PREAMBLE/BACKGROUND
In increasing numbers, researchers are seeking to identify, protect and commercialize intellectual property ("IP") that is the outcome of research. To that end, researchers at Capital Health require a clear statement from Capital Health as to its role in the identification, protection and exploitation in such IP. This is particularly important for researchers in dealing with third parties, such as collaborators, granting agencies, funding partners, etc.

Capital Health recognizes the need for a clear statement on the ownership of IP. Capital Health is also interested in participating with the researcher in the protection and commercialization of IP, where Capital Health identifies such IP as being important to Capital Health's internal administration and overall mission.

POLICY

Article 1 - SCOPE AND PURPOSE

1.01 **Scope.** This Policy applies to all Intellectual Property developed by Capital Health Members using Capital Health Resources.

1.02 **Purpose.** It is the intent of this Policy:

(a) to encourage research, the development of Intellectual Property and the protection of Intellectual Property Rights within Capital Health;

(b) to define the expectations and responsibilities of Capital Health Members who engage in research or other activities giving rise to Intellectual Property Rights;
(c) to clarify and establish consistent procedures respecting the management of different types of Intellectual Property Rights, in particular, Inventions, Copyrighted Works and Trade-marks;

(d) to ensure a fair recognition of the contributions of both Capital Health Members and Capital Health in the development of Intellectual Property;

(e) to encourage the commercialization of Intellectual Property where warranted; and

(f) to protect the interests of the Capital Health Member, Capital Health, and third party sponsors of research which may be, in part, carried out by a Capital Health Member.

Article 2 - GENERAL RESPONSIBILITIES

2.01 Current and Complete Records. All Capital Health Members engaged in research activities using Capital Health Resources, whether directly or indirectly, shall maintain such dated, complete and current records as would be maintained in the ordinary course of research and such records shall be deemed to be part of the Research Data, as that term is defined herein.

2.02 Documentation and Disclosure. All Capital Health Members shall be responsible for documenting Intellectual Property identified in the ordinary course of research, and promptly identifying and disclosing the same to the Office of Research and Academic Affairs at Capital Health.

2.03 Institutional Affiliations. Nothing in this Policy shall be construed so as to derogate from any written agreement regarding collaborative research and/or collaborative development of educational materials between:

(a) Dalhousie and Capital Health under the Dalhousie Affiliation Agreement;

(b) the IWK and Capital Health; or

(c) another university or health care institution and Capital Health regarding the same.

2.04 Further Documentation. All Capital Health Members and Capital Health shall execute or provide such further documentation as is necessary to carry out the intent of this Policy.

Article 3 - OWNERSHIP OF INTELLECTUAL PROPERTY

3.01 Ownership of Intellectual Property Rights. Except as provided for in Sections 3.02 and 8.01, Capital Health hereby acknowledges that all Intellectual Property Rights for Intellectual Property developed by Capital Health Members using Capital Health Resources shall belong to Capital Health Members.

3.02 Exceptions. Each Capital Health Member acknowledges that Intellectual Property Rights for Intellectual Property developed by a Capital Health Member may not remain with the Capital Health Member where such Intellectual Property:

(a) is created by a Capital Health Member who is a Capital Health Employee, pursuant to and in the course of Capital Health Employee's employment with Capital Health;

(b) is commissioned by Capital Health;
and the associated Intellectual Property Rights in such works are acquired by Capital Health through a written assignment or by a bequest in a will;

(d) consists of Trade-marks created for goods, wares, or services related to the business of Capital Health; or

(e) is otherwise subject to contractual obligations between the Capital Health Member, Capital Health and/or a third party.

3.03 Alternative Ownership Arrangements. Nothing in this Policy precludes Capital Health from entering into written agreements with the Capital Health Member and/or third parties which may derogate from the statements in this Policy.

Article 4 - INVENTIONS

4.01 Disclosure of Inventions to Capital Health. Inventions arising from research conducted at Capital Health must be disclosed by Capital Health Members to the Office of Research and Academic Affairs at Capital Health prior to disclosure to any third parties, by filling out a disclosure form which can be obtained from the Office of Research & Academic Affairs.

