



LANSING COMMUNITY COLLEGE
and
LANSING COMMUNITY COLLEGE CHAPTER,
MICHIGAN ASSOCIATION FOR HIGHER EDUCATION

MEMORANDUM OF AGREEMENT
December 14, 2017

In accordance with and satisfaction of the obligations described in Article XIX. Intellectual Property, the parties have developed a mutually agreeable policy on the ownership, uses, and compensation for use of Intellectual Property developed by faculty members, a copy of which is attached to this memorandum of understanding. Accordingly, the parties recommend that the Board of Trustees take action to approve adoption of this policy.

 12/14/17
James Mitchell
Labor Relations Director

 12/14/17
Eva Menefee
MAHE President

Intellectual Property Policy Procedures for Faculty and College Employees

I. Purpose

The purpose of these procedures (the “Procedures”) is to set forth the rights and obligations of Lansing Community College (“LCC” or “the College”) and its employees and student-employees, with regard to intellectual property created by them.

II. Scope

These Procedures apply to all members of the LCC community, including all full-time and part-time LCC employees and student-employees, including those persons working, with or without monetary compensation, on any project under the direction and control of the College or using the College’s facilities or conducting activities under the supervision of LCC personnel (“Members”). These Procedures govern in all circumstances, unless the College and Members have modified Intellectual Property ownership and rights through a specific written agreement. Students are covered under this policy as set forth herein, and a student who is employed by the College shall be considered a “Member”.

These Procedures cover the ownership and use of all work that is created, authored, conceived, or invented, in whole or in part, by any Member during the period of employment, attendance or other relationship with LCC. Any member of the College community who contributes to the creation of Intellectual Property may be treated as a Member. As described further below, all work created with Substantial Use of College Resources will be LCC Intellectual Property.

If there is any conflict between the provisions of these Procedures and the terms of a separate agreement with a Member (including without limitation an employment agreement and/or collective bargaining agreement), the terms of that separate agreement will control.

III. General

A. Defined Terms.

1. **“Intellectual Property”** shall mean original ideas and original works of authorship, including inventions, books, articles, study guides, syllabi, workbooks, manuals, bibliographies, instructional packages, tests, video or audio recordings, films, slides, transparencies, charts, graphic materials, photographic or other similar visual materials, film strips, multimedia materials, 3D materials, exhibits, software, and databases. The Intellectual Property may be in tangible or intangible form. Intellectual Property may be protected by one or more of the following: patent, copyright, trade secret, trademark, contract or agreement.
2. **“Copyright”** is the intellectual property right granted by federal statute for an original work of authorship fixed in a tangible medium of expression to the creator of the work.
3. **“Patent”** is the property right granted by federal statute that permits

the owner to exclude others from engaging in a number of activities including the making, selling, using or importing of a claimed useful, novel, and nonobvious invention or idea throughout the United States for a set period of time.

4. **“Trademarks”** are the distinct word, name, symbol, device, picture, and/or graphic that is used in commerce to identify the source or origin of goods and/or services.
5. **“College Resources”** means LCC funds or funds administered through LCC, LCC space, equipment, personnel, tangible or intangible research materials, information and/or materials. College Resources include things such as LCC facilities, computing and graphic services, equipment, staff support and supplemental pay.
6. **“Substantial Use of College Resources”** means unreimbursed use of College Resources which requires additional expenses that are not part of standard expenses for supporting a Member in his/her Scope of Employment. Examples include but are not limited to assistance and time of College employees outside the classroom, and the use of facilities not generally available to all Members, such as video facilities or laboratories. Ordinary use of LCC-issued computers and devices, College libraries, and routine support from College faculty and staff in connection with student classwork does not constitute “Substantial Use of College Resources.” Any use of College Resources for private commercial purposes is considered “Substantial Use”. Decisions about whether use is “Substantial Use of College Resources” shall be determined by the College Provost or the Provost’s designee.
7. **“Sponsored Work”** means work requested by an organization, agency or individual that provides funding, equipment, or other support for the College or Member to carry out a specified project pursuant to a written agreement. “Sponsored Work” includes, without limitation, sponsored research.
8. **“Commissioned Work”** means work commissioned by the College in writing from a Member, outside the Scope of his or her Employment.
9. **“Scope of Employment”** shall mean work that is an essential function of a Member’s job responsibilities and performance of the work that such Member is employed to do. Intellectual Property is created within a Member’s “Scope of Employment” if (a) the Intellectual Property is created in the performance of the kind of work that the Member has been employed by LCC to do, (b) such Intellectual Property has been created, at least in part, for the

Member's use in performance of such work for LCC (even if the Member is not specifically requested to create such Intellectual Property), and (c) if others in the Member's profession commonly view creation of such Intellectual Property as being reasonably expected as included within the Member's job responsibilities or assignments.

10. **“Independent Intellectual Property”** means Intellectual Property that is created, authored, conceived, and invented (a) outside the Member's Scope of Employment, (b) without the Substantial Use of College Resources, and (c) independent from Member's relationship with LCC.
11. **“Commercialize”** means to manage on a business basis for profit.

