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Commercialization

1. Introduction and Purpose

Loyalist College has developed this policy in conformity with the requirements of the Commercialization Mandate Policy Framework, giving due consideration to the specificities of research in a college environment, the College's other policies relating to Intellectual Property and the current legislative framework. By adopting this policy, the College aims to foster an environment in which the commercialization potential for the Intellectual Property (IP) derived from Applied Research services rendered to Third Party Commercial Entities ("TPCEs") can be maximized for the benefit of Ontarians. The purpose of this policy is to:

- › Promote the appropriate use and protection of IP arising from the College's research activities
- › Maximize the socioeconomic benefits to Canada and Ontario of such IP
- › Promote individual and collective compliance with College and third-party expectations with regards to applicable legislation and regulations
- › Define the roles and responsibilities of the various stakeholders in the management of Arising IP
- › Promote the use and dissemination of research results in subsequent teaching or research activities at the College

2. Application

This policy applies to:

- › All faculty and staff members, whether employees or contractors, of the College
- › All students of the College involved in paid research activities

who generate Intellectual Property in the course of government-funded Applied Research activities. Other Intellectual Property, for example, copyright in literary works, authored by the foregoing persons, is addressed in the College's Intellectual Property Policy – AOP 235.

3. Definitions

“Applied Research and Innovation Office” or **“ARIO”** means the research administration office of the College.

“Applied Research” means research and development activities directed at solving a specific challenge faced by an external partner or TCPE. Applied Research at colleges is typically carried out by teams of students working under the guidance, supervision and mentorship of faculty, and in collaboration with partner organizations or under agreement with TCPEs. Applied Research includes grant-funded and industry sponsored Applied Research, curriculum-based research projects in collaboration with an external organization and Applied Research carried out by faculty and staff on paid professional development leave.

“Applied Research Services Agreement” means an agreement between the College and a TCPE whereby the College agrees to provide Applied Research services to the TCPE.

“Arising IP” means IP that is developed by one or more parties in the course of Applied Research activities which did not previously exist. It is also referred to as “Foreground IP”.

“College” means Loyalist College of Applied Arts and Technology.

“Commercialization” means the process of taking an invention or scientific discovery (for example, new technology or new or improved manufacturing process) or other IP to one or more commercial markets.

“Commercialization Pathways” means the various methods by which IP may be commercialized. A list of Commercialization Pathways is provided in Appendix A to this Policy.

“Creator” means any employee, including faculty, staff or student who creates IP at the College.

“Invention” means a tangible or intangible concept, system, device, process, machine, scientific discovery, work or creation, which is unique and original, as well as any related Intellectual Property. Inventions can be issued a patent under the *Patent Act* (Canada).

“Intellectual Property” or **“IP”** means any form of knowledge or expression created by one’s intellect that can be legally protected, including technical information, inventions, models, drawings, photographs, specifications, prototypes, computer software, curriculum and teaching materials, and other creations that can be protected under patent, copyright, trademark and industrial design laws. For the purposes of this policy, confidential information having a commercial value is to be considered Intellectual Property.

“Literary work” means work consisting of text, such as books, pamphlets or computer programs.

“Patent” is, in Canada, a right granted by the federal government to the inventor (or a person to which the investor has assigned her rights) to stop others from making, using and/or selling an Invention from the day the patent is granted to a maximum of 20 years after the day on which the patent application is filed.

“Public Disclosure” means the communication of information relating to IP to external parties, including students who are not presently contractors or employees of the College. Public Disclosure includes, but is not limited to, disclosure in written or oral form; communication by email; posting on a web blog or social media platform; disclosure in a news report, press release or interview; publication in a journal, abstract, poster, or report; presentation at a conference; demonstration of an Invention at a trade show; or the industrial application of an Invention.

“Third-Party Commercial Entities” or **“TCPE”** means businesses with which the College has contracted to provide Applied Research Services that could result in Arising IP.

4. Policy Statement – General Principles

This policy is to be read in conjunction with the AOP 235 Intellectual Property, which addresses the ownership of intellectual property developed by its employees and students.

4.1 Disclosure

All Creators have an obligation to promptly disclose Intellectual Property with commercial potential to the College as per the procedure developed for disclosure to the ARIO or TCPE. For clarity, such disclosure is not considered Public Disclosure.

Given that the responsibility to disclose rests with individuals, the College will educate potential Creators on the importance of thorough and timely disclosure.

4.2 Non-disclosure and Confidentiality

While disclosure of IP is important, non-disclosure of IP is equally so. Creators should be aware that Public Disclosure may result in loss of IP protection rights. This is especially true of Inventions as a patent is difficult or impossible to obtain if Public Disclosure of the Invention has occurred. Care must therefore be taken to avoid premature disclosure before a patent application has been filed. In light of this, Creators are strongly encouraged to make all reasonable efforts to identify any protectable IP as early as possible and consult the ARIO before making any Public Disclosure of IP.

4.3 Confidentiality

Partnerships and research collaborations with TCPEs often involve the communication by them of confidential proprietary information, some of which is likely to implicate Intellectual Property. Any Applied Research Services Agreement must contain confidentiality clauses, and any College employees and students must be made aware of such confidentiality provisions to ensure that they are respected.

Persons engaged in research shall treat as confidential all information received in the context of research activities that is designated as confidential by the party disclosing it or protected by a confidentiality clause. This is especially important in the context of an Invention that could be patented, since a patent cannot be obtained if there has been public disclosure of the Invention. Note: Canada, the United States, Australia and several Latin American countries provide a twelve (12) month grace period after the public disclosure first occurred to file a patent application, but a competitor could file a patent on the disclosed Invention in that time period as well.

TCPEs may require individuals within the College community to sign non-disclosure agreements (NDAs) as additional protection, often prior to the College and the TCPE entering into an Applied Research Services Agreement. In such case, unless the NDA contains clauses that cannot be considered standard, the individual shall be required to sign the NDA as a condition of participating in the project to indicate their acknowledgement of the NDA terms.

Finally, where the AROI believes that Intellectual Property belonging to the College, or which the College licenses from a third party, may be divulged during research activities, the College will request the TCPE to sign a non-disclosure agreement. As a matter of practice however, the NDA which the TCPE is asking the College to sign may offer the parties mutual protection.

4.4 Use of Proper Binding Agreement

Regardless of the Commercialization Pathway ultimately chosen Applied Research Services Agreements that could result in the creation of new Intellectual Property must be documented in a written contract which:

1. protects the interests of the College, faculty and staff, and students, for example by minimizing the potential for, and the consequences of, a breach of the agreement and saves it harmless from future IP-related claims
2. retains rights for the College to use the IP for educational and research purposes

In all instances, the contract shall explicitly or implicitly provide that the decision to commercialize Arising IP will rest with the TCPE.

4.5 Rights Retained

The College must endeavour to maintain the right to use any Arising IP resulting from an Applied Research Services Agreement for internal academic and teaching purposes, including for the purposes of enhancing curriculum relating to the subject matter thereof and of providing case studies and examples of research-derived IP and the management thereof.

5. Roles and Responsibilities

5.1 The College

As an institution supporting and facilitating the commercialization of Intellectual Property created in Ontario, the College's role is to ensure that intellectual property created with the use of its physical and human resources (i.e., s Arising IP) will be identified, protected from disclosure and transferred to TCPEs or, if so directed by them, to third-parties who can assess the IP's commercial potential.

5.2 Applied Research and Innovation Office

The ARIO is responsible for the administration of all research matters relating to IP at the College. Its functions include:

- › Ensuring and promoting compliance with this policy and other IP policies of the College, if any, namely by informing relevant stakeholders of their rights, roles and responsibilities
- › Responding to questions regarding the application, interpretation and implementation of this policy
- › Managing agreements signed with TCPEs, including non-disclosure agreements, assignments and licences, including establishing, negotiating and reviewing all such agreements, with the assistance of legal counsel if necessary, before they are signed by any employee, contractor or student of the College
- › Serving as the repository for the foregoing agreements
- › Reviewing all written IP disclosures in a timely manner
- › Where possible, supporting staff members, students and industry partners with any issue related to IP protection and commercialization
- › Making members of research teams aware of the terms and conditions of the relevant research agreement that could impact them (such as disclosure and confidentiality provisions).

The AROI is not responsible for identifying Inventions or confirming the ownership of Intellectual Property that have not been disclosed as per the Disclosure section above.

5.3 Senior Vice President, External Relations and Business Development

The Senior Vice President, External Relations and Business Development or equivalent individual, must sign all agreements that could result in Arising IP, including all Applied Research services agreement.

5.4 Deans, Directors, Chairs and Managers

The Deans, Directors and Chairs of the College are responsible for supporting and implementing this policy.

5.5 Employees

College employees, including faculty, staff, paid researchers and paid students, are responsible for abiding by this policy.

All employees of the College whose work may involve the creation of intellectual property have a duty to both disclose and protect such intellectual property.

5.6 Creators

All Creators have an obligation to promptly disclose Intellectual Property with commercial potential (see the disclosure section of this policy).

Creators shall collaborate with the College TCPEs and any other relevant third party to identify and protect third-party IP rights, as well as any rights that the College may have in IP.

Creators recognize that ownership of Arising IP resulting from projects involving third parties depends on the terms of the agreement between the College and the third party. In the vast majority of cases, rights of Creators will be transferred to the third party that commissioned an Applied Research project.

Creators may be asked to sign a waiver, an assignment of rights or any other document relating to ownership and protection of the Arising IP (see section 7 below).

6. Education and Awareness

To promote the objectives of this policy, the College shall:

- provide all employees with access to IP education resources made available by the IP office of the Province of Ontario (IPON)

- › organize and hold introductory IP sessions, during which participants will be introduced to the contents of the College's IP Policy and this commercialization policy
- › provide access to IP training and education information materials on the College Intranet
- › raise awareness of this Commercialization Policy by posting in faculty newsletters (printed and/or online)
- › take any reasonable steps to further the objectives of this policy

7. Providing Net Benefit to Ontarians and Institutional Engagement with the Innovation Ecosystem

To build institutional capacity to conduct Applied Research and thereby develop and enhance Ontario-based IP, the College will continue to build and maintain relationships with local innovation ecosystem partners such as incubators, accelerators, innovation centres, research networks, without however impacting federal funding received by the College in relation to the Applied Research projects it undertakes.

Partnering with Ontario businesses will result in a net benefit to Ontarians by keeping IP development and enhancements in Ontario. In order to optimize the commercial potential of the College's Applied Research activities, the College will:

1. prior to entering into an Applied Research Services Agreement, make a summary assessment of the TCPE in order to confirm that it has a minimum level of viability
2. following the completion of the Applied Research Services Agreement, transfer and/or confirm the transfer of Arising IP to the TCPE

8. Discrepancies and Exceptions

In case of discrepancy between this policy and the terms of an Applied Research Services Agreement, the terms of the Agreement shall prevail. Any other exception to this policy requires prior approval of the ARIO.

9. Related Documents

- › [Appendix A: Commercialization Pathways](#)
- › [Appendix B: Assignment of Invention and Priority Rights Template](#)
- › [AOP 235 Intellectual Property Policy](#)
- › [Institutional Approaches to Research and Innovation and Public Statement on the Annual Commercialization Plan](#) (May 2023)

10. References

- Commercialization Mandate Policy Framework