

THE FORSYTH INSTITUTE
INTELLECTUAL PROPERTY AND COPYRIGHTABLE WORKS POLICY

I. INTRODUCTION

During the course of conducting research, teaching, clinical care and other intellectual and administrative activity at or on behalf of The Forsyth Institute (“Forsyth”) the employees, staff members, volunteers, students of Forsyth as well as any visiting scientists or students performing research or participating in any other programs at Forsyth, whether compensated or not (hereinafter collectively referred to as “Forsyth Personnel”) may discover new Intellectual Property or create Copyrightable Works.

Forsyth is committed to supporting Forsyth Personnel in securing commercial development of Intellectual Property and Copyrightable Works so that the benefits of such Intellectual Property and Copyrightable Works may reach society at the earliest opportunity in a manner consistent with applicable federal and state regulations and laws. Forsyth has established the following policies and procedures with respect to all Forsyth Intellectual Property and Copyrightable Works in order to:

- a. Promote Forsyth’s mission of fostering scientific research and scholarship;
- b. Develop new knowledge and facilitate the practical application of such knowledge to the public benefit;
- c. Encourage, assist and reward Forsyth Personnel who develop and create Intellectual Property and Copyrightable Works under this Intellectual Property and Copyrightable Works Policy;
- d. Establish procedures and practices for determining the rights and obligations of Forsyth, inventors and research sponsors with respect to Forsyth Intellectual Property and Forsyth Copyrightable Works; and
- e. Enable Forsyth to accept research funding and enter into research agreements with governmental agencies, foundations, and corporate sponsors.

II. DEFINITIONS

For the purposes of this Forsyth Institute Intellectual Property and Copyrightable Works Policy (“Policy”) the following definitions shall apply.

“Intellectual Property” is any new and useful process, machine, composition of matter, life form, article of manufacture, software, or tangible property, including, but not limited to, such things as new or improved devices, chemical compounds, drugs, data sets, genetically engineered biological organisms, and/or unique and innovative uses of existing discoveries or inventions. Intellectual Property is created when something new and useful has been conceived or developed; or when unusual, unexpected, or non-

obvious results, obtained with an existing invention can be practiced for some useful purpose. Intellectual Property may or may not be patentable or copyrightable.

“Forsyth Intellectual Property” is any Intellectual Property discovered or created by Forsyth Personnel arising from programs or projects supported in whole or in part by funds, facilities or resources of Forsyth.

“Inventor” is an individual who has conceived of an essential element of any patentable Intellectual Property or contributed substantially to its conceptual development or is a creator of unpatentable Intellectual Property.

“Copyrightable Works” are “original works of authorship” which have been fixed in any tangible medium of expression from which they can be perceived, reproduced or otherwise communicated, either directly or with the aid of a machine or device. Such works include the following:

- Literary works such as books, journals, articles, poems, manuals, memoranda, tests, computer programs, instructional material, databases, bibliographies;
- Musical works including any accompanying words;
- Dramatic works, including any accompanying music;
- Pantomimes and choreographic works (if fixed, as in notation or videotape);
- Pictorial, graphic and sculptural works, including photographs, diagrams, sketches and integrated circuit masks;
- Motion pictures and other audiovisual works such as videotapes;
- Sound recordings.

“Forsyth Copyrightable Works” are any Copyrightable Works authored by Forsyth Personnel arising from programs or projects supported in whole or in part by funds, facilities or resources of Forsyth.

“Author” means any person who creates a work of authorship qualifying for protection under U.S. copyright law.

III. INVENTIONS AND PATENTS

A. REPORTING OF FORSYTH INTELLECTUAL PROPERTY

Any Forsyth Personnel who is an Inventor of Forsyth Intellectual Property shall report to the Chairman of the Forsyth Intellectual Property and Copyright Committee (“Committee”) any Forsyth Intellectual Property promptly upon learning of such. The report shall be made in writing using the Forsyth Intellectual Property/Copyright Report Form. The Forsyth Intellectual Property cannot just be an abstract idea.

Forsyth Intellectual Property must be reported before it is publicly disclosed, otherwise patent rights in foreign jurisdictions may be lost.

