Intellectual Property

PURPOSE
To provide guidance on Intellectual Property (IP).

POLICY
The “Mission” of Scott & White Healthcare (S&W) is to provide personalized, comprehensive, high quality healthcare, enhanced by medical education and research. The pursuit of this Mission may result in the creation or development of IP, whose further development and commercialization has the potential to result in improved healthcare and enhancement of medical research and education.

Other than the copyright in scholarly publications governed by the Scott & White Healthcare Honoraria guidelines, S&W, its successors and assigns own all Intellectual Property conceived, created, developed and/or reduced to practice in whole or in part by any Creator using S&W Resources and, in the case of an individual receiving any portion of their salary from S&W, all IP that relates to such individual’s responsibility to S&W, S&W’s businesses, and/or S&W’s anticipated research or development, regardless in each case of whether S&W Resources are used (“S&W-Associated IP”). In the case of an individual receiving any portion of their salary from S&W, S&W-Associated IP includes IP conceived, created, developed and/or reduced to practice in whole or in part during a time of the day when the individual was not engaged in employment activities (including free time and vacation time) if the IP was developed using S&W Resources or if the IP relates to the scope of the individual’s responsibility to S&W, S&W’s businesses, and/or S&W’s anticipated research or development.

APPLICATION
This document replaces the “Scott & White Healthcare Intellectual Property Policy” that was approved by the Board of Directors on February 1, 2011, for all purposes except for IP created prior to the Effective Date, which shall remain governed thereby.

DEFINITIONS
When used in this document with initial capital letter(s), the following word(s)/phrase(s) have the meaning(s) set forth below unless a different meaning is required by context.

“Chief Executive Officer (CEO)” – The Chief Executive Office of Scott & White Healthcare.

“Creator” – Any individual or entity associated with S&W including, without limitation, an employee, agent, independent contractor, postdoctoral fellow, resident, student, visiting scholar, visiting industry representative and volunteer.

“Effective Date” – April 12, 2013.

“Innovations and Ventures Advisory Committee” – A committee composed of members selected by the Scott & White Healthcare Intellectual Property Committee (SWIPC) from business, venture, and technology development executives and S&W staff and charged with providing advice on licensing and commercialization strategy and revenue distribution concerning selected S&W-Associated IP as deemed
appropriate by the SWIPC. The SWIPC is not obligated to follow any advice or recommendations made by the Innovations and Ventures Advisory Committee.

“Intellectual Property (IP)” – All creations of the mind that can be protected by legal process, statute or common law, including without limitation inventions whether or not patentable, the reduction to practice of these creations, and the tangible and intangible property rights in or to any of the foregoing, including without limitation patent rights, copyright, trademarks, trade secrets, tangible research property, prototypes, products and know-how.

“Intellectual Property Advisory Committee” – A committee composed of S&W staff charged with assisting SWIPC’s implementation of this Policy including, without limitation, providing input on licensing and commercialization strategy and revenue distributions concerning S&W-Associated IP.

“Net Revenue” – Payments received by the SWIPC from:
   a licensee to whom the SWIPC granted a license under the S&W-Associated IP; and
   an assignee to whom the SWIPC assigned S&W-Associated IP;
in each case less all costs and expenses relating to such S&W-Associated IP including, without limitation, attorneys’ fees for IP and licensing, marketing, travel, or other costs and expenses of the SWIPC. If the SWIPC receives equity shares from the licensing or assignment of S&W-Associated IP, then the SWIPC may decide to hold these shares until liquidation, in which case the payments received from liquidating the shares would be considered payments under Net Revenue, or distribute the shares in accordance with the foregoing as if the shares were payments received under Net Revenue.

“Scott & White Healthcare (S&W)” – Scott & White Healthcare, its successors and assigns, and includes all affiliated entities within the organizational structure of Scott & White Healthcare or any other entity that by prior agreement has been granted use of or operates under a name related to or owned by Scott and White Memorial Hospital, Scott, Sherwood and Brindley Foundation, Scott & White Clinic, or Scott & White Health Plan.

“Scott & White Healthcare Intellectual Property Committee (SWIPC)” – The Committee charged with evaluating, protecting, managing and transferring for commercialization S&W’s IP, and authorized on behalf of S&W to implement and enforce this Policy.

“S&W Resources” – Funds, equipment, facilities, personnel, patients, support, resources, contracts and/or other tangible or intangible property of S&W.

PROCEDURE

Obligations of Creators
Creators must submit to the SWIPC a completed Intellectual Property Disclosure Form regarding all S&W-Associated IP in a timely manner following the first of conception, creation, development or reduction to practice. A copy of this Intellectual Property Disclosure Form is available at [link], or can be requested by sending an email to the attention of the SWIPC staff at [email]. Submission must be timely to avoid loss of rights in S&W-Associated IP. Creators should consult with the SWIPC prior to public disclosure or offer for sale of any product or service related to S&W-Associated IP to confirm that these activities are in the best interest of S&W and not in violation of obligations, contractual or otherwise, related to the S&W-Associated IP.
Creators are obligated to memorialize the ownership of S&W-Associated IP, and upon request shall execute a confirmatory assignment to Scott & White Healthcare, its successors and assigns of all rights, titles, and interests in and to S&W-Associated IP. Creators shall assist the SWIPC in the evaluation and otherwise cooperate as reasonably requested throughout the protection and commercialization process including, without limitation, executing documents and taking other actions requested to file, prosecute, register, maintain, enforce, transfer and defend S&W-Associated IP.

Rights, titles and interests in or to S&W-Associated IP shall not be assigned or transferred by any Creator unless pursuant to the express written permission of Scott & White Healthcare, its successors or assigns.

The obligations of Creators under this Policy continue even if a Creator ceases to be associated with S&W.

**Obligations of SWIPC**

The SWIPC shall evaluate the potential for protection and commercialization of S&W-Associated IP, and endeavor to provide a preliminary evaluation to the Creators listed on the Intellectual Property Disclosure Form within 90 days of disclosure. The SWIPC may determine whether to initiate or continue to pursue protection or commercialization for S&W-Associated IP or whether to await supplemental data regarding the S&W-Associated IP.

If the SWIPC declines to initiate or continue to pursue protection and commercialization for S&W-Associated IP solely due to lack of market potential, then the SWIPC shall notify the Creators listed on the Intellectual Property Disclosure Form. Although the S&W-Associated IP will continue to be owned by Scott & White Healthcare, its successors and assigns, such Creators may choose under a separate written agreement with the SWIPC to pursue protection and commercialization of such S&W-Associated IP using funding and resources other than S&W Resources. Unless otherwise agreed by the parties to the agreement in writing, the agreement will be subject to the following terms:

- An irrevocable grant-back license to S&W to practice and have practiced by other non-profits the S&W-Associated IP including, without limitation, for patient care;

- Reimbursement for all costs incurred by S&W relating to the protection and/or commercialization of the S&W-Associated IP;

- 10% of all consideration received by the Creator(s) or on behalf of the Creator(s) after the total consideration received by the Creator(s) or on behalf of the Creator(s) exceeds $10,000, where such consideration shall include, but not be limited to the following: profit from sales; royalties; up-front payments; marketing, distribution, franchise, option, license, or documentation fees; bonuses; consultancy payments; milestone payments; distributorship fees or advances; and equity securities or other non-cash consideration; and

- Other terms and conditions customary in such agreements including, without limitation indemnification of S&W and maintenance of sufficient insurance as determined by S&W.

If the SWIPC decides to abandon S&W-Associated IP, then the SWIPC shall notify the Creators listed on the Intellectual Property Disclosure Form, and those Creators may request that such S&W-Associated IP be assigned to them under a separate written agreement to pursue protection and commercialize independently of S&W and S&W Resources. If the SWIPC is able to enter into such agreement, and agrees to enter into such agreement, which it has the right to withhold, then the assignment shall be subject to the same terms listed above.
Employees have the option of submitting a formal written request to the SWIPC for return of any rights to S&W-Associated IP at least one year following the submission of an Intellectual Property Disclosure Form. The SWIPC will consider the request, and will respond to the Creators within 60 days following receipt of the formal written request. The SWIPC is under no obligation to return any rights to S&W-Associated IP to the Creators as a result of receiving the formal written request.

If the SWIPC determines to initiate or continue to pursue protection or commercialization for S&W-Associated IP, it will endeavor to do so, and may optionally engage the services of third parties in pursuing protection or commercialization.

Nothing in the foregoing or any agreement resulting therefrom shall affect the obligations of Creators to comply with this Policy including, without limitation, to disclose and assign improvements on the S&W-Associated IP.

**Distribution of Revenue**

To encourage and reward creativity, the SWIPC shall distribute an amount of Net Revenues of S&W-Associated IP to the Creators for such S&W-Associated IP pursuant to one of the following distribution allocations:

- 50% to Creator(s) or Designee of the Creator(s)
- 50% to Scott & White Healthcare

Special facts concerning certain S&W-Associated IP may warrant a different distribution of royalties that is negotiated, but in no event will S&W receive less than 50% of Net Revenues. Alternative distribution of Net Revenue may be made upon recommendation to the CEO.

If the Intellectual Property Disclosure Form lists more than one Creator, then the Intellectual Property Disclosure Form shall also list the share of the Creators’ Net Revenue to be allocated to each Creator. If the shares are not listed on the Intellectual Property Disclosure Form, are ambiguous or are disputed, then the SWIPC shall convene a committee composed of the chair of the department(s) involved, a member of the Innovations and Ventures Advisory Committee, and a member of the Intellectual Property Advisory Committee for the purpose of determining the appropriate allocation. This committee’s decision is final. If the IP is technology for which a patent application is filed, then an individual who is listed as a Creator on the corresponding Invention Disclosure Form will not receive Net Revenue if they are subsequently determined to not be an inventor under U.S. patent law.

**Waivers**

Waivers of the provisions of this Policy may be granted by the CEO on a case-by-case basis following an assessment of various considerations including, without limitation, whether the waiver would be in the best interest of S&W, consistent with S&W’s obligations to sponsors, and whether the waiver would result in a conflict of interest.

Waivers of all or any part of Scott & White Healthcare’s ownership of S&W-Associated IP shall be effective only if stated expressly in a writing signed by an authorized representative of Scott & White Healthcare.

**Implementation and Revisions**

**Current Association with S&W**

If Employees or other individuals subject to this Policy believe they have IP or have created IP during the term of their employment that for any reason should not be subject to this Policy, then such individual
must fully disclose to the SWIPC this IP along with the documentation necessary to support its exception under the Policy 90 days following the Effective Date. Thereafter, any IP not disclosed and excepted in writing from this Policy shall be S&W-Associated IP if it otherwise falls within the definition.

**New Association with S&W**
Employees or other individuals subject to this Policy beginning their association with S&W after the Effective Date of this Policy must fully disclose to the SWIPC any IP they have created that predates their association with S&W along with documentation necessary to support its exception under the Policy within three months of first association with S&W. Thereafter, any IP not disclosed and excepted in writing from this Policy shall be S&W-Associated IP if it otherwise falls within the definition.

**Subsequent Revisions**
Scott & White Healthcare may change this Policy at any time without notice.

**Applicable Law**
This Policy shall be administered in accordance with the laws of the state of Texas without regard to conflict-of-law principles, and applicable federal and international laws, regulations and court orders governing IP and assignments.

The SWIPC shall have authority and discretion to interpret and apply this Policy to ensure compliance with all applicable laws and regulations, other S&W policies, and S&W’s contractual obligations. The provisions of this Policy are severable, and if any provision of this Policy is determined to be invalid or unenforceable under any controlling body of law, such invalidity or non-enforceability shall not in any way affect the validity or enforceability in any jurisdiction where valid and enforceable or the validity or enforceability of the remaining provisions. The SWIPC may reform any invalid or unenforceable provisions to effectuate the intent of Scott & White Healthcare as evidenced on the Effective Date.

The information contained herein should not be considered standards of professional practice or rules of conduct or for the benefit of any third party. This document is intended to provide guidance and allows for professional discretion and/or deviation when the individual healthcare provider or, if applicable, the “Approver” deems appropriate under the circumstances.