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## Commercialization Policy

### Preamble

In July 2020, in response to the recommendations of the Expert Panel established in Spring 2019 to help Ontario become more strategic in its approach to generating, protecting and commercializing intellectual property (IP), the government of Ontario released the province’s first Intellectual Property Action Plan. One of the key action items of the Plan is to clarify the commercialization mandates of post-secondary institutions. In response, the Ministry of Colleges and Universities released a Commercialization Mandate Policy Framework in early 2022 directing each post-secondary institution to develop a Commercialization Policy focused on the objective of harnessing the intellectual property generated with the institution’s resources so as to achieve Ontario’s goal of ensuring that made-in-Ontario innovations benefit Ontarians.

Under the *Ontario Colleges of Applied Arts and Technology Act, 2002*, the objects of The Humber College Institute of Technology & Advanced Learning (hereafter referred to as “Humber” or “the College”) are to offer a comprehensive program of career-oriented, post-secondary education and training to assist individuals in finding and keeping employment, to meet the needs of employers and the changing work environment and to support the economic and social development of their local and diverse communities. The Act further provides that in carrying out its objects, the College may undertake a range of education-related and training-related activities, including applied research. It is within such context that the College involves its students, faculty and other staff in Applied Research projects, notably through the rendering of Applied Research services to Sponsors. Through its applied research activities, the College, along with all other Canadian colleges, plays a critical role in supporting small and medium-sized enterprises (SMEs), fostering competitiveness and innovation, and contributing to Ontario’s economic growth.

This policy recognizes that the College, like most colleges in the Province of Ontario, is neither equipped to assess the commercial potential of Arising IP nor to manage a portfolio of Intellectual Property rights. As such, these tasks are left to other actors in the Ontario innovation ecosystem, such as Sponsors. This policy provides a framework for the College’s role of supporting these actors and facilitating the commercialization by them of Arising IP.

This policy has been developed within the unique applied research funding context for Ontario colleges. The operating funding provided to colleges by the province is designed to support the core education and training mandate of colleges and does not reflect the overhead costs of exploring, developing and overseeing applied research projects. These costs must be met through other revenue sources. Funding from granting agencies, primarily federal agencies, is crucial for the College to undertake specific applied research projects. These projects increase innovation at the community and regional level by enabling the College to work with companies to develop solutions to specific business and technical challenges. With the help of such funding, the College can actively engage in Applied Research and collaborations that can lead to the commercialization, as well as technology transfer, adaptation and adoption, of new technologies by Sponsors.

This policy is to be reviewed no less than five years in order to reflect the College's experience with Intellectual Property and with other participants in the innovation ecosystem.

## **1. Purpose and Scope of Policy**

The 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 derived from Applied Research services rendered to Sponsors can be maximized for the benefit of Ontarians. More specifically, by adopting this Policy, the College seeks to achieve the following:

- 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

This policy applies to College Personnel 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 #AC205.

Nothing in this Policy restricts an employee exercising their rights under a relevant collective agreement.

**This document is available in alternate format on request.**

## 2. DEFINITIONS

**“Applied Research”** means research and development activities directed at solving a specific challenge faced by an external partner or Sponsors. 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 Sponsors. 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 Sponsor whereby the College agrees to provide Applied Research services to the Sponsor.

**“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 Humber College Institute of Technology & Advanced Learning

**“College Personnel”** means College academic staff, support and administrative staff, students, visiting staff, contractors, consultants and all other persons whose work affiliation is with the College, whether compensated by the College or not.

**“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 College academic staff, support and administrative staff, students, visiting staff, contractors, consultants and all other persons whose work affiliation is with the College, whether compensated by the College or not who creates IP at the College.

**“Intellectual Property”** or **“IP”** means any form of knowledge or expression created by one's intellect that can be legally protected, including:

- **Copyrights:** Copyrights include, without limitation, all creative works, electronic or paper documents, software (including source code and object code), multimedia or audiovisual materials, photographs, and any other materials that may be copyrightable under Canadian law. (Copyrightable material shall include educational or research software, but shall not include software other than educational or research software.)
- **Industrial Designs:** An industrial design is the features of shape, configuration, pattern or ornament (or any combination of these features) applied to a finished article made by hand, tool or machine. It may be, for example, the shape of a table or

the shape and ornamentation of a spoon. The design must have features that appeal to the eye ([Canadian IP Office, Industry Canada](#)).

