

INTELLECTUAL PROPERTY POLICY

Amended: July 5, 2012

This IP Policy will be incorporated into and made a schedule to the CMIC membership agreement.

In this CMIC IP Policy:

“Background IP” means IP owned or licensed by a Project Participant, which arose prior to or independently of the Project, and whose disclosure or use is necessary in order to conduct the Project or use or implement Project IP;

“Confidential Data” means confidential data, whether created before or during the Project;

“Confidential Information” means information received by any Project Participant from another Project Participant, or, which is created by a Project Participant as part of their participation in the Project, and, which is not generally known and is either a) identified by a Participant as confidential or b) which would be understood by a Participant, exercising reasonable business judgment, to be confidential, and without limiting the foregoing includes data, methods, systems, algorithms, research results, inventions (whether patentable or not) and software;

“Intellectual Property” and “IP” mean any intellectual property rights recognized by law, including but not limited to patents, trademarks, copyrights, and trade secrets.

“Member” means any CMIC member, whether or not a Project Participant for a given Project;

“Person” means any individual, corporation, university, or entity otherwise recognized at law;

“Project” means a CMIC research project;

“Project IP” means all new IP created by a Project Participant that arise during or as a direct result of a Project;

“Project Participant” means any participant in a given Project, including CMIC, all Sponsors, all universities and research laboratories, and all non-Sponsor private sector contractors and subcontractors whether or not a Member, and their respective employees, students, researchers, contractors and subcontractors, and researchers who are involved in the Project;

“Sponsor” means a Project Participant that is providing support, financial or in-kind, for the Project.

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Unless otherwise expressly provided in a Project IP Agreement the following shall govern all Projects:

Project IP Agreements

- All Projects shall have a Project IP Agreement. The Project IP Agreement must conform to this CMIC IP Policy, provided that the Project IP Agreement may set out express additions or modifications to the CMIC IP Policy for that Project.
- No Person may be Project Participant unless that Person has become a Party to the Project IP Agreement, or, owes equivalent duties to a Party, as a result of a written agreement or recognized fiduciary duty.
- The CMIC research director for a Project shall be responsible for brokering the Project IP Agreement, for ensuring that all Project Participants are bound by the Project IP Agreement, for retaining a copy of all executed Project IP Agreements and for ensuring that the Project IP Agreement conforms to this CMIC IP Policy.
- CMIC shall provide to any Project Participant, on request, a copy of the fully executed consolidated Project IP Agreement.
- CMIC will only be a signatory to Project IP Agreements if CMIC is directly funding the Project from pooled CMIC funds.

Confidentiality

- The meetings of the CMIC Executive Board and CMIC Program Committees will not be considered confidential.
- Review of funding proposals will be considered non-confidential, though reviewing members will be required to not disseminate proposals.
- All Project Participants shall retain in strict confidence all Confidential Information for twelve (12) months from the date when that Confidential Information became known to all Project Participants as part of that Project reporting of that Confidential Information (the “Confidentiality Period”).

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- A Project Participant may only share Confidential Information with a Person not a party to the Project IP Agreement if:
 - The recipient owes the disclosing Project Participant contractual or fiduciary duties of confidentiality and disclosure of Confidential Information, and assignment and licensing of intellectual property which are no less extensive than the confidentiality obligations established by the Project IP Agreement; and
 - on a need-to-know basis.
- Project Participants who are researchers may commence use of Confidential Information (including incorporating it in a thesis or research paper or report which is submitted for review) six (6) months after its first disclosure to other Project Participants, provided that this Confidential Information shall not be published or publicly disclosed before the expiry of the relevant Confidentiality Period without the express written permission of all of the Sponsors.

Background IP

- All Background IP ownership will reside with the Project Sponsor who has developed it or licensed it.
- Third party licensed IP included in any Background IP supplied by a Project Sponsor must be identified as such by the Project Sponsor when they disclose the Background IP to the Project.
- No Person, including the discloser of third party Background IP, shall be deemed to have made any representations with respect to freedom to use the Background IP or to operate; all Members desiring to benefit from the results of a research project will be responsible for any required arrangements to access such licensed Background IP.
- Confidential Data provided to a project by a sponsor will remain the property of that Sponsor and that Sponsor must specify the limitations associated with the use and dissemination of such Confidential Data.

