

25 July 2011
Mr Richard Balson
49 College Crescent
PARKVILLE 3052



Dear Richard

Rights and obligations pertaining to confidential information and intellectual property

Preamble:

The Bionics Institute ("BI") conducts research, development, and early human studies in the medical field, including medical bionics. The research teams at BI are committed to furthering knowledge in medicine and engineering to overcome debilitating conditions such as deafness, blindness, and epilepsy through the development and application of medical bionic devices and their associated surgical and clinical procedures.

The BI's stakeholders include governments, funding bodies, donors, patients, scientific and commercial partners, staff, students, and collaborating scientists.

Publication in peer-reviewed papers, commercialisation and exploitation of scientific discoveries and inventions generate significant value for our stakeholders. They enhance the reputation of the BI and its researchers as well as attracting grants and commercial revenues to support our sustained growth and future research.

The outcomes and innovations that arise from all research at the BI are confidential and must not be disclosed without the prior written permission of the BI's Intellectual Property Rights Committee.

Our policy on confidentiality and intellectual property is intended to enable and reward successful translational research, innovation, publication, and clinical outcomes. It emphasizes the importance of working together in a collaborative team environment and contributing to the development of valuable intellectual property and the achievement of scientific and clinical outcomes in a manner demonstrating fairness, equity and flexibility.

This letter sets out your rights and obligations which apply in respect of intellectual property and confidential information relating to your work with the BI both during and after the term of your Employment with the BI. These rights and obligations apply to all work or study that you do using BI resources or working with BI employees. These rights and obligations are the same for all staff, joint appointees, secondees, honorary research fellows, consultants, contractors, visiting scientists, and students. The BI does not assert ownership or other rights over intellectual property or confidential information that is generated without using BI resources or working with BI employees.

If you are a student at the BI, you must have a BI supervisor who must advise you on your rights and obligations pertaining to confidential information and intellectual property before you countersign this letter and start your research.

1 Definitions:

In this letter the following words have the corresponding meaning:

"Confidential Information" means:

- (a) Project Material and any details or results pertaining to or arising from any research projects or programs conducted by the BI;
- (b) any other information relating to the BI's trade secrets and know-how, including any financial, commercially valuable or other confidential information of whatever description and in whatever form; and
- (c) Any information obtained from a third party under a confidentiality agreement between the BI and the third party.

"Employee" means all members of staff, joint appointees, secondees, honorary research fellows, consultants, contractors, visiting scientists, and students. For the absence of doubt, the BI recognises that some prospective Employees, including but not limited to honorary staff, joint appointees, and visiting staff, may have obligations to third party employers or organisations. It is anticipated that these obligations will be disclosed in writing by the prospective Employee together with any Excluded Material prior to signing this form and any potential conflicts will be dealt with in an additional written agreement between the BI and the third party employer.

"Employment" means the period of time during which you are an Employee of the BI;

"Excluded Material" means information, data, documents, reports, papers, results, concepts, models, software, research output, or other material, created by you that has been identified by you in writing to the BI Intellectual Property Rights Committee and is unrelated to any BI Project or existed prior to your becoming a BI employee or was created without using BI resources after you ceased to be a BI employee;

Intellectual Property Rights" (or "IPR") means:

- (a) any inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including development of or any improvement to any know-how, concept, idea, information, data, formula, equipment, product, technology, process, method or technique;
- (b) copyright (including future copyright) throughout the world in any literary works, artistic works, computer software, and any other works or subject matter in which copyright subsists and may in the future subsist;
- (c) trade secrets, processes or trade marks (whether registered or unregistered);
- (d) any proprietary rights under the Circuit Layouts Act 1989 (Cth); and
- (e) any right to use, or to grant the use of, or to be the registered owner of (in any and all countries and jurisdictions of the world) any of the rights listed above;

"IPR Committee" means the Intellectual Property Rights Committee appointed by the Director of the Bionic Ear Institute. Official communications with the IPR Committee shall be via email to IPRC@bionicear.org.

"IPRC Policy" means the Intellectual Property Rights and Commercialisation Policy determined from time to time by the Board of the Bionic Ear Institute.

"Moral Rights" means the rights conferred on authors of works by Part IX of the *Copyright Act 1968* (Cth);

"Project" means any research or development work or study using BI resources and/or involving BI employees. For the absence of doubt, Projects include research projects, student projects and contract projects whether funded by grants, contracts, donations or other revenues;

"Project Material" means all information, data, documents, reports, papers, results, concepts, models, software, research output, or other material, created by you either in the course of any BI Project or arising out of your work or study with the BI, other than Scholarly Papers;

"Scholarly Papers" means any journal articles, conference papers, essays, theses or abstracts relating to the foregoing which are written by you during the course of or relating to your work or study on any Project;

"Stakeholders" means Employees, the BI, and third parties identified in the IPRC Policy.

2 Confidential Information

- (a) You warrant and agree that you will:

- (1) keep any Confidential Information in your possession or knowledge in strict confidence, acknowledging it to be the valuable property of the BI;
 - (2) hold any Confidential Information in your possession or knowledge in trust and take all steps and do all things that are necessary or prudent to safeguard its confidentiality; and
 - (3) not in any way, directly or indirectly, disclose any Confidential Information in your possession or knowledge to any third party without the prior written consent of the BI.
- (b) Clause 2 does not apply to any information which you can prove, beyond reasonable doubt:
- (1) you received in good faith from a third party who did not obtain that information in breach of an obligation of confidence owed to the BI; or
 - (2) was already in your possession or the public domain.
- (c) Your obligations under this Clause 2 persist after the cessation of your Employment with the BI for a period of one (1) year or until the expiry of the last to expire confidentiality agreement relevant to the confidential information between the BI and any third party, whichever is later.

3 Disclosure and management of Intellectual Property Rights

- (a) You must inform the BI IPR Committee of all IPR that you create during the course of your Employment with the BI including both Project Material and Excluded Material, and provide the BI with a copy of all Project Material and Scholarly Papers.
- (b) The management, including the protection and commercialisation, of the BI's IPR will be conducted by the IPR Committee in its sole discretion in accordance with the IPRC Policy.
- (c) You must not disclose to any third party or otherwise deal with the IPR of the BI without the express written consent of the IPR Committee.
- (d) If the BI decides not to commercialise any IPR that are assigned to it, the Employee who developed the IPR may seek approval from BI to pursue commercialisation opportunities in his or her own right. BI will not withhold consent unreasonably.
- (e) Any net commercial income derived from commercial exploitation by the BI of IPR will be shared between Stakeholders in accordance with the IPRC Policy.

4 Ownership of Project Material

- (a) You hereby assign to the BI, on creation, all IPR that you may have in any Project Material.
- (b) You must do all things necessary or desirable to ensure the BI owns all IPR that you have in any Project Material.
- (c) This assignment above includes the right to take action and recover damages or an account of profits against third parties for infringement of any or all IPR in the Project Material.

5 Ownership of Scholarly Papers

- (a) Subject to clause 5(b), you retain any copyrights that you may have in any Scholarly Papers you create during the course of Employment with the BI.
- (b) Notwithstanding clause 5(a), you agree that you will not:
 - (1) publish, or seek to publish, any Scholarly Papers without the prior approval of the IPR Committee; or

- (2) submit any Scholarly Papers to a third party (including but not limited to an external examiner or external supervisor) without the prior approval of the IPR Committee.
- (c) Approval to submit Scholarly Papers for publication, review or examination shall be subject to provision of a title, authors, and summary to the IPR Committee at least 42 calendar days prior to submission and, if required by the IPR Committee at their sole discretion, provision of an IP disclosure form to the IPR Committee at least 28 calendar days before submission. Approval for publication shall not be unreasonably withheld. Project Leaders may apply to the IPR Committee for exemption from clause 5(c).
- (d) The BI may only decline to approve a request pursuant to clause 5(b)(2) on the grounds the BI requires the relevant third party to execute a confidentiality undertaking in respect of any Confidential Information contained in the Scholarly Papers.

6 Moral Rights subsisting in any Project Material

The BI acknowledges the Moral Rights of the author(s) in any copyright work, and will use reasonable efforts to acknowledge these rights in writing wherever it is appropriate to do so in its sole discretion.

7 Dispute resolution

Any dispute arising in relation to this letter will be dealt with firstly by the IPR Committee. If the dispute is not resolved, it will then be referred to the Chairman of the Board for consideration and final determination in accordance with procedures prescribed by the Board in its sole discretion.

8 Jurisdiction

- (a) This letter is governed by, and to be interpreted according to, the laws of the State of Victoria, Australia.
- (b) The courts of the State of Victoria, Australia have jurisdiction to hear any dispute relating to the terms of this letter.

* * *

To indicate your agreement to be bound by the terms of this letter, please sign and return the duplicate copy to Linda Peterson, Executive Officer, BI IPR Committee.

Yours sincerely


HR Manager

Linda Peterson
Executive Manager
IPR Committee

Accepted by
[Insert employee's name]

sign here ► _____

print name _____

date _____

Witnessed by

[Insert witness's name.

The witness must be the BI supervisor in the case of a BI student.]

sign here ► _____

print name _____

date _____

Obligations to third parties and potential conflicts of interest

Please list briefly in dot point form any obligations you have to third parties, including current and former employers.

Excluded Material

Please list briefly in dot point form any Excluded Material, including but not limited to patent applications, papers in preparation, and works in progress. For the absence of doubt, new and existing IPR not disclosed here will be treated as Project Material for the purposes of this letter.

In the event that you are seconded to a third party who pays all salary and other costs associated with the secondment, all material developed by you during the secondment shall be Excluded Material.