



Brock Innovation
Legal and Commercial templates July 31st 2013

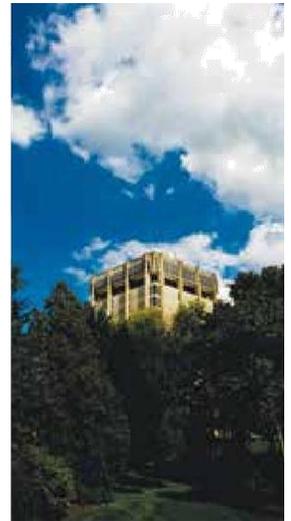
www.brocku.ca/research/brock-innovation

John Wilson
Director, Innovation and Commercialization, Brock University
Director, ACCT Canada

The logo for Brock University, featuring the word "Brock" in a large, bold, white sans-serif font above the word "University" in a smaller, white sans-serif font. To the left of the text is a red square containing a white circular emblem with a stylized fingerprint or wave pattern.

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Introduction

Brock Innovation is an office within the University, managing research and innovation relationships between members of the University and the commercial world. We help to bring inventions and other Intellectual Property to market, put in place partnerships for research, assist professors and students with new ventures, and provides academic extension services and consultancy.

The first 2 of our 5 products (inventions and research partnerships) are managed balancing the commercial and reputational opportunities; our remaining 3 products are managed primarily as reputational opportunities. Overall, our greatest impact is reputational; however, our commercial focus allows us to earn cash, to support Research at Brock and the University mission.

The commercial-reputational balance

Brock Innovation works with faculty, students and staff who wish to engage in commercial activities that are somehow connected to Brock. In providing this service, Brock itself may or may not take a commercial position; our default position is that we do not, but there are some situations where it is either necessary or highly advantageous, usually for financial or reputational reasons.

Brock's potential commercial involvement is always discussed with the faculty, staff or students presenting the opportunity, prior to any decision being made and agreed by all. If all parties decide to enter into a commercial arrangement, then a formal agreement will be made in accordance with University policy.

A few key points:

Brock does not take equity in Student Ventures

Brock has not yet taken equity in a Faculty Venture, but it may in the future where all parties wish this.

Inventions and other Intellectual Property are managed in accordance with University policy (if those presenting the opportunity wish for Brock to manage the commercialization process, the intellectual property is assigned to Brock and Brock agrees to share the net revenue 50/50 with the originators. Brock's share is used to support Research and Innovation at Brock.

Extension Services and Consultancy are managed on a case-by-case basis. Brock does not apply an overhead charge for simple commercial transactions, but it may need to apply a charge where more complex agreements are needed.

Project Management: The legal and commercial process

Projects are managed in a formal stage-gate process, with legal and commercial milestones required to pass from one stage to another. Our 5 products each have characteristic and defined stages.

| | |
|------------------------|---|
| Inventions: | Prospect - Assigned - Marketing - Exclusive/Non-exclusive - Archived |
| Research Partnerships: | Prospect - Applied for - Awarded/Not awarded - In process - Post funding - Archived |
| New Ventures: | Prospect - Approved - Marketing - Newco - Archived |
| Extension Services: | Prospect - Approved - Contract - Post-contract - Archived |
| Consultancy: | Prospect - Approved - Contract - Post-contract - Archived |

All projects start as a Prospect. At this first stage all parties discuss the project and determine; how Brock might be able to assist; if this assistance is likely to be significant or not; and if this will lead to Brock taking a commercial position. Brock will likely perform an assessment of the commercial and reputational opportunity, in addition to identifying any likely stumbling blocks to success. **Our assessment of the suitability for commercialization of research is not a reflection of the quality of the research, in reality the majority of research is difficult to commercialize.**

The final stage of all projects is termed 'Archived', projects are never deleted! An archived project is largely dormant, but one which may have residual legal terms, often confidentiality or ownership in nature.

In a projects active life (between Prospect and Archived) each project will travel its own path and at its own pace, but always with Brock's guidance and the help of all parties. Projects can be active for many years, Innovation projects are rarely short-term commitments. Invention projects can last for more than 20 years, Research Partnerships and New Ventures for 5 years, Extension Services and Consultancy can be completed in less than a year, but not always.

Universities and companies are good commercial partners because of our complementarity; however we operate in different worlds with different rules. If the company is new to University partnering, an initial exchange of University legal and commercial sensitivities is likely. This period can take some time, very occasionally these sensitivities determine that a project cannot be agreed, this is unusual but it does happen.

To help the agreement process, a suite of legal and commercial agreement templates has been developed for Brock; these documents have been designed for the particular needs of a University - Company project. The templates are living documents, they have been constructed with the experience of 1000's of University-Company agreements, yet we understand that each new opportunity is an individual case, and the templates have flexibility and adaptability built into them.

Inventions and other Intellectual Property

Inventions, Know-how, Literary and artistic works, Databases, Logos and Designs are all forms of Intellectual Property, they can be commercialized or made freely available or both. Literary and artistic works form the majority of IP created in a University, often these are published in academic journals, protected by copyright law, with no commercial intent. Inventions are Brock's most common form of commercial IP. Inventions can be protected by patents, which in turn can be licensed to a commercial partner. Often the commercial partner sponsors research in the University, and this can be a significant benefit to the University. Other forms of IP can be licensed to a commercial partner in much the same ways as a patent, as such, and for simplicity, we confine the remainder of this section to a discussion on inventions.

