

# INTELLECTUAL PROPERTY RIGHTS

Intellectual property can be a complex area to engage with, especially when low and middle-income institutions engage in research partnerships with high income partners. It is critical that the risks and benefits for all parties with respect to intellectual property rights (IPRs) are clarified upfront in a formal agreement or contract. It is thus important for all partners to have a satisfactory level of awareness about IP and IPRs in general, and about the protections available to LMIC institutions in particular.

Four common elements relate to IPRs: i) ownership of the IP; ii) access to and use of the IP; iii) rights and responsibilities attached to the IP; and iv) mechanisms for managing and negotiating IP, including disputed issues. Underlying these factors are the laws and/or policies which facilitate protection or enforceability of IPRs.

**As you think through each of these questions, consider whether and how they can be incorporated explicitly into the research contract.**

## **What type/s of IP will be brought to and generated by the partnership?**

- ❖ What types of IP (foreground) are likely to be generated from the research carried out in the partnership? (e.g. inventions, data, publications, designs, trademarks, drug discoveries etc)
- ❖ What IP rights apply to the type of IP that will be generated by the partnership? (e.g. patent rights, copyrights, trade secrets etc)
- ❖ What existing IP (background) does your (and your partner's) institution bring to the partnership and how will this be used and protected?
- ❖ When and how will IP be disclosed in the partnership?
- ❖ Is there any IP (sideground) that is likely to be generated as a result of the partnership but that was not explicitly an intended outcome of the research? How will this be managed in terms of ownership and IPRs?

## **Who will own the IP?**

- ❖ How will rights and ownership relating to the background foreground, and sideground IP be dealt with?
- ❖ Will ownership of IP be exclusive or shared (joint)?
- ❖ What are the short, medium and long-term implications of ownership of IPRs in this

partnership for your institution?

- ❖ Which partner/s will control access and use of the IP relating to the partnership activities? What will the conditions of this access and use be?

### **What are the rights, responsibilities and interests of each partner?**

- ❖ What are each partner's rights with respect to the IP and what responsibilities does this infer on each partner to adhere to the protection and use of IPRs within and beyond the partnership?
- ❖ Is there a need for confidentiality or privacy agreements?
- ❖ What costs could be involved in the acquisition and further protection of IPRs? Who will be responsible for covering these costs?
- ❖ What benefits and risks are associated with IP ownership and protection? Who will bear these risks and who will have access to the benefits?
- ❖ What benefit sharing arrangements are in place?
- ❖ Are there obligations to use the IP for public benefit?

### **What mechanisms are required to manage IP and resolve disputes?**

- ❖ What mechanisms are needed to adequately manage all the aspects relating to IP mentioned above? (e.g. technology transfer offices, patenting procedures, copyright enforcement etc)
- ❖ How will disputes around IP be resolved?
- ❖ What dispute resolutions mechanisms are available and agreed on by all parties?

### **What legislation and policies will influence how IP is managed?**

- ❖ What national legislation exists in your country with respect to IP? (e.g. IP law, copyright law, privacy laws)
- ❖ How can national legislation facilitate protection and enforcement of IPRs?
- ❖ Does your country subscribe to any international treaties and conventions (e.g. TRIPS) that determine how IP should be managed? How might these affect partnership negotiations around IP?

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