited to, use of Harvard Pilgrim and/or the Institute's resources such as funds, facilities, equipment or other resources, in consideration of making such resources available to the third parties who are not Participants, ownership and rights to shares of royalties or income or both shall be fairly and equitably apportioned as between Harvard Pilgrim and/or the Institute and the Author(s) or may be varied by policy duly adopted by Harvard Pilgrim. This Policy encourages, whenever feasible, Harvard Pilgrim and/or the Institute and the Author(s) to reach agreement prior to the commencement of a project on the rights that Harvard Pilgrim and/or the Institute and the Author(s) will have in the resulting copyrighted materials.

Harvard Pilgrim and/or the Institute, at any time, may acquire ownership or rights in Copyright and copyrighted materials by agreement with the Author(s) or other rights holder(s), on such terms as are agreed.

IV. COMPUTER SOFTWARE

Computer Software is protected by law as a copyrightable work but it may also constitute an Invention. All Sponsored Software Inventions are required to be disclosed to the DRIC as an Invention, and shall be treated for all purposes under this Policy like other Inventions in accordance with Section II. In addition, all Sponsored Computer Software shall be subject to the obligations set forth in this Section.

A. Disclosure Obligations

Participants are required to notify the DRIC of Sponsored Computer Software for purposes of the proper application of Copyright notices and licensing by completing a Harvard Pilgrim/Institute Intellectual Property disclosure form and submitting it to the DRIC prior to any publication of the Computer Software or disclosure outside Harvard Pilgrim and the Institute.

B. Distribution of Computer Software and other copyrightable works

Copyrightable works owned by Harvard Pilgrim, including Computer Software, shall be published, licensed to third parties or otherwise distributed for commercial purposes only through Harvard Pilgrim.

V. ROYALTY SHARING

A. Distributable Royalties

Harvard Pilgrim and the Institute shall employ a single uniform structure for distribution of royalties to Inventors and Authors of Intellectual Property (for the purposes of this Section V, collectively, "Creators" and each a "Creator") as to which Net Royalties (as defined in this Section V.A below) are to be distributed in accordance with this Policy. As to any Computer Software, including Sponsored Computer Software, the DRIC, and if requested by the DRIC, with the assistance of the IP Committee, shall determine (i) who shall be deemed as Authors for purposes of receiving a distribution of Net Royalties under this Policy with respect to the Computer Software, or (ii) if appropriate, that no Authors shall receive any distribution of Net Royalties under this Policy with respect to the Computer Software. Any Inventors of a Sponsored Software Invention shall be treated the same as Inventors of any other Invention under this Policy for purposes of royalty distributions.

"Net Royalty" is equal to monies actually received by Harvard Pilgrim in exchange for license, transfer or other disposition of any nature of Intellectual Property under this Policy, less: (i) amounts that are or may become due and payable to a third party (as determined in the discretion of Harvard Pilgrim) pursuant to a contractual or legal obligation; (ii) Harvard Pilgrim's out-of-pocket costs and fees associated with pursuing, securing, maintaining and enforcing intellectual property protection such as patenting and litigation expenses, (iii) out-of-pocket costs incurred by Harvard Pilgrim in the licensing of the intellectual property and (iv) any out-of-pocket expenses in making, shipping or otherwise distributing materials (collectively, "Harvard Pilgrim development costs"). Harvard Pilgrim will distribute Net Royalties as and to the extent

provided in this Policy. “Monies actually received” by Harvard Pilgrim will include non-cash consideration, such as securities or other equity shares in an enterprise, but only upon the liquidation of such non-cash consideration by Harvard Pilgrim. Harvard Pilgrim will not distribute any non-cash consideration to any Participant and shall have no obligation or fiduciary duty to any Participant with respect to managing, investing, monitoring or liquidating any such non-cash consideration. Net Royalty will not include any monies received for research funding, grants or other financial benefits such as gifts.

B. Royalty Distribution Formula

Royalty income derived from Harvard Pilgrim’s licensing of Inventions and Intellectual Property will be administered and distributed in accordance with the provisions of Harvard Pilgrim’s Royalty Distribution Formula as follows, with the further understanding that these provisions may be periodically amended:

- The Creator(s) shall receive thirty-four percent (**34%**) of the Net Royalties (“Creator(s) Share”) unless by written agreement Harvard Pilgrim and Creator(s) agree to a different percentage. Creators shall determine in a writing signed by all of the applicable Creators how the Creator(s) share is allocated among themselves. If no written agreement is entered into, the Creator(s) Share shall be allocated equally among all Creators of the applicable Intellectual Property.
- Thirty-three percent (**33%**) of the Net Royalties will be allocated to Harvard Pilgrim.
- Thirty-three percent (**33%**) of the Net Royalties will be allocated to the Institute.

C. Portability of Royalty shares

Personal royalty shares will be payable to Creators regardless of their employment status at Harvard Pilgrim, the Institute, or elsewhere.

VI. MISCELLANEOUS

A. Procedures and Documentation

The DOSP shall have responsibility for developing procedures and documentation as necessary for implementing this Policy. Implementation procedures as recommended by the DOSP shall be subject to the approval of Harvard Pilgrim.

B. Further Assurances of Participants

By making use of Harvard Pilgrim or the Institute’s facilities and/or by participating in Harvard Pilgrim and/or the Institute’s administered research programs and/or activities of Harvard Pilgrim and/or the Institute that are subject to agreements with third parties, Participants are covered by this Policy and agree to assist and cooperate with Harvard Pilgrim and/or the

Institute in those actions reasonably undertaken by Harvard Pilgrim and/or the Institute pursuant to this Policy.

C. Applicability of New Policy Provisions

Except as otherwise specifically provided, it is not the intention of a Policy revision or revisions to apply to Inventions, Copyrights, and/or Computer Software made or developed prior to the effective date of the revision or revisions if the revision or revisions would not have applied previously.

D. Changes to Policy

This Policy is required to be approved by Harvard Pilgrim before it becomes effective. Any amendments or modifications to this Policy must also be approved by Harvard Pilgrim in order to become effective. Participants shall be notified of any substantive changes to the policy via email and postings on the OSP website.