B. OWNERSHIP OF FORSYTH INTELLECTUAL PROPERTY

1. Forsyth shall own all Forsyth Intellectual Property, and Forsyth shall be free to patent, license, sell, commercialize, develop and market Forsyth Intellectual Property as it deems appropriate. At the request of the Chairman of the Committee, the Inventor(s) shall (i) execute assignments or other documents assigning to Forsyth all their rights in such new Forsyth Intellectual Property and any patent applications or resulting patents on such new Forsyth Intellectual Property, and (ii) fully cooperate with and assist, if requested, in any efforts by Forsyth to patent such Forsyth Intellectual Property.
2. In the event that the Committee decides (i) not to file a patent application on any Forsyth Intellectual Property, (ii) to abandon a patent application on any Forsyth Intellectual Property prior to issuance of the patent, or (iii) to abandon an issued patent on any Forsyth Intellectual Property, the Committee shall notify in writing the Inventor(s) of the subject Forsyth Intellectual Property of such decision, and such Inventor(s) may request in writing to the Committee that such Forsyth Intellectual Property (“Released Intellectual Property”) be released to him, her or them (as applicable). Upon determining whether such requested release be granted, the Committee shall consider whether such release would be inconsistent with Forsyth’s obligations to third parties or violate the terms of any external funding agreement and whether such release would be in the best interests of Forsyth and the public. The Committee may agree to grant the requested release and in such case will assign or release all interest that Forsyth holds or has the right to hold in the subject Forsyth Intellectual Property to the Inventor(s) in equal shares, or such other shares as the Inventor(s) may agree. Release of any Forsyth Intellectual Property to the Inventor(s) shall be conditioned on the Inventor(s)’ fulfilling the following:
 - a. To reimburse Forsyth for all out-of-pocket legal expenses and patent related fees incurred by Forsyth if and when the Inventor(s) receives income from the Released Intellectual Property.
 - b. To share with Forsyth twenty percent (20%) of the Net Income (income remaining from gross income after repayment of Forsyth expenses above and Inventor(s)’ legal and licensing expenses and patent related fees) received by the Inventor(s) from the Released Intellectual Property, but does not include financing received for purposes of research and development.
 - c. To report to Forsyth at least annually on the efforts taken to develop the Released Intellectual Property for public use, and, at Forsyth’s request, to reassign such Released Intellectual Property which the Inventor(s), their agents or designees are not developing for the benefit of the public.
 - d. To fulfill any obligations that may exist to sponsors of the research that led to the Released Intellectual Property.
 - e. To grant back to Forsyth an irrevocable, perpetual, royalty-free, nonexclusive, worldwide right and license to use the Released Intellectual Property for its

non-commercial research, education and clinical care purposes and a right to grant the same rights to other non-profit organizations.

- f. To agree to indemnify, defend and hold harmless Forsyth for any third party claims arising from Inventor(s)' use of the Released Intellectual Property.

IV. COPYRIGHTS

A. REPORTING OF FORSYTH COPYRIGHTABLE WORKS

Any Forsyth Personnel who is an Author of Forsyth Copyrightable Works shall report to the Chairman of the Committee any Forsyth Copyrightable Works promptly upon the creation of such. The report shall be made in writing using the Forsyth Intellectual Property/Copyright Report Form.

B. COPYRIGHT OWNERSHIP

1. It is traditional at Forsyth and other non-profit academic and research institutions for books, articles and other scholarly writings by a staff member to be deemed the property of the Author, who is considered to be entitled to determine how such Copyrightable Works are to be disseminated and to keep any income they produce. This tradition reflects Forsyth's commitment to encourage Forsyth Personnel to write and to publish what they wish. In recognition of that longstanding practice, Forsyth disclaims ownership of Forsyth Copyrightable Works, except in the following cases:
 - a. Assigned Tasks. Forsyth will own the copyright to Copyrightable Works created (i) by Forsyth Personnel in the course of their assigned duties of employment or internship, (ii) by student employees in the course of their assigned duties of employment, including duties as teaching or research assistance, or (iii) by staff members as part of an assigned task where the assignment explicitly states that the work will be owned by Forsyth.
 - b. Outside Agreements/Grants. Where copyrighted materials are developed by Forsyth Personnel in the course of sponsored research funded by a third party pursuant to an agreement approved by Forsyth or under a grant from a governmental entity, ownership of the copyright will be determined by the applicable terms of such agreement or grant.
 - c. Patentable Works. Where a Copyrightable Work, such as certain computer software, is also patentable and the Committee elects to file a patent application, Section III of this Policy will apply to it. The copyrightable portions of such software shall remain subject to this Section IV.
 - d. Commitment of Forsyth Resources. When Forsyth makes substantial commitments of resources to, or expenditures of resources for, a project, Forsyth may be entitled to ownership of any works created in the conduct of such project. The term "substantial" is not meant to include ordinary use of Forsyth's offices, office equipment or Forsyth owned personal computers. The Committee will determine whether substantial commitments exist in a particular case and whether Forsyth ought therefore not to disclaim ownership of such works. Where feasible, the Committee will make this determination before the work is created and at

- the beginning of the project, and will so inform the principal investigator or other responsible staff member.
- f. To comply with all applicable conflict of interest policies.