B. Disclosure and Determination.

1. Each Member who solely or jointly creates, authors, conceives or invents any Intellectual Property during the period of that Member's employment or work relationship with LCC should disclose such Intellectual Property in writing to that Member's Administrative Supervisor, as early as possible in the creation of such Intellectual Property, using such form, format and process as may be required from time to time; provided that this requirement shall not apply to the creation of Independent Intellectual Property. Disclosures pursuant to this paragraph shall include a description of the Intellectual Property, the circumstances under which the Intellectual Property was created or invented, and the identity of all individuals contributing to the creation of such Intellectual Property. Failure to disclose promptly after creation or to otherwise comply with this disclosure obligation shall create a conclusive presumption of LCC's ownership of such Intellectual Property. Without limiting the foregoing, disclosure shall be made prior to publication, license, or distribution of the Intellectual Property.
2. If the Member would like a written determination of whether the Intellectual Property is Member Intellectual Property or LCC Intellectual Property, the Member shall submit a written request for such determination to the Member's Administrative Supervisor. Within a reasonable time after receiving the Member's written request, the Member's Administrative Supervisor shall provide a written recommendation to the College Provost (or the Provost's designee) regarding the determination, with a copy provided to the Member. The Member shall have two weeks to provide a statement in writing to the Provost (or the Provost's designee) setting forth the Member's position. Within 60 days after receiving the initial recommendation, the Provost (or the Provost's designee) will take

into consideration the Administrative Supervisor's recommendation and any statement timely submitted by the Member, will meet with the Member if appropriate, and will issue a written decision that shall be final and not subject to the grievance procedure contained in any relevant collective bargaining agreement. Without limiting the provisions of Section III.C.3, a Member may ask the Provost (or the Provost's designee) to enter into a written agreement granting the Member certain specified rights in and to Intellectual Property determined to be LCC Intellectual Property.

C. Ownership

1. Member Intellectual Property.

As a general rule, Intellectual Property that is created by Members through independent academic effort shall be considered Member Intellectual Property. Member Intellectual Property may include faculty or staff journal articles, books and other publications, auditory creations, and visual and auditory compositions, irrespective of their medium of storage or presentation. Exceptions to this general rule include: (a) Intellectual Property falling within the definition of LCC Intellectual Property, as set forth below; (b) Independent Intellectual Property, which shall be the property of the Member who has created, conceived, invented or authored such Independent Intellectual Property, and which shall not be subject to these Procedures; and (c) Intellectual Property resulting from work supported by Federal funds or third party sponsorship, which shall be subject to the terms of such funding and/or sponsorship. Except as otherwise required pursuant to these Procedures, separate written agreement, or any open educational resources award program, Members are free to license, sell, restrict or Commercialize Member Intellectual Property they create without further approval from or payment to LCC, as described in further detail in Section 3.C.3.

LCC shall have a non-exclusive, irrevocable, royalty free, perpetual, worldwide license to use, reproduce, modify, and create derivative works from Member Intellectual Property for LCC's educational purposes, and Member agrees that such license has been granted. LCC shall also have the right to promote Member Intellectual Property, including but not limited to referencing Member Intellectual Property in LCC newsletters and marketing materials, and to use Members' names in connection with same. Members further agree to sign license agreements or other documents considered necessary by the College to evidence the license granted herein. Unless otherwise agreed in writing and/or pursuant to any open educational resources award program, Members will not receive any compensation, payment, royalties or other financial benefit for such license.

If more than one Member is responsible for contributing to the creation of a work constituting Intellectual Property, all creators shall enter into a negotiated written agreement specifying (a) the rights of each party to use, distribute, modify, and sell the materials; and (2) the division of revenues between the parties, where applicable. Members' failure to enter into such agreement shall not affect the rights granted to LCC herein.

2. LCC Intellectual Property.

Except as otherwise provided by written agreement, Intellectual Property is owned by LCC (a) when such Intellectual Property is created within a Member(s)' Scope of Employment; (b) the Intellectual Property results from Substantial Use of College Resources; or (c) the Intellectual Property is part of Commissioned Work or Sponsored Work.

All right, title and interest in LCC Intellectual Property shall vest exclusively in LCC. To the extent that title to LCC Intellectual Property may not automatically vest in LCC by operation of law, Members involved in the creation of such LCC Intellectual Property shall irrevocably assign all right, title and interest in such LCC Intellectual Property to LCC. Members further agree to sign all assignments, declarations and/or other documents considered necessary by the College to evidence, perfect and/or record the ownership rights of the College as set forth herein. Unless otherwise agreed in writing and/or pursuant to any open educational resources award program, Members will not receive any payment, royalties or other financial benefit for such assignment or license.

LCC Intellectual Property may be protected by the College in its sole discretion through any means, including patenting or registration with the US Copyright Office. Unless LCC disclaims, releases or waives its ownership rights to a Member, the College shall be responsible for all costs of such protection, and Members agree to cooperate with such protection efforts.

Without limiting the foregoing, all Trademarks used by or pertaining to LCC related to an item of LCC Intellectual Property or related to a program of education, service, public relations, research or training of the College, shall be considered LCC Intellectual Property, regardless of the circumstances underlying the creation of such Trademarks. The College shall publish guidelines, procedures and administrative policies regarding the proper use of its Trademarks.