4.02 Disclosure of the Intent to Protect or Commercialize an Invention. Capital Health Members shall disclose any intent to protect and/or commercialize an Invention to the Office of Research and Academic Affairs at Capital Health prior to disclosure of such intent to third parties, by filling out a disclosure form which can be obtained from the Office of Research & Academic Affairs.

4.03 No Public Disclosure by Capital Health. Capital Health shall not publicly disclose any information relating to an Invention to anyone not bound by this Policy, without prior written permission of the Capital Health Member. However, nothing in this Section prevents Capital Health from disclosing information relating to an Invention to legal counsel for the purpose of seeking legal advice.

4.04 Right of First Option to Participate. Capital Health shall have first option to participate with the Capital Health Member in any project relating to a disclosure made by the Capital Health Member pursuant to Sections 4.01 or 4.02. To that end Capital Health shall, within 30 days from the date of such disclosure either:

(a) provide notice to the Capital Health Member that it wishes to participate with the Capital Health Member in the project which is the subject of the disclosure and present a proposal to the Capital Health Member concerning Capital Health's role in the project; or

(b) provide notice to the Capital Health Member that Capital Health is declining to participate in the project that is the subject of the disclosure. The Capital Health Member is then free to approach third parties or to make another offer to Capital Health regarding the project.

Failure on the part of Capital Health to provide notice within the 30 day period following disclosure shall be deemed to be notice declining participation pursuant to paragraph (b).
4.05 **Licenses.** Should Capital Health decline to participate with the Capital Health Member in protecting and/or commercializing the Invention pursuant to Section 4.04, the Capital Health Member may require that Capital Health obtain a license to use the Invention. In the event that the Capital Health Member requests such a license, the Capital Health Member shall grant a royalty-free, perpetual and irrevocable license to Capital Health to use such Intellectual Property for medical education, research and clinical or related purposes, subject to the following terms and conditions:

(a) the Capital Health Member may refuse to grant a license to Capital Health where granting such license jeopardizes the ability of the Capital Health Member to patent or otherwise register Intellectual Property Rights in an Invention; and

(b) such license will not prevent the Capital Health Member from requiring that Capital Health purchase products containing the Intellectual Property, where such products are articles of manufacture.

4.06 **No Obligation to Commercialize Invention.** Nothing in this Policy obligates Capital Health to protect, develop, market or license an Invention disclosed pursuant to this Policy.

**Article 5 - COPYRIGHTED WORKS**

5.01 **Scholarly Works.** Subject to Sub-sections 3.02 (b), (c), (d) and (e), Capital Health does not assert an interest in Capital Health Member-authored scholarly works related to the Capital Health Member's professional field, regardless of the medium of expression, unless such work is assigned to Capital Health by written agreement of the parties.

5.02 **License to Capital Health.** Where the Capital Health Member retains ownership in a Copyrighted Work, the Capital Health Member shall, upon reasonable request from Capital Health, grant to Capital Health an unrestricted, royalty-free, perpetual and irrevocable license to use a Copyrighted Work for medical education, research and clinical or related purposes. The Capital Health Member may refuse to grant a license for a Copyrighted Work where granting such license jeopardizes the ability of the Capital Health Member to patent or otherwise register Intellectual Property Rights in an Invention.

5.03 **Moral Rights.** Capital Health acknowledges that Capital Health Members who are authors of Copyrighted Works retain certain rights in the integrity of their works. Where Capital Health retains ownership of a Copyrighted Work (that is not a scholarly work), Capital Health may request that a Capital Health Member waive his or her statutory moral rights in a Copyrighted Work. Where an author’s moral rights are waived in favour of Capital Health, Capital Health will use all reasonable efforts to maintain the integrity of the Copyrighted Work and the right of the author to be associated with the work. In such cases, Capital Health may grant the author a non-exclusive, royalty-free, irrevocable, and non-transferable license back to use, revise and modify the Copyrighted Work for non-commercial purposes.
5.04 **Marking.** All Copyrighted Works owned, in whole or in part, by Capital Health shall be published with the following copyright notice:

© Capital Health, [year of publication]

5.05 **Recognition.** Capital Health shall provide printed acknowledgement of the creative contributions of Capital Health Members in Copyrighted Works owned and distributed by Capital Health, where such acknowledgement is warranted in the circumstances. Where the Capital Health Member is the owner of the Copyrighted Work and the work has been created using Capital Health Resources, the Capital Health Member shall acknowledge Capital Health in the publication thereof.

**Article 6 - RESEARCH DATA**

6.01 **Research Data.** Capital Health recognizes that Research Data is an integral part of research conducted in Capital Health. Where collaborators are involved in research at Capital Health, Capital Health Members are expected to fully disclose and provide copies of all Research Data to such collaborators as appropriate and necessary for the conduct of the research.

6.02 **License to Collaborators Upon Departure.** Upon notice from the Capital Health Member of his or her departure from Capital Health, the Capital Health Member shall grant to collaborators of the Capital Health Member an unrestricted, royalty-free, perpetual and irrevocable license to use copies of the Research Data provided pursuant to Section 6.01. All biological samples which are accessed/used by Capital Health Member(s) shall remain within the control of Capital Health and within Capital Health’s sites and shall be maintained in accordance with Capital Health’s policies, rules, procedures and protocols and pursuant to relevant legislation.

6.03 **License to Capital Health Upon Departure.** Upon notice from the Capital Health Member of his or her departure from Capital Health, Capital Health may also require a license to use the Research Data, if, in Capital Health's opinion such Research Data is necessary for medical education, research and clinical or related purposes at Capital Health. Upon written notice from Capital Health, the Capital Health Member shall grant a royalty-free, perpetual and irrevocable license to Capital Health to use the Research Data for medical education, research and clinical or related purposes, subject to the following terms and conditions:

(a) the Capital Health Member may refuse to grant a license to Capital Health where granting such license jeopardizes the ability of the Capital Health Member to patent or otherwise register Intellectual Property Rights in an Invention;

(b) Capital Health shall ensure that the license granted under this Section and the contribution of the Capital Health Member are appropriately acknowledged in each use of the Research Data by Capital Health; and

(c) such license will not prevent the Capital Health Member from requiring that Capital Health purchase products containing the Intellectual Property, where such products are articles of manufacture.
6.04 **Patient Information.** Nothing in this Article derogates from the Capital Health Member's responsibility to maintain the security and confidentiality of Capital Health patient information pursuant to the Capital Health Privacy Policy and related policies.

Article 7 - **TRADE-MARKS**

7.01 **Trade-marking.** All trade-marked goods, wares or services owned, in whole or in part, by Capital Health shall show the following trade-mark notice:

- ® (if a registered trade-mark)
- ™ (if an unregistered trade-mark)

Trade-marks used under license from Capital Health shall show the following trade-mark notice:

- ® (used under license from Capital Health) (if a registered trade-mark)
- ™ (used under license from Capital Health) (if an unregistered trade-mark)

Article 8 - **GENERAL PROVISIONS**

8.01 **Failure to Comply with the Policy.** Notwithstanding Section 3.01, any failure to comply with any material aspect of this Policy may result in Capital Health retaining an ownership interest in the Intellectual Property created by the Capital Health Member.

8.02 **Confidentiality.** Nothing in this Policy derogates from any confidentiality obligations of Capital Health or Capital Health Members contained in any agreements with third parties.

8.03 **Equity/Management Positions.** Capital Health and/or Capital Health Members may, in appropriate circumstances, take equity, director, management or employment positions in companies established to protect and commercialize Intellectual Property.

8.04 **Exclusion of Liability.** Capital Health is not responsible for or liable in respect of any real or perceived loss of opportunity as a result of any internal review or approval process relating to this Policy.

