

## Commercialisation of innovations

### 1. Changes from previous version

Updating the health authority's rules for processing innovations—clarified procedures and responsibilities.

### 2. Purpose and scope

Oslo University Hospital HF (OUS) promotes innovation through development of internal services, external collaboration with academia and businesses, and through business development and commercialisation of ideas and inventions. This guideline describes the tasks, rights and obligations of the inventor, OUS and OUS' Technology transfer office Inven2 AS regarding commercial exploitation of innovations.

### 3. Responsibilities

- **CEO:** Responsible for the day-to-day operation of the health trust, including commercialization of ideas and inventions.
- **Director of Research, Innovation and Education:** Responsible for innovation policy and commercial exploitation of innovations, including development and management of governing documents on behalf of the CEO.
- **Line managers** are responsible for ensuring that guidelines are implemented and complied with within their own area of responsibility.
- **All employees** of the health trust must comply with these guidelines. This also applies to others who are involved in commercialisation under the responsibility of the health trust.
- **Inven2 AS:** Inven2 AS is the technology transfer office (TTO) of OUS and is responsible for the administration of reported inventions, assessing their commercial potential, maintain property rights and promote further commercialisation measures and business development.

### 4. Procedure

#### 4.1. Scope and limitations

##### 4.1.1 Scope

The health trust is the owner of rights to innovations (see definitions in chapter 5) that arise from an inventor's work at OUS. These are further developed in a professional commercialisation system. Inventors (see definitions in Chapter 5) receive a compensation of the health trust's gain from commercialisation. The remaining benefits go to units in relevant clinics from which the invention originates, and to create a basis for new research and innovation.

#### **4.1.2 Limitations**

Innovations that have emerged in their entirety in connection with other employment relationships fall outside the rights that the health enterprise may require to be transferred.

This is provided that the innovation has taken place outside the inventor's affiliation with OUS and without the use of the health trust's infrastructure and resources, and provided that the activity that forms the basis for the innovation does not conflict with OUS' guidelines for secondary occupation.

#### **4.1.3 Relationship with the University of Oslo**

Employees with employment at both OUS and the University of Oslo must follow this procedure for both working conditions. Inven2 AS represents both employers. The sharing of profits/dividends between the two institutions follows the applicable agreements at all times.

## **4.2 Rights to innovations and other intellectual property and material rights**

### **4.2.1 Patentable inventions**

OUS will demand to transfer the rights to patentable inventions that are a result of, have come into being in connection with, or in any other way arise from connection to or stay at OUS.

### **4.2.2 Copyright in intellectual property etc.**

OUS holds the copyright, and thereby controls the right to exploit intellectual property, databases, catalogues with associated documentation and computer programs created by the inventor during the performance of tasks for OUS, according to OUS' instructions, or otherwise have been created in connection with or in any other way arise from employment, connection to or stay at OUS.

The same applies to other intellectual works created in connection with the employment relationship, such as notes, reports, document templates as well as teaching, course and information material. OUS will not take over rights to non-fiction/scientific works, including books, scientific articles, doctoral theses. Here, the employee retains the rights unless otherwise specifically stipulated or agreed.

OUS has or acquires the rights to trademarks and designs, circuit designs for integrated circuits that are protected under the Act on circuit patterns and physical objects/material.

Clinical data and products of organic, inorganic or biological material, including substances and data derived from material, organisms and crops, that have been created or collected as part of activity and projects at OUS, belong to OUS. These are not considered innovations.

### **4.2.3 Other technology etc.**

OUS has the right to other technology etc., e.g. non-patentable inventions, practical solutions, technical principles and know-how, scientific and mercantile information and business concepts that

arise in connection with, relate to or are a result of the inventor's working relationship with connection to or stay at OUS.

### **4.3 Notification of innovation**

An inventor who has made or contributed to an innovation with commercial potential shall, without undue delay, notify OUS, represented by Inven2, of the innovation with the necessary documentation and details in the notification form available on Inven2's website: [Report a new idea – Inven2](#). In this connection, the inventor is obliged to provide all necessary information of significance for the assessment of the innovation.

If the inventor is in doubt as to whether an innovation has commercial potential, the question shall be submitted to OUS at Inven2.

### **4.4 Silence**

Until Inven2 has been notified of the innovation and until there is a feedback/reply to the inventor (point 4.5), the inventor shall not make the innovation publicly available (Section 2 of the Patents Act). When OUS uses its right to take over the innovation, the inventor must not make the innovation publicly available.

### **4.5 Notification of Acquisition of Rights**

After submitting notification of the innovation with information necessary for OUS, by Inven2, to be able to decide on the question of rights, the inventor will receive written feedback stating that OUS is considered to have acquired the right to the innovation. Inven2 has been authorised to make claims against the inventor(s) for acquisition of the rights to innovations.

When OUS assumes rights pursuant to the Copyright Act, etc., the inventor is entitled to be named in accordance with good practice in connection with making the innovation available.