V. REVENUE FROM FORSYTH INTELLECTUAL PROPERTY AND COPYRIGHTABLE WORKS

1. For purposes of this Policy, “Royalties” is defined as running royalties, advances against running royalties, up-front license fees, milestone payments, and any other payments received by Forsyth under an agreement in consideration for licensing, assigning or otherwise transferring Forsyth Intellectual Property and/or Copyrightable Works, but shall not include payments or consideration received by Forsyth from a licensee or others (a) in sponsorship of research or under other agreements for goods, services or rights or (b) in fees, stock, securities or other form of equity.
2. Royalties shall be used by Forsyth first to offset fees and expenses incurred by Forsyth (a) in applying for, obtaining, maintaining and enforcing intellectual property protection and/or copyright registration, including, but not limited to, patenting, registration and litigation expenses; and (b) in developing and negotiating license or other transfer agreements for Forsyth Intellectual Property and/or Forsyth Copyrightable Works.
3. After recovery of the expenses by Forsyth as provided in subsection 2 above, the remaining Royalties will be designated “Net Royalties.”
4. After deducting a ten thousand dollar (\$10,000) administrative and maintenance fee, Forsyth shall distribute Net Royalties as follows:
 - 35% to Inventor(s)/Authors
 - 15% to Forsyth’s Technology Acceleration Fund
 - 50% to Forsyth
5. Forsyth’s share of Net Royalties will be used in support of research consistent with Forsyth’s mission as a non-profit, research institution. Forsyth shall establish a Technology Acceleration Fund and Net Royalties allocated to such Fund will be used to fund internal research development projects.
6. As used in this Policy the term “Inventor(s)” or “Author(s)” may represent two or more individuals. These individuals will be expected to agree among themselves on the fractional distribution of the “Inventor(s)/Author(s) share of the Net Royalties. A written agreement must be signed by all the Inventors/Authors who are listed on the relevant Intellectual Property or Copyrightable Work and provided to Forsyth’s Chief General Counsel. If no such written agreement is provided to Forsyth’s Chief General Counsel by the time of a distribution of Net Royalties, the Inventors’/Authors’ share of such distribution shall be divided equally.

VI. ADMINISTRATIVE RESPONSIBILITY

Forsyth shall maintain an Intellectual Property and Copyright Committee to represent Forsyth in all matters of policy or procedure affecting all Forsyth Intellectual Property and Forsyth Copyrightable Works. This Committee shall consist of the following seven (7) members: the President/CEO of Forsyth; the Vice President for Clinical and Translational Research of Forsyth, and two senior Forsyth staff members appointed by the President/CEO, as well as two (2) outside consultants, and, as a non-voting ex officio member, the Chief General Counsel of Forsyth. A quorum shall consist of at least four (4) voting members; and, excepting adjournment, every decision by the Committee shall require the presence of a quorum. Committee members may participate via telephone if they are unable to be physically present at a meeting. The Chief General Counsel, the Chairman and Secretary of the Committee are responsible for administrative matters relating to Forsyth Intellectual Property and Copyrightable Works. The Chairman and Secretary shall be appointed by the President/CEO.

The specific duties of the Committee include the following:

- a. Provide oversight on the implementation and interpretation of this Policy, and recommend revisions to the Policy as may be needed in order to achieve its goals;
- b. Sit as a tribunal to resolve any disputes involving the ownership of any Forsyth Intellectual Property or Forsyth Copyrightable Works;
- c. Decide what Forsyth Intellectual Property should be patented and what existing patents of Forsyth Intellectual Property should be maintained;
- d. Decide what Copyrightable Works should be registered.

VII. REVISION OF THIS POLICY

This Policy may be revised at any time by action of the Board of Directors of Forsyth. Such revisions shall not affect the rights accrued prior to the date of such action.

VIII. INTELLECTUAL PROPERTY AND COPYRIGHTABLE WORKS AGREEMENT

This Policy, as may be amended from time to time, shall be deemed to be a condition of initial or continuing employment of all Forsyth employees and a condition of acceptance by all visiting scientists, students, interns or volunteers who work on a research project at Forsyth or funded through Forsyth. All Forsyth Personnel will be expected to sign The Forsyth Intellectual Property and Copyrightable Works Agreement which is attached as Exhibit A to this Policy, but failure to do so shall not affect the applicability of this Policy nor relieve any Forsyth Personnel from the obligations imposed upon them under it.

EXHIBIT A

THE FORSYTH INSTITUTE
INTELLECTUAL PROPERTY AND COPYRIGHTABLE WORKS
AGREEMENT

I understand that, consistent with applicable laws and regulations, The Forsyth Institute (“Forsyth”) is governed in the handling of intellectual property and copyrights by its policy entitled “Intellectual Property and Copyrightable Works Policy” (published in the Employee Handbook). I have read and I understand this policy.

In consideration of one or more of the following: (a) my employment by Forsyth, (b) my receipt of remuneration from Forsyth, (c) my participation in projects sponsored or administered by Forsyth, and/ or (d) my access to or use of facilities or resources provided by Forsyth, I hereby accept, and will abide by, and fully comply with The Forsyth Institute Intellectual Property and Copyrightable Works Policy, as it may be amended from time to time. I further agree not to enter into any agreement creating patent or copyright obligations which would conflict with my obligations to The Forsyth Institute under The Forsyth Institute Intellectual Property and Copyrightable Works Policy.

This agreement is effective on the date of my hire, enrollment, or participation in any project at or with Forsyth and is binding on me, my estate, heirs and assigns.

By: _____

Printed Name: _____

Date: _____