The flow diagram below shows our stage-gate process for the management and commercialization of inventions. All projects start as a Prospect. Four documents are required completed before an Invention can be assigned to Brock:



1. Invention Disclosure
2. IP Due Diligence
3. IP Income Distribution
4. Assignment to Brock

The Invention Disclosure document seeks to capture background information on the technology and the commercial landscape if this is known.

The IPDD document seeks to capture the provenance of the invention, including the people and the funding agencies involved.

The IPID document captures the income distribution between the inventors and other contributors.

Only after these 3 documents are in place, are we able to assign the technology to Brock.

Once the technology is assigned we may choose to move into a Marketing phase straight away, or we may decide to wait, often

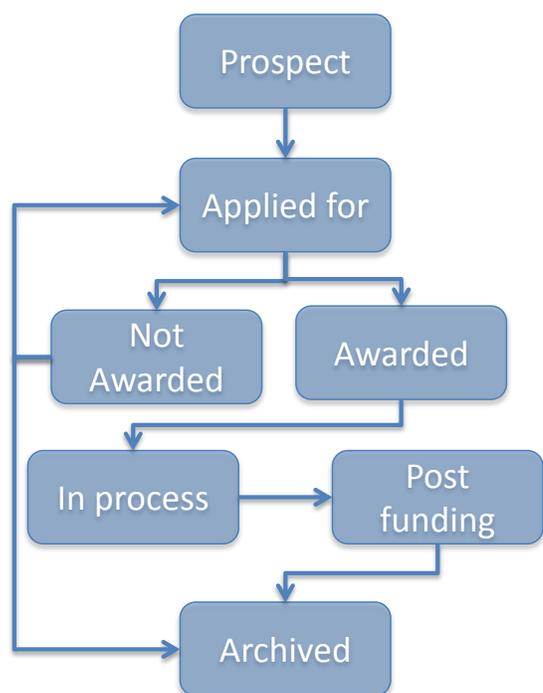
because we are filing a patent application or we are waiting for an academic work to publish.

Occasionally, where another institution is involved in the invention, Brock will need an IP co-ownership agreement. During the Marketing phase we may ask a potential licensee to sign a Confidentiality Agreement. If we are successful in reaching an agreement with a company, this deal will either be exclusive or non-exclusive in nature, clearly this is an important distinction. The deal may be a Licence Agreement, or an Option Agreement, or possibly an Evaluation Agreement. The technical and commercial plans of the company will often determine which of these 3 agreements are the most appropriate. An exclusive deal will bring Marketing to an end. Deals usually have a prescribed lifetime, once a deal has expired, we may choose to re-enter the Marketing stage. If we see no way forward for the project, and with the agreement of all involved, the project will be archived.

Research Partnerships

Research Partnerships are usually trilateral agreements, occasionally bilateral when a company directly funds a research project without the assistance of a funding agency. Today, NSERC, OCE and FedDev Southern Ontario are the major funding agencies for Research Partnerships at Brock. In the future SSHRC may play a more significant role in this scene. Brock’s Research Partnership portfolio is diverse in nature, in some cases the research push comes from the Brock professor, in which case an agreement will only be made once all non-commercial research activity of the professor is safeguarded. In other cases, the push comes from the company, in which case, and particularly where the professor has expressed no ongoing academic interest in the project, Brock is freer to give the company a broader ownership of the project output.

The flow diagram below shows our stage-gate process for the management and commercialization of Research Partnerships. All projects start as a Prospect. This can be a professor with research (or an idea) seeking a commercial partner, or a company with an opportunity, seeking a research partner. Sometimes a Confidentiality Agreement is required at this stage. Funding application processes are funding agency specific, but often commercial terms are agreed once the project is awarded, as part of the acceptance process and not before. A directly funded research project will require a Brock or Company Contract Research Agreement, when a funding agency is involved, this agreement will always come from them. A funding agency agreement might require Brock’s PI Acknowledgment Agreement; as Brock is an inventor-owned institution, it is sometimes necessary for the professor to agree IP terms with Brock, before Brock can agree terms with the funding agency and the company. Invariably, the contract research agreement will set out if the IP generated in the project is to be owned by Brock, by the Company, or shared.



Once the project is awarded, the project can start, hopefully the project will be successful and often much of the commercial activity takes place only after the research work is complete, ‘post-funding’. If we have agreed that the Company owns all arising IP, Brock’s involvement may be complete once the project is post-funding. If Brock owns the arising IP, or if the IP is co-owned, Brock will likely want to license this IP to the Company, as described in the preceding section. Alternatively, Brock can assign its IP to the Company in return for a revenue stream, using our Revenue Share and Assignment-out agreement. Assignment of IP can only be considered if the research area is unrelated to any existing research interests of the professor.

New Ventures

New Ventures can be highly beneficial to the University environment, in part because they can be a good way to keep and attract talented individuals, in part because they often play an important role in the funding and commercialization of research coming from the University.

However, New Ventures are almost certainly the most complex and most demanding component of the University Innovation ecosystem. Because of this, Brock assists with both Student and Research Ventures, but has yet to play a role in the construction or the management of a new company. Brock does not take equity or any other commercial position in its Student Ventures, thus no legal or commercial templates are necessary here. Brock has not yet taken equity in a Research Venture, but this is a possibility, if all parties involved were to agree that this was the best way forward. If Brock were to create or manage a new venture it would be for commercial reasons and mostly likely in return for a significant equity stake in the company. The flow diagram below shows our stage-gate process for the management and commercialization of Research Ventures.



All projects start as a Prospect. A business plan must be presented to Brock in order for Brock to assess the opportunity. Approval is required for Brock to take a commercial role in the Research Venture. The terms of this approval would be captured in a New Venture Agreement, to include the responsibilities of Brock and as well as those of other parties. Brock would likely play a role in the construction of the company; this would include the sourcing of executives as well as assistance in the raising of finance. Sometimes a Confidentiality Agreement is required at this stage. On completion of this marketing stage the new company would be formed. On formation, equity would initially pass to Brock and the individuals involved. This equity would be diluted by any investment in the company.

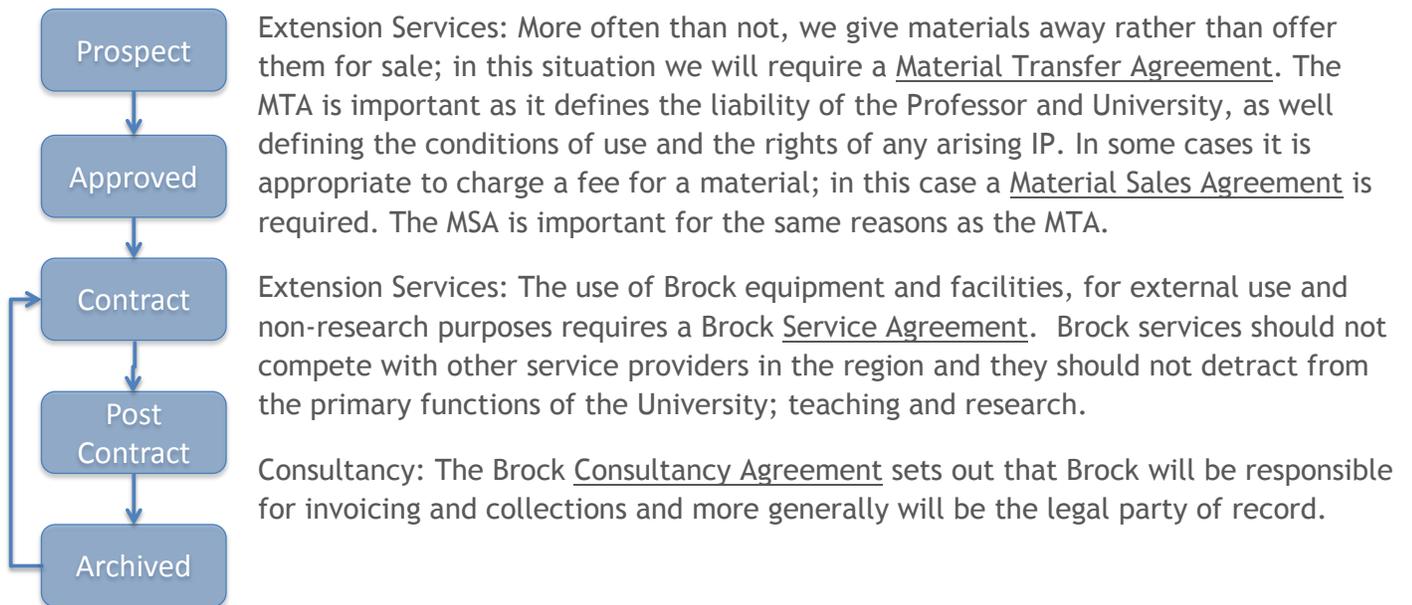
Once the company is formed it would be free to work with Brock professors and students in much the same way as any other external company.

Extension Services and Consultancy

Extension service projects include both the use of Brock facilities and equipment, as well as the sale of surplus materials. Here Brock aims to provide a service to the outside world, while at the same time ensuring these projects support the University and its professors, staff and students.

Consultancy allows Brock expertise to help solve some of the challenges faced by organizations in Canada and overseas. Moreover, Consultancy is often an excellent vehicle for a ‘first date’ between a University and a Company. Brock Professors are free to manage their own consultancy projects, but if they choose to work through Brock, Brock will assist in the financial, legal and administrative required to support the project.

Extension Services and Consultancy share the same stage-gate process as shown below. All projects start as a Prospect.



Legal and Commercial Templates

| | |
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| 01. DCS | Document control slip |
| 02. CDA | Confidential Disclosure agreement |
| 03. INV | Invention disclosure |
| 04. IPDD | Intellectual property due diligence |
| 05. IPID | Intellectual property income distribution |