### **4.6. Follow-up of innovations**

#### **4.6.1 The innovation will be followed up as a commercialisation project under the auspices of Inven2**

When Inven2 follows up the reported innovation as a commercialisation project, this must be stated in the reply to the inventor.

Inven2, on behalf of OUS, is responsible for ensuring that the innovation is legally protected as far as such protection is possible, and for determining and leading the process towards commercial exploitation.

The inventor is obliged within the framework of his employment to contribute to the commercialisation of the innovation. The scope and conditions for this effort must be clarified in writing with the inventor's line manager (employer), but not lower than at level 3 (head of department). See clause 4.8.2 on agreement.

#### **4.6.2 In the event that Inven2 refuses to follow up the reported innovation, or terminates the follow-up of a started project**

Inven2 may decline to follow up a reported innovation. This should be stated in the feedback to the inventor. Inven2 can also terminate the commenced commercialisation of an innovation. In the event of a rejection or termination, Inven2 provides a reason for the rejection or termination.

Both in the event of rejection and termination, the rights to the innovation will be transferred back to OUS. The innovation unit in the Technology and Innovation Clinic is responsible for receiving the rights on behalf of OUS.

Innovations that are transferred back from Inven2 to OUS will be part of the activities of OUS and will be developed there. If the innovation later become ready for commercialisation, it can be reported to Inven2 again.

If there is a basis for this, OUS may consider whether completed innovations can be commercialised by other enterprises than Inven2. For example, if the commercialisation assignment is offered to another commercialisation actor/TTO, or that the inventor(s) take on the commercialisation task.

The choice of method of commercialisation has different consequences for those involved in terms of whether it can be reconciled with the tasks at Oslo University Hospital and the possibilities for succeeding with commercialisation. The Innovation Unit at the Technology and Innovation Clinic will consider whether innovations should be commercialised outside Inven2. The authority to decide on such commercialisation rests with the Director of Research, Innovation and Education.

## **4.7 Distribution of revenues gained through commercialisation of innovation**

### **4.7.1 Distribution principles**

When OUS assumes the rights to the innovation, the inventor is entitled to remuneration in accordance with the principles underlying the Act on Inventions made by employees (§ 7), supplemented by applicable guidelines.

OUS has as a starting point a tripartite share of net income from innovation. In order to commercialise an innovation, OUS pays 1/3 of the net income from the innovation to Inven2.

Of the remaining 2/3 of the innovation's net income, OUS will, as a general rule, give half as remuneration to the inventor(s), while the other half goes to clinic(s)/relevant research environments in accordance with the current guidelines (cf. eHandbook ID 132237, Accounting and use of the health trust's revenues from innovations and clinical commissioned studies). If this is to be deviated from, for example as a result of a recommendation from Inven2, relevant clinic(s) or research environments, the final decision on allocation must be made by the Director of Research, Innovation and Education.

If there are several inventors, the remuneration shall be distributed among them according to the inventor's share; Section 4.8.1.

Payment of remuneration to inventors is made by OUS and is regulated in the guideline on Payment of income from commercialisations, cf. eHandbook ID 135134.

### **4.7.2 Basis for calculating income distribution**

The basis for calculating remuneration is the net income of the innovation. The net income is income Inven2 receives that is directly related to exploitation of the rights to the innovation, less documented expenses Inven2 has in connection with legal protection of the innovation, as well as necessary costs in connection with commercialisation of the innovation. A more detailed definition of the basis for calculation is given in the agreement on services and authorisations between OUS and Inven2.

#### **4.7.3 Distribution of shares in start-up companies**

If an innovation is commercialised through a separate start-up company, remuneration to the inventor(s), OUS and Inven2 may be made through ownership of shares in the company. The principles in Section 4.7.1 on tripartite division are used as a basis for the distribution of shares. Inven2 manages OUS's shareholding.

The starting point is that Inven2 gets 1/3 of the foundation shares and OUS 2/3. The inventor(s) can subscribe for up to 1/3 of the foundation shares, and OUS' share will then change correspondingly down to 1/3 of the foundation shares. The inventor must own the shares himself (personally) to ensure transparency of ownership. See clause 4.8.3 on agreement.

Even in cases where the inventor(s), without Inven2 owning shares, establish a start-up company to carry out the commercialisation, OUS shall have the same share of at least 1/3 of the foundation shares.

The inventor is not entitled to a share of income OUS derives from the health trust's shareholdings in companies.

#### **4.7.4 Distribution when the inventor carries out commercialisation under his own auspices**

If the inventor(s) have been granted permission to carry out commercialisation under their own auspices, the starting point is that in addition to the ordinary remuneration from OUS, the inventor(s) also receive the 1/3 part Inven2 would have received for carrying out the commercialisation.

As with other commercialisation, OUS will require 1/3 of shares and/or licence in connection with commercialisation.

### **4.8 Agreements**

#### **4.8.1 Agreement between Inven2 and the inventor on formal transfer of rights to OUS**

For all innovations that Inven2 includes as commercialisation projects, an agreement (Right to Invention Agreement) must be entered between Inven2 and the inventor(s), which states that the innovation is owned by OUS.