- **Integrated Circuit Topographies**: Integrated circuit topographies are now considered a form of IP. Recognizing the growing impact of integrated circuit technology in virtually all fields of industry, and the need to protect Canadian innovations in this technology both nationally and internationally, Canada has introduced protection for integrated circuit topographies. Topographies are innovative, three-dimensional circuit designs used in many different products. Examples of such products are automobiles, industrial robots, cameras, spacecraft and computers ([Canadian IP Office, Industry Canada](#)).
- **Patents**: Patents include, without limitation, all inventions, discoveries, know-how (despite the fact that these may not benefit from patent protection) or other material that is patentable under Canadian law, as well as all software that is excluded from "copyrightable material" (whether or not patentable under Canadian law).
- **Principal Investigator**: Person designated as the primary representative of a research project and bears the responsibility for research design, conduct of research, and reporting of findings.
- **Trademarks**: Trademarks include a word, a symbol, a design (or a combination of these features), used to distinguish the wares or services of one person or organization from those of others in the marketplace or any other feature that is considered a trademark under Canadian law.
- **Trade secrets**: Trade secrets are ideas or know-how (business methods, processes, machines, formulas, patterns and techniques) that are kept secret from one's business competitors.

**"Invention"** means any new and useful art, process, machine, manufacture or composition of matter, or any new and useful improvement in any art, process, machine, manufacture or composition of matter.

**"Literary work"** means work consisting of text, such as books, pamphlets or computer programs.

**"Office of Research & Innovation"** or **"ORI"** means the research administration office of the College or equivalent.

**"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.

**“Sponsor”** means the partner in the project and can be an individual, a for-profit company, a government agency, an academic institution, a private organization or a not-for profit organization. The sponsor takes responsibility for the initiation, management, and/or financing the research project. The sponsor may participate in the conduct of the research. Usually, the sponsor has defined the research project and requires some Humber resources (staff expertise, students, space and/or equipment) in order to complete the project. The sponsor usually remains in control of the final results and any Intellectual Property arising from the project, in compliance with the Humber Intellectual Property policy and/or the research contract.

### **3. GENERAL PRINCIPLES**

#### **3.1 IP policy**

#### **3.2 This policy is to be read in conjunction with the College’s IP Policy (#AC205), which addresses the ownership of intellectual property developed by its employees and students. Disclosure**

All Creators have an obligation to promptly disclose to the College Intellectual Property with commercial potential. The College shall establish a procedure to facilitate such disclosure to the ORI or Sponsor. This may include the use of a disclosure form, or it may be included in a report provided to the Sponsor that describes the Invention or other IP, the Creators, and any existing agreements related to the Invention or other IP. For clarity, such disclosure is not considered Public Disclosure.

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

#### **3.3 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, generally speaking, 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 ORI before making any Public Disclosure of IP.

#### **3.4 Confidentiality**

Partnerships and research collaborations with Sponsor 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. 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.

Sponsors may require individuals within the College community to sign non-disclosure agreements (NDAs) as additional protection, often prior to the College and the Sponsor 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 ORI believes that Intellectual Property belonging to the College, or which the College licenses from a third party, may be divulged in the course of research activities, the College may request the Sponsor to sign a non-disclosure agreement. As a matter of practice however, the NDA which the Sponsor is asking the College to sign may offer the parties mutual protection.

### **3.5 Use of a 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:

- a. protects the interests of the College, and College Personnel 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; and
- b. 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 Sponsor

### **3.6 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.

## **4. ROLES AND RESPONSIBILITIES**

### **4.1 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., Arising IP) will be identified, protected from disclosure and transferred to Sponsors or, if so directed by them, to third-parties who are capable of assessing the IP's commercial potential.

Senior Vice President, Academic is responsible for approving, periodically reviewing and updating this policy.

### **4.2 Office of Research and Innovation**

The ORI is responsible for the administration of all 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 Sponsors, 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
- Working with Humber Legal, who serves as the repository for the foregoing agreements
- Reviewing all written IP disclosures in a timely manner
- Where possible, supporting College Personnel 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 ORI is not responsible for identifying Inventions or confirming the ownership of Intellectual Property that have not been disclosed as per Section 3.2 above.

### **4.3 Senior Vice President, Academic**

The Senior Vice President, Academic or equivalent individual with authority to legally bind the College, must sign all agreements that could result in Arising IP, including all Applied Research services agreement.

#### **4.4 Senior Deans, Deans, Associate Deans and Directors**

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

#### **4.5 Employees**

College Personnel 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.

#### **4.6 Creators**

All Creators have an obligation to promptly disclose Intellectual Property with commercial potential (see section 3.2 of this policy).

Creators shall collaborate with the College Sponsors and any other relevant third party in order 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 virtually all 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).

### **5. EDUCATION AND AWARENESS**

In order to promote the objectives of this policy, the College may:

- provide all employees with access to IP education resources made available by the IP office of the Province of Ontario (IPON)
- organize and hold annual “IP 101” 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.



## **6. PROVIDING NET BENEFIT TO ONTARIANS AND INSTITUTIONAL ENGAGEMENT WITH THE INNOVATION ECOSYSTEM**

In order 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 Sponsor in order to confirm that it has a minimum level of viability; and
- 2) following the completion of the Applied Research Services Agreement, transfer and/or confirm the transfer of Arising IP to the Sponsor.

## **7. 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 ORI.

### **Acknowledgements**

This model commercialization policy has been prepared, under the guidance of a working group of the Heads of Applied Research, for the use of Ontario's colleges.

### **Appendices:**

Appendix A: Commercialization Pathways

Appendix B: Institutional Approaches to Research and Innovation and Public Statement on The Annual Commercialization Plan

### **References**

[Canadian IP Office, Industry Canada](#)

## Appendix A: Commercialization Pathways

### Licensing

Licensing can be in the form of an exclusive licence, a non-exclusive licence, a sole licence or a cross licence. All licensing arrangements can be contractually limited by geographical locations, time, industry and fields of application.

In order to maximize benefits to Ontarians, the College shall endeavour to grant non-exclusive licences, and preference shall be given to small and medium-sized enterprises. In determining the type and terms of a licence, the College shall consider the likelihood that the Licensee will be able to bring the licensed IP to market.

Some of the different forms of license, and other important licensing terminology, are the following:

**“Cross-Licence”** means a licence whereby two or more Intellectual Property owners contractually authorise each other to use their Intellectual Property for commercial and non-commercial purposes. Cross-licensing terms may include the payment of a licensee fee or royalty if the rights conveyed by the parties are not equal in value.

**“Exclusive Licence”** means a licence whereby the licensor transfers all rights of exploitation of the Intellectual Property to the licensee. This means that the licensor relinquishes the rights to exploit the Intellectual Property itself, or to grant any additional, subsequent licence(s) to another party.

**“Licence”** or **“License Agreement”** means a contract under which the holder of IP (the Licensor) grants permission for the use of its IP to another person (the Licensee), within the limits set by the provisions of the contract. The Licensor retains ownership of the IP and is therefore responsible for any on-going prosecution of the IP and maintenance of IP rights.

**“Licensee”** means the recipient of a licence.

**“Licensor”** means the provider of a licence.

**“Non-Exclusive Licence”** means a licence whereby the Licensor may grant the rights of exploitation of the Intellectual Property to one or more party(ies), including the right to exploit the Intellectual Property itself. In a non-exclusive licence, the Licensor may grant the Licensee sub-licensing rights.

**“Sole Licence”** means a licence whereby the Licensor transfers all rights of exploitation of the Intellectual Property to the Licensee but retains its rights to exploit the Intellectual Property itself.

### **Assignment**

The College transfers complete ownership to another party (the “**Assignee**”). Assignment involves an outright sale of Intellectual Property rights to the Assignee. However, partial assignments are allowed. For example, an assignment may be restricted by geographical locations.

### **Spin-Off Company**

The College establishes a company for the purpose of commercializing the Intellectual Property, where the Creator(s) and the College may own equity in the company together with any third party, in proportions to be negotiated.

### **Joint Venture Company**

The College establishes an entity together with a third party for the purpose of commercializing the Intellectual Property, where the College and the third party are shareholders of the said company.

## **Appendix B: Institutional Approaches to Research and Innovation and Public Statement on The Annual Commercialization Plan**

The Humber College Institute of Technology and Advanced Learning (“Humber”) is focused on developing mutually beneficial research partnerships that leverage our combined strengths to solve real-world problems and increase innovation capacity. Humber undertakes applied research in response to community/industry need in order to support economic development and community development.

Humber’s mandate is to support innovation in partnership with Small and Medium-sized Enterprises (SME) and Multinational Enterprises (MNE) with significant manufacturing and/or research and development operations in Ontario and/or Canada. Four goals drive Humber’s engagement with SMEs and MNEs:

- Impact on the industry partner by benefitting their products and services and accessing state-of-the-art R&D facilities, equipment, technical resources and expert researchers;
- Impact on students and their experiential learning through research and innovation projects;
- Impact on the college through new knowledge, skills, and technologies gained by the college from research projects which benefit curriculum and research;
- Societal impact via community economic development and sustainability.

Humber’s research priority areas include the Internet of Things (or Industry 4.0), Social Innovation, Sustainable Architecture and Energy Efficient Construction, System Integration, User Experience (UX) Design. We leverage our Centre of Innovation (COI) Network which brings together interdisciplinary teams of faculty members, students, community and industry partners to solve complex, real-world problems. For example, Humber’s Barrett Centre for Technology Innovation (Barrett CTI) is a 93,000 square-foot stand-alone facility, designed to be a powerhouse of technological innovation and to leverage Humber’s proven leadership in automation and robotics, systems Integration, design, augmented and virtual realities, user experience testing. The Barrett CTI is utilized to help SMEs understand and successfully compete in digital transformation environments through process improvements, technological advancements and potential new sources of revenue. SMEs also have access to the Barrett CTI Advanced Manufacturing Skills Consortium whose members include MNEs Cisco Canada, DMG MORI Canada, Festo Didactic, Javelin Technologies, KUKA Canada, Magna International, Rockwell Automation, SEW-EURODRIVE and SICK Canada.

Further to leveraging the COI Network, Humber will continue to engage its faculty, Continuous Professional Learning experts and innovation intermediaries as well as IPON to further engage and support Ontario companies with their research and innovation priorities.

Humber’s Intellectual Property Policy and the Commercialization Policy directly support and promote research. Our IP policy is industry friendly where the industry partner owns the resulting IP, while Humber retains rights for further research, education and knowledge dissemination purposes. To further promote the policies and training, Humber’s Office of

Research and Innovation (ORI) hosts research and innovation sessions throughout the year and will share information about IP as it typically rests with the industry partner. Through the Humber-Seneca Polytechnic Partnership, we are embedding the Intellectual Property in Applied Research Training Module into our learning management systems which will be freely available to Humber employees and students.

In addition to external partnerships, Humber cultivates and on-campus research and innovation ecosystem in the following ways:

- As the Office of Research and Innovation (ORI) is centralized, institutional collaboration on is focussed on delivering IP and commercialization through research projects involving faculty, staff, students and partners.
- Information on research and innovation activities is publicly available on the ORI's website, ORI's engagement events and ORI's publications: Annual Reports, our award-winning quarterly magazine "SPARK", and the peer-reviewed Journal of Innovation in Polytechnic Education (JIPE) which is unique to College sector.
- Humber College is the designated as the only Canadian education provider of Innovation360 Group, which helps organizations become innovation ready through a data-driven methodology and a suite of tools for innovation management. It is the world's largest framework and tool suite for online analysis, design, implementation, and execution of innovation management in any kind of organization. ORI has trained 34 Humber staff as practitioners of Innovation360 Group's **InnoSurvey® framework**, with six achieving the top status called the Black Belt designation and 14 achieving Green Belt designation.
- Through Humber's COI Network, the Longo Centre for Entrepreneurship (Longo CfE) offers significant programming and mentorship for Humber student and alumni entrepreneurs including:
  - Intellectual property facilitation and mentorship from an IP law firm;
  - **Innovate and Create Entrepreneurship (ICE) Program** for innovation skills, marketing, finances, and more with the help of experts and experienced entrepreneurs;
  - **Experience Ventures** which facilitates student placements to hone entrepreneurial skills with innovation companies in Canada;
  - **BMO Launch Me** where participants complete a series of skill-building workshops to prepare their business idea for launch and then submit their work for a chance to win funds through pitch competitions;
  - **Longo Family Be Your Own Boss** a seven-week entrepreneurship workshop series that trains participants in ideation, marketing, promotions, sales, finance, funding and operations in support of "Be Your Own Boss" pitch competition;
  - **Longo CfE Start my Business Boot Camp** for women entrepreneurs thinking about starting their own business or venture. This intensive 16-module program supports women entrepreneurs in the early stages of ventures in a variety of industries;

- **Entrepreneurship Modules** where participants learn the fundamentals of entrepreneurship through their 10-part “Key to Entrepreneurship” Modules; and
- Partnership between the Longo CfE and Seneca College’s HELIX to review incubators using the **Gender Smart Entrepreneurship Education and Training Plus (GEET+)** framework and assess the status of equity, diversity, and inclusion in entrepreneurship events/activities/programs, and develop gender-smart materials and supports.

Humber continues to welcome the opportunity to work more closely with IPON to support IP and commercialization best practices.