



SWOG

INTELLECTUAL PROPERTY POLICY

(REV. 10-12)

This Intellectual Property Policy (“Policy”) was adopted by the Board of Governors at its bi-annual meeting on October 20, 2012, and replaces any previous Intellectual Property policy.

The Policy is effective as of October 2012.

1. INTRODUCTION

SWOG’s mission is to improve the practice of medicine in preventing, detecting and treating cancer, and to enhance the quality of life for cancer survivors, as stated further in the SWOG Group Mission Statement at www.swog.org. In conjunction with its member researchers and institutions, SWOG designs, conducts, and administers multidisciplinary clinical trials and publishes and presents the results of same.

In the course of pursuing its mission, the Group innovates and otherwise adds to the general body of scientific, educational and medical knowledge. The aim of the Policy is to make available such knowledge, and related technology, to industry and others for the public benefit, while providing recognition to individual inventors and encouraging the prompt and open dissemination of research results, and to otherwise facilitate the mission of SWOG.

This Policy has been adopted to assist SWOG in these efforts. SWOG has adopted the NCI Cancer Therapy Evaluation Program (CTEP) Intellectual Property Option to Collaborators as amended from time to time and this Policy is subject to the terms and conditions contained therein.

2. DEFINITIONS

Unless expressly noted otherwise, terms of art used in this Section 2 have the same meaning provided under applicable domestic or international copyright, trademark and/or patent laws.

- a. **Group** – refers to SWOG, its Members and the Investigators.

LIB01\2328030.3-LAWJOR

2328030.10

- b. **Group IP** – refers to Intellectual Property which is owned by SWOG or has been developed, created, or discovered, by the Group arising out of or related to SWOG Activities. SWOG may, in its discretion, decide to file patent applications, copyright applications, and to otherwise pursue statutory protection of the retained Intellectual Property rights, under applicable laws.
- c. **Intellectual Property** – refers broadly to creations of the mind, including, but not limited to, Inventions, discoveries, studies, trials, mask works, tangible research property, trademarks, and copyrightable works, including software, hardware, Works, know-how and show-how (to the extent such relate to an Invention or Work otherwise covered by the Policy), research material, computer software, compilations, collective works, original data and other creative or artistic works which may have commercial value, and including, but not limited to, that which is protectable by statute or legislation, such as patents, copyrights, trademarks, service marks, trade secrets, and mask works. In general, the mission of SWOG is to disseminate the results of Research and discoveries, and therefore, the Group acknowledges that there will be very limited situations in which trade secret rights will exist.
- d. **Invention** – refers to a new device, improvement, system, method, or process developed from research and experimentation.
- e. **Investigator** - refers to an individual who is a Member or who is affiliated with a Member who conducts Research as part of the Group. An Investigator may also be an inventor of Inventions, an author of a copyrightable Work, or an originator of a creative Work.
- f. **Limitations** – refers to applicable: (i) local, state and federal regulations (e.g., NCI regulations); and/or (ii) any pre-existing third party contractual obligations, that may affect the ownership of Group IP by SWOG. Examples of Limitations for purposes of Section 3 of the Policy include the National Cancer Institute’s (“NCI”) National Clinical Trials Network Program Guidelines and the NCI-CTEP “Cancer Therapy Evaluation Program Intellectual Property Option to Collaborators”.
- g. **Member** – refers to an institution or individual that/who has contracted with SWOG to participate in SWOG activities, or whom SWOG otherwise deems to be a member.
- h. **Member Retained IP** – means Intellectual Property retained by a member institution or individual Investigators.
- i. **Research** – refers broadly to creative expression, studious inquiry, examination, investigation, clinical trials, analysis, or experimentation aimed at the discovery and interpretation of facts, revision of accepted theories or laws in the light of new facts, or

practical application of such new or revised theories or laws and applies equally to scholarly and creative activities across all disciplines.