8.05 **Tax-related Proposals.** Whenever appropriate, and provided that such arrangements do not represent undue risk or generate undue expense for Capital Health, Capital Health shall consider proposals from Capital Health Members aimed at lawfully minimizing the impact of income tax legislation for the Capital Health Member.

8.06 **Dispute Resolution.** Disputes under this Policy (“Disputes”) shall be dealt with as follows:

(a) Any Disputes between Capital Health Members shall be submitted in writing to the Vice President, Research and Academic Affairs at Capital Health.
Health, who shall render a decision within 30 days of receipt of written submissions from all parties to the Dispute.

(b) Any Disputes between a Capital Health Member and Capital Health shall be submitted in writing to the Vice President, Research and Academic Affairs at Capital Health. Within 15 days of a receipt of a complaint under this paragraph, the Vice President, Research and Academic Affairs shall strike a committee of three or more individuals from outside of Capital Health (the "External Review Committee") for the purpose of reviewing the Dispute. The External Review Committee shall invite and review written submissions from both parties and shall prepare a report regarding resolution of the Dispute, within 60 days of receipt of submissions from the parties. Within ten days of receipt of the report of the External Review Committee, the Vice President, Research and Academic Affairs shall advise the Capital Health Member of Capital Health’s decision with respect to resolution of the Dispute.

(c) Decisions rendered by the Vice President, Research and Academic Affairs following completion of the processes outline in paragraphs (a) or (b) are final.

8.07 References. Further reference can be made to the Canadian Intellectual Property Office, Place du Portage I, 50 Victoria Street, Room C-229, Hull, Quebec K1A 0C9 (http://strategis.ic.gc.ca/sc_mrksv/cipo/welcome/welcom-e.html).

8.08 Application. This Policy shall apply to any and all Intellectual Property developed using, incorporating or relying on Capital Health Resources after the dated fixed for implementation of this Policy.

EXPECTED OUTCOMES

It is the intent of this Policy:
1. to encourage research, the development of Intellectual Property and the protection of Intellectual Property Rights within Capital Health;
2. to define the expectations and responsibilities of Capital Health Members who engage in research or other activities giving rise to Intellectual Property Rights;
3. to clarify and establish consistent procedures respecting the management of different types of Intellectual Property Rights, in particular, Inventions, Copyrighted Works and Trade-marks;
4. to ensure a fair recognition of the contributions of both Capital Health Members and Capital Health in the development of Intellectual Property;
5. to encourage the commercialization of Intellectual Property where warranted; and
6. to protect the interests of the Capital Health Member, Capital Health, and third party sponsors of research which may be, in part, carried out by a Capital Health Member.

GUIDING PRINCIPLES AND VALUES

1. Capital Health is committed to research excellence and the advancement of knowledge throughout Capital Health.
2. Capital Health recognizes that Intellectual Property is an outcome of research and that the value of Intellectual Property may go unrealized. Capital Health is committed to facilitating the identification, protection and exploitation of Intellectual Property within Capital Health.

3. Capital Health does not claim ownership to Intellectual Property created as an outcome of research within Capital Health, except in limited and specific circumstances which are outlined in this Policy. However, to assist in the identification of Intellectual Property within Capital Health, Capital Health will require systematic disclosure of all research activities and resulting Intellectual Property within Capital Health.

4. This Policy acknowledges and is not intended to interfere with third party contracts for research, including but not limited to clinical trial research, where the expectations of the parties regarding Intellectual Property are already defined.

5. This Policy acknowledges and confirms the affiliations between Capital Health and other health care and university institutions in the region, in particular, Dalhousie and the IWK.

**DEFINITIONS**

"Capital Health" means the Capital District Health Authority, the Queen Elizabeth II Health Sciences Centre and the Nova Scotia Hospital;

"Capital District Health Authority" means the authority for the Capital Health District, as established under the *Health Authorities Act*, S.N.S. 2000, c. 6, as amended, and regulations;

"Capital Health Employee" means all persons employed by Capital Health, including, but not limited to full and part-time staff.