When starting commercialisation projects, Inven2 will clarify who the inventor is. If there are several inventors, an agreement is entered between Inven2 and the inventors regarding the distribution of the inventor's share as a basis for the distribution of remuneration.

Inven2 ensures that an agreement is concluded. In the event of disagreement or doubt about who the inventors and the inventor share are, this is decided in consultation with the head of

innovation at the Technology and Innovation Clinic. In the event of internal disagreement at OUS, it is the Research Director who decides OUS's position.

#### **4.8.2 Agreement between OUS and the inventor on the inventor's work with commercialisation**

If commercialisation of the innovation entails a need for input from the inventor, the scope and content must be clarified in writing with the inventor's line manager (employer), however not lower than at level 3 (head of department). The manager may limit the inventor's efforts so that it does not conflict with the performance of the inventor's work in OUS, see the guideline for cooperation with industry in research, innovation and development projects, ref. [eHandbook - Cooperation with industry in research, innovation and development projects](#) (ous-hf.no) and OUS's regulations for secondary occupation [eHandbook - Secondary occupation for employees at Oslo University Hospital \(ous-hf.no\)](#). The Department of Researcher Support in Oslo Hospital Service can assist in drawing up an agreement.

#### **4.8.3 Agreement on inventor's shareholding between Inven2 and the inventor**

After approval of the management line in OUS, which follows procedure as in clause 4.8.2, the inventor may buy/subscribe for shares in a start-up company in connection with commercialisation. The inventor shall own the shares himself (personally) from the establishment so that the ownership becomes visible.

Ownership of shares is regulated in a separate agreement between Inven2 and the inventor in connection with the establishment of a start-up company. If there are several inventors, Inven2 assists in establishing the distribution of foundation shares among the inventors.

#### **4.8.4 Agreement between OUS and commercial operator on use of the health trust's infrastructure etc. in commercialisation**

A company or others commercialising an invention from OUS may wish to use the health trust's resources and infrastructure in commercialising the innovation. In such cases, an agreement must be entered into where the purchase of services from or use of facilities in OUS takes place on market terms and such that impartiality is safeguarded.

This also applies to inventors who carry out the commercialisation of innovations on their own.

Appointments are processed by the Department of Administrative Research Support in Oslo Hospital Service. Agreements must be approved by managers of affected units in Oslo University Hospital. In accordance with the authorisations of the health trust, the head of the Technology and Innovation Clinic decides to rent out medical equipment, and the head of Oslo Hospital Service decides to rent out premises. The hiring of employees in connection with a commercialisation is decided by the clinic manager in the line after having been submitted to the HR director.

#### **4.8.5 Agreement between OUS and the inventor when the inventor commercialises under his own auspices**

A separate agreement must be entered into between OUS and the inventor in connection with the inventor carrying out commercialisation under its own auspices.

The Innovation Unit at the Technology and Innovation Clinic will consider whether innovations should be commercialised outside Inven2. The agreement must be clarified with the inventor's

manager, head of department and head of clinic. The authority to decide on such commercialisation rests with the Director of Research, Innovation and Education.

#### **4.9 Governing Law and Disputes**

Disputes are settled in accordance with Norwegian law.

Disputes that cannot be resolved amicably shall be settled by arbitration pursuant to the provisions of Section 32 of the Civil Procedure Act of 13 August 1915 No. 6. The arbitration proceedings shall take place in Oslo.

Before arbitration can be initiated, the parties must have made an attempt to resolve the dispute through attorney mediation or any other form of mediation agreed upon by the parties.

### **5. Definitions**

#### **Innovation:**

a. Patentable inventions,

Other technology with potential for commercial exploitation (practical solutions, technical principles, know-how, scientific and mercantile information and business concepts)

c. Databases, catalogues and computer programs that are protected under the Copyright Act (possibly patent law) and that have the potential for commercial exploitation. Including associated documentation and source codes.

**Inventor:** A person, one or more, who in connection with or in a stay at Oslo University Hospital has made, produced, achieved or contributed to an innovation. The inventor is understood as "employee" under the Employee Invention Act.

### **6. Deviance or dissent**

In the event of registered deviations from these guidelines, all employees are obliged to report to their immediate superior.

### **7. References**

#### **Laws (in Norwegian):**

[Lov om retten til oppfinnelser som er gjort av arbeidstakere \[arbeidstakeroppfinnellesloven\] - Lovdata](#)

[Lov om vern av kretsmønstre for integrerte kretser \[kretsmønsterloven\] - Lovdata](#)

[Lov om opphavsrett til åndsverk mv. \(åndsverkloven\) - Lovdata](#)

#### **Other eHandbook documents in Norwegian):**

[Cooperation with industry in research, innovation and development projects](#)

[Payment of income from commercialisations \(ous-hf.no\).](#)

[Accounting and use of the health trust's revenues from innovations and clinical commissioned studies](#)