Developed IP

- The ownership of Project IP remains with the creator or other first owner until and unless it is assigned contractually or otherwise transferred to another party with a right to it (e.g. to the university, research organization, or Sponsor).

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- If Project IP is a patentable invention, or might reasonably be considered patentable by a Project Participant exercising reasonable commercial judgement, the Project Participant who makes the invention shall promptly disclose the invention (the “Invention”) to CMIC and the Sponsors. Each Sponsor shall have the right, but not the obligation, which must be exercised by notice in writing to the Project Participant who made the Invention, the first owner of the Invention (if not that Project Participant), and all other Sponsors of the Project within 6 months of disclosure of the Invention, to acquire an undivided joint interest in the Invention, and all corresponding patent rights, together with any other Sponsor or first owner of the Invention, each co-owner to pay a pro rata share of the costs of patenting the Invention (unless they otherwise agree among themselves). If no other person participates in costs of patenting an Invention, a Sponsor who exercises this option shall become the sole owner of the Invention, and the first owner of the Invention shall assign it to this Sponsor.
- Unless the Project Agreement provides otherwise, no Project Participant or first owner of an Invention, can be compelled to pay any costs for patenting any Invention, including any costs of drafting, prosecuting or maintaining any patent or patent application anywhere in the world.
- CMIC will not participate in any patent rights arising from any Invention, nor in any costs of patenting any Invention.
- Software which is developed as Project IP by a Project Participant shall be deemed to be owned by the developer, who as first owner of the copyright of the software shall set the terms of license. The owner shall grant one license to each Project Sponsor to use by the Project Sponsor for internal use.
- Data generated as part of a Project will be considered to be jointly owned by the Project Participants; Project Participants will be free to use the data for their own internal purposes

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Licensing of IP

- The owner or assignee of all new Project IP (including any software) shall be deemed to have granted, without any further action on the part of the owner or assignee, to all Sponsors of that Project a non-revocable, non-exclusive, royalty-free, worldwide license for their own internal purposes.
- The Background IP as well as Project IP can be licensed to Members who were not Sponsors of that Project at a cost to be determined at the time the non-sponsoring member requests a license and must be licensed to other non-sponsoring CMIC members under fair, reasonable and non-discriminatory fashion except that there may be an adjustment to the fees as the value of IP increases with time. Such non-sponsoring members must also observe the same grant-back requirements.
- Any revenues from licensing should go to the IP owners unless otherwise agreed.

Disputes

- The CMIC will not be responsible for reviewing invention disclosures or deciding what to patent; this will be handled within the Project. If there is disagreement on patenting between Sponsors and/or the research organization, the CMIC Research Director can help facilitate. Disputes should be brought to the appropriate Program Committee.

Participation of ‘Late Sponsors’

- If non-sponsoring Members want to join an on-going Project, they will need to pay a ‘catch-up’ fee to join unless agreed otherwise with the Sponsors of that Project. Once the late-joining Members have paid the catch-up fee, they will be considered a Sponsor of the Project.
- The “catch-up” fee shall be not less than the cumulative annual sponsorship costs incurred by the other Project Sponsors prior to the late joining.
- Any catch-up fees should go to the Project unless otherwise agreed.

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Licensing to Non-Members

- After an agreed exclusivity period as documented in the Project IP Agreement, IP owners may license to non-members.
- The principle of a surcharge or higher royalty requirement for non-members should be upheld.
- Any revenues from licensing should go to the IP owners unless otherwise agreed.

Survival

- If a Member resigns their membership in the CMIC, and was a fully paid Project Sponsor and recipient of a license stemming from Project IP, the license will survive the longer of the resignation for the duration of any patents or for ten (10) years following the resignation.
- All confidentiality obligations assumed by a Member in any capacity shall survive the termination of their Membership for any reason.
- Improvements made on the project after the Member leaves would not be available to the Member unless accessed by a second, non-member license. The retiring Member shall be responsible for its share of any patent maintenance for the duration of the patent (as per the Project IP Agreement) unless the member wants to withdraw from the license.