"Capital Health Member" means
  a. Capital Health Employees; and
  b. persons granted privileges by Capital Health in Component Institutions, including, but not limited to clinicians, students, affiliates and trainees.

"Capital Health Resources" means premises, buildings, equipment, Intellectual Property, whether owned wholly or jointly by Capital Health, and other facilities, resources or property under control of or owned, leased or licensed by Capital Health and funds, regardless of source, that are administered wholly or partially under the control, responsibility, or authority of Capital Health.

"Component Institutions" means institutions within the Capital Health District, (as defined in the *Health Authorities Act*, S.N.S. 2000, c. 6, as amended, and regulations) that are administered by the Capital District Health Authority including:
  a. Addiction Prevention and Treatment Services;
  b. Capital District Mental Health Program;
  c. Cobequid Community Health Centre;
  d. Community Health;
  e. Dartmouth General Hospital;
  f. East Coast Forensic Hospital;
  g. Eastern Shore Memorial Hospital;
  h. Hants Community Hospital;
  i. Home Support Central;
  j. Nova Scotia Hospital;
k. Musquodoboit Valley Memorial Hospital;
l. Public Health Services;
m. Twin Oaks Memorial Hospital; and
n. QEII Health Sciences Centre.

"Copyright" shall have the meaning prescribed by the Copyright Act, R.S.C. 1985, c. C-42, as amended, and includes the sole right to produce or reproduce a work or any substantial part thereof in any material form whatsoever, to perform a work or any substantial part thereof in public or, if a work is unpublished, to publish the work or any substantial part thereof.

"Copyrighted Work" means a work in which Copyright exists.

"Dalhousie" means Dalhousie University, Halifax, Nova Scotia.

"Dalhousie Affiliation Agreement" means the Affiliation Agreement between Dalhousie University and Capital District Health Authority, Queen Elizabeth II Health Sciences Centre and the Nova Scotia Hospital dated October 1, 2002.

"Intellectual Property" means any tangible or intangible form of intellectual or artistic activity, including, but not limited to: Inventions, Research Data, databases, source code, object code, Copyrighted Works and Trade-marks, as well as all other creations that can be protected under patent, copyright, trade-mark, Trade Secret or similar laws.

"Intellectual Property Rights" means the legal rights to Intellectual Property.

"Invention" means the following subject matter and any improvements thereto, regardless of whether or not they are patented or patentable: (i) any new and useful process, machine, manufacture or composition of matter; (ii) know-how; (iii) new life forms; (iv) methods of medical treatment; (v) analytical and surgical methods; (vi) computer software (source or object code) and any computer related technology; (vii) any other discoveries; (viii) improvements to existing Patents; and (ix) Research Data;

"IWK" means the IWK Health Centre.

"Patent" shall have the meaning prescribed by the Patent Act, R.S.C. 1985, c. P-4, as amended.

"Policy" means this Intellectual Property Policy.

"Research Data" means written and non-written material produced by a Capital Health Member during the course of conducting research, including, but not limited to, know-how, information, processes, techniques, computer software, databases and information stored therein, and other computer-related product or documentation.

"Trade-mark" shall have the meaning prescribed by the Trade-marks Act, R.S.C. 1985, c. T-13 and amended and includes a mark that is used by a person for the purpose of distinguishing wares or services manufactured, sold, leased, hired or performed by that person from those manufactured, sold, leased, hired or performed by others.

"Trade Secret" means any form of know-how, data concepts, discoveries or other information with an obligation not to disclose to third parties.
REFERENCES
1. Further reference can be made to the Canadian Intellectual Property Office, Place du Portage I, 50 Victoria Street, Room C-229, Hull, Quebec K1A 0C9 (http://strategis.ic.gc.ca/sc_mrksv/cipo/welcome/welcom-e.html).

2. Affiliation Agreement between Dalhousie University and Capital District Health Authority, Queen Elizabeth II Health Sciences Centre and the Nova Scotia Hospital dated October 1, 2002.

HISTORICAL DATES

June 2005