j. **SWOG** - refers to the NCI supported cancer clinical trials cooperative group formerly known as Southwest Oncology Group (www.swog.org).

k. **SWOG Activities** – refers to all activities of SWOG that advance or otherwise relate to SWOG’s mission, including, without limitation, conducting Research and participating in clinical trials.

l. **Work** - includes creative works and Research materials that are educational, scholarly, artistic or literary. Examples include: books, articles, class notes, theses, dissertations, abstracts, manuscripts, press-releases, posters (Pol. #24) films, video, digital and analog recordings, pictorial and graphic works, and other works of the imagination or the like. As defined herein, status as a Work will not be affected by the tangible medium in which it appears.

3. **OWNERSHIP OF INTELLECTUAL PROPERTY**

Ownership of all rights in and to the Group IP shall be as follows:

a. **Ownership** - SWOG will own all rights in and to the Group IP to the maximum extent such ownership is not restricted by applicable Limitations. The Members and Investigators agree to execute documents and take all other reasonable activities requested of them to assist SWOG in evidencing, protecting, and enforcing SWOG’s ownership of the Group IP;

b. **License** - To the extent applicable Limitations restrict SWOG’s full ownership or use of the Group IP, resulting in the retention of some rights by the Member(s) and/or Investigator(s) (“Retained Rights”), the Member(s) and/or Investigator(s) shall grant to SWOG, at SWOG’s discretion:

i. a non-exclusive, royalty-free, worldwide right and license, with rights of sublicense, under the Retained Rights to need scope e.g., make, use, copy, modify, incorporate, commercialize or otherwise utilize same in connection with SWOG Activities];

OR

ii. an exclusive, royalty-free, worldwide right and license, with rights of sublicense, under the Retained Rights to need scope e.g., make, use, copy, modify, incorporate, commercialize or otherwise utilize same in connection with SWOG Activities];

The Members and Investigators agree to execute documents and take all other reasonable activities requested of them to assist SWOG in evidencing its license rights granted herein.

c. **Right of First Refusal** - The Member(s) and/or the Investigator(s) shall grant to SWOG a right of first refusal to acquire full ownership rights in and to any Member Retained IP; the terms of such Right of First Refusal shall be negotiated in good faith by SWOG and such Members. In its discretion, SWOG may elect to waive any Right of First Refusal.

d. **Commercialization** - SWOG shall be entitled to participate in revenue generated from the commercialization of Member Retained IP and the Member(s) and/or the Investigator(s) shall negotiate in good faith to determine a reasonable participation level for the respective parties.

4. **THIRD PARTY AGREEMENTS**

Members will take such steps as are requested by the Group Chair to ensure that the terms of any third party agreements do not conflict with their commitments to SWOG under this Policy

5. **ADMINISTRATION**

The Group Chair shall have the authority to address all Intellectual Property matters at SWOG, including but not limited to, taking all steps that he/she deems appropriate to implement and enforce the Policy. Without limiting the Group Chair's authority, such authority shall include, but not be limited to:

a. Appointing a SWOG IP Committee, which he/she shall head.

b. In the event of a dispute between any Member(s) of the Group, any question of ownership or rights in Intellectual Property, or any question of interpretation of this Policy, the Group Chair shall address and resolve same. The Group Chair may consult with and involve the IP Committee in addressing and resolving any such disputes or questions. The Group Chair's decision on all such matters shall be final.

c. Require All Members Investigators who participate in SWOG Activities to agree to the terms of any of SWOG's Invention and Proprietary Information Agreement ("Agreement") as promulgated by the SWOG IP Committee.

6. **DISCLOSURES**

In order to comply with this Policy, Members and/or Investigators must report to the Group Chair any Intellectual Property created during or related to SWOG Activities, utilizing an IP

Disclosure Form to be created by the Group Chair or the Intellectual Property Committee under the guidance of the Group Chair.

7. ADDITIONAL INFORMATION

Additional information about this Policy and related issues may be posted from time to time at (www.swog.org).