3. Commercialization of Intellectual Property; Distribution of Royalties; Compensation for Creation of Intellectual Property.

Members may license, sell, restrict, or otherwise Commercialize Member Intellectual Property they create without approval from or payment to LCC. Members may request that LCC pursue Commercialization of Member Intellectual Property, and if LCC determines in its sole discretion to pursue Commercialization of Member Intellectual Property, the remainder of this Section shall apply. If LCC otherwise wishes to pursue Commercialization of Member Intellectual Property, it must first obtain the written permission of the Member, and upon receiving such permission, the remainder of this Section shall apply.

In the event that any revenues are received by LCC from the Commercialization of Member Intellectual Property or any patents or copyrights obtained thereon, except for monies received from an outside sponsor in payment for or in relation to a Sponsored Work or Commissioned Work, the Member(s) who created such Member Intellectual Property shall be entitled to receive not less than 50% (unless otherwise negotiated) of the net proceeds of such money royalties received by LCC. The term “net proceeds” as used in these Procedures shall mean gross profits less the cost of obtaining and protecting the rights to such Intellectual Property including, by way of illustration and not limitation, procuring, renewing, licensing, selling, defending, and enforcing any patents, or copyrights obtained thereon.

Unless otherwise expressly agreed in writing, Members shall not receive other compensation for the creation of Member Intellectual Property or LCC Intellectual Property beyond compensation paid pursuant to the relevant employment agreement between such Member and the College, including any relevant collective bargaining agreement, as agreed in a separate written agreement, or pursuant to any open educational resources award program.

As set forth in further detail above, Members shall not Commercialize LCC Intellectual Property without express written consent from LCC. Members may, however, include reference to their contribution to LCC Intellectual Property in curriculum vitae or other materials, provided that doing so does not disclose confidential information regarding LCC or a third party that Member knows or reasonably should know should be kept confidential. Members should direct their questions regarding this paragraph to the Provost.

The College and/or Members may make their copyrightable works available for use by the public by designating such work as an “open educational resource” (“OER”). Creation, designation and use of OER may be covered

by separate College policies and procedures from time to time, including without limitation pursuant to any open educational resources award program.

4. Procedures for Securing Ownership in Intellectual Property.

The Provost (or the Provost's designee) shall have the sole discretion to determine the College's position on whether the Intellectual Property is LCC Intellectual Property or Member Intellectual Property, consistent with these Procedures and applicable law.

5. Intellectual Property Developed Under Third Party Contracts.

From time to time LCC enters into contracts with third party vendors ("Vendors") pursuant to which Intellectual Property may be used or developed. Contracts between LCC and Vendors will generally include language that determines the ownership of intellectual property that is developed under the purpose of the particular contract. If a Member is merely suggesting concepts or ideas regarding the contracted project, and is not actually inventing, reducing an invention to practice, or fixing an idea in tangible expression, the Member is likely not contributing to Intellectual Property.

At a minimum, each contract with a Vendor that may involve the use or creation of Intellectual Property should specify either:

- a. that LCC has a non-exclusive, fully paid up license to fully utilize any Intellectual Property of the Vendor which is necessary in order for LCC to enjoy the benefits and object of the contract, whether or not the Intellectual Property was developed during the course of the contract project or prior to the contractual relationship; or
- b. that the resulting Intellectual Property is a "work for hire" and all Intellectual Property rights developed during the course of the contracted project are owned by LCC and, any pre-existing Intellectual Property rights are the subject of a non-exclusive, fully paid up license in favor of LCC to fully utilize such Intellectual Property to the extent necessary for LCC to enjoy the benefits and object of the contract.

If a Member is closely involved in determinations of specifications, testing, authoring code or other Intellectual Property, or any other inventive or creative expression, then the Member may well be a contributing inventor or author. In those contracts where, in the determination of the Provost (or the Provost's designee), Members of LCC may be involved in creating or

developing Intellectual Property, LCC's intellectual property counsel should review the contract prior to acceptance by LCC.

6. Student Ownership Issues.

Intellectual Property created by students in the course of their employment by LCC (including as research or teaching assistants) shall be considered "Member Intellectual Property", and ownership shall be determined as set forth above. In all other cases, Intellectual Property created by students shall be covered separately.

7. Use of Third Party Work.

Each Member who participates in the creation of Intellectual Property is responsible for his or her contribution to such Intellectual Property, including, without limitation, confirmation that his or her contribution to such Intellectual Property does not violate or infringe on any copyright or any other right of any other person, and that such Intellectual Property is not otherwise contrary to law. Each Member is responsible for obtaining any necessary permissions for the use of any copyrighted or pre-existing materials that the Member contributes to such Intellectual Property.

Members may use copyrightable works owned by third parties subject to third parties' copyright protections. The College shall publish guidelines, procedures and administrative policies regarding the proper use of materials owned by a third party.

IV. Responsibility

The College's Provost is responsible for the oversight of these Procedures and the development and implementation of corresponding procedures.

1/22/18