

# **Intellectual Property Policy**

**AVAC Ltd.**

November 2, 2005  
Version 2.0a

## 1. STATEMENT OF INTENT

This intellectual property policy is to be used as a guideline for transactions AVAC Ltd. enters into with its clientele using Agrivalue Fund 1 and Ag Research Fund 3. This document is also intended to provide clarity to the reader and direct the attention to the AVAC strategic intent of its investments in the creation of intellectual property, and to encourage the effective commercialization of technology for the benefit of Alberta.

## 2. INTRODUCTION

AVAC Ltd. is a unique not-for-profit company. Its mandate allows it (the Investor) to invest in initiatives that expand Alberta's ag research and value-added agribusiness sectors. These investments:

- a.) stimulate and enhance research and development capacity in response to existing and evolving market opportunities,
- b.) facilitate the effective utilization of the research and development capacity, and
- c.) assist with the commercialization of innovative value-added products and services.

To fulfill this mandate, AVAC negotiates two basic types of contracts with its clientele (the Investee), which take into consideration the specific position of each in relation to the mandate of AVAC. The two types of investment are compared below:

- **Entrepreneurial and Commercial Projects:**

Investments in private sector initiatives are made on a royalty basis whereby successful commercial ventures pay royalties to AVAC based on revenues realized as a result of commercial sales. Normally, investment return is based on a royalty approach calculated as a percentage of gross revenue of the client business, or of a specific new product or service. Other remuneration vehicles may be contemplated as an alternative to the royalty basis to meet unique investment situations.

- **Research and Strategic Initiatives:**

Investments in public sector initiatives are normally not made with the expectation of financial return, and as such royalties or other repayment mechanisms are not normally included in these AVAC Investment Agreements. These enabling investments are intended to provide broad public good benefits. Notwithstanding this, AVAC will identify a 'line of sight' for commercial benefits as part of its due diligence of the research and strategic investments.

### 3. BENEFITS OF INTELLECTUAL PROPERTY

In **Entrepreneurial** and **Commercial** projects, the Investee shall be entitled to all the benefits of the ownership of the intellectual property.

For **Research** and **Strategic** investments, the benefit derived from the supported research is normally intended to accrue to the associated research and teaching institutions, as well as the discovering researchers. Intellectual property benefit shall be commensurate with the relative contribution of each party in its creation, and in accordance with the respective policies of the institutions involved. When multiple institutions and/or commercial parties are involved in these investments, the lead Investee shall negotiate in advance intellectual property and licensing rights with all parties.

### 4. SECURITY AND RESTRICTIONS

- 4.1 Ownership of intellectual property developed within **Entrepreneurial** and **Commercial** projects shall be the property of the Investee, unless otherwise mutually agreed in writing.
- 4.2 In the interest of increasing the likelihood of the commercialization of the intellectual property developed using the proceeds from Entrepreneurial and Commercial projects in a manner that is consistent with the primary objectives of the investment, and to ensure that the intellectual property developed will be effectively commercialized in a manner that meets AVAC's strategic intent:
  - i.) AVAC may take a security interest in the intellectual property, to permit it to enforce the Investee's obligations.
  - ii.) AVAC reserves the right to place restrictions on the disposition of intellectual property as follows:
    - A.) Not assign or otherwise dispose of any interest in the intellectual property derived from the AVAC-supported project (this prohibition shall not apply to charges made on the intellectual property to a financial institution in proper pursuit of financing the Investee's business);
    - B.) Not permit the issuance of or the grant for any securities of any option for the issuance of any of its shares which would result in there being an effective change of control of the Investee;

- 4.3 Ownership of all intellectual property developed during the course of a **Research, or a Strategic** project or program shall be the property of the researcher, unless otherwise specified in writing, and subject to any existing obligations to transfer ownership arising from terms and conditions of employment of the researcher, and subject to the following provisions:
- i.) An industry contributor's rights to ownership of, and royalties from, intellectual property shall not exceed the proportional value of its contribution to the project, unless otherwise negotiated with AVAC.
  - ii.) The Investee will use best commercial efforts to ensure that any intellectual property generated through the project is used to the benefit of Alberta and Albertans.
  - iii.) The Investee will use the bulk of net revenue generated from intellectual property that it receives for agriculture and value-added agricultural research. AVAC recognizes that the researcher may be constrained by policy conflicting with total compliance, but expect the researcher to make reasonable efforts to accomplish this.
  - iv.) Ownership of all the intellectual property resulting from the project or program shall transfer to AVAC if the Investee has not actively pursued intellectual property protection or commercialization within three (3) years from the date of the conclusion of the project; or within three (3) years from the date that the intellectual property is protected by patent, trademark, license or otherwise.
  - v.) Ownership includes the right to control commercial exploitation of the intellectual property and the distribution and use of the resulting proceeds, income, royalties and fees.

## 5. DISCLOSURE

- 5.1 The Investee shall provide full and prompt disclosure of the intellectual property developed during the course of the project or program to AVAC, in order for AVAC to measure the continuing progress and merits of the project.
- 5.2 Publication or disclosure of intellectual property arising from a **Research or Strategic** project or program.
- a.) The research results of the project or program shall be considered confidential information of the Investee and AVAC shall maintain the same in confidence until disclosure, publication or release is otherwise permitted in accordance with the investment agreement.
  - b.) Unless the respective investment agreement expressly restricts the same, AVAC may disclose, publish or release research communicated from the Investee:
    - i.) that are not capable of statutory or trade secret protection, or

- ii.) that are capable of statutory protection but are identified in the report to AVAC as research results for which the Investee is not seeking statutory or trade secret protection.
- c.) In the event a graduate student of the Investee works on the project or program and that student completes a thesis or education report relating to the project or program, the student will own the copyright in that thesis or report.

## **6. CONFIDENTIALITY**

- 6.1 AVAC will take reasonable measures to comply with all applicable privacy rules to maintain secrecy where required by law, or where required by contract.
- 6.2 As a private Alberta corporation, AVAC is not presently subject to the provisions of the Freedom of Information and Protection of Privacy Act (Alberta).
- 6.3 Obligations:
  - (a) The obligation to keep such information confidential shall not apply to information which:
    - i. is already known to the party to which it is disclosed;
    - ii. is or becomes part of the public domain without breach of this Agreement;
    - iii. is obtained from third parties which have no obligation to keep confidential to the contracting parties.

## **7. COMMITMENT TO COMMERCIALIZE**

### **7.1 Research And Strategic Initiatives**

- a.) Investee:
  - i.) Where the Investee takes steps or seeks to negotiate with a third party for the commercial exploitation of intellectual property, the Investee must notify AVAC,
  - ii.) Once AVAC is notified that the Investee is seeking to exploit the intellectual property commercially, the Investee must decide the level of involvement that it wishes to be engaged in the process of commercial exploitation.
- b.) AVAC:
  - i.) In making a decision AVAC shall consult in confidence with the Investee and any other relevant parties including any other investors.

- ii.) In making a decision AVAC will take into account:
  - 1.) the nature of the intellectual property and the extent of patent or other protection desirable;
  - 2.) whether the securing of patent or other protection will assist in the development and subsequent commercial exploitation of an invention;
  - 3.) whether it would be desirable for AVAC to maintain an interest in the quality and technical efficiency of production;
  - 4.) the potential benefit to AVAC arising out of further funding and development; and
  - 5.) the cost of protecting and maintaining protection of intellectual property and the probable commercial returns to AVAC,

## 7.2 Assignment of Rights and Interests

- a.) Where the Investee owns the intellectual property, the Investee agrees to assign its rights and interest in and further to release the intellectual property to AVAC if:
  - i.) the Investee decides not to proceed with or become involved in the commercial exploitation of the intellectual property;
  - ii.) the Investee has not shown interest in or refuses to incur further expense in the development of the intellectual property;
  - iii.) the Investee determines that the intellectual property does not merit or warrant exploitation;
  - iv.) the Investee fails to adequately protect, develop or exploit the intellectual property as is required and on terms consistent with this policy;
  - v.) the Investee fails diligently pursue the commercialization of the intellectual property. in a timely manner and in any event not longer than 180 days after a request by AVAC to do so; or
  - vi.) there are mutually agreed upon terms reached between the Investee and AVAC in respect of their rights to the intellectual property.

## 8. DISPUTE RESOLUTION

- a.) If a dispute arises as to the operation of this policy, or as to any matter on which the operation of this policy hinges, AVAC will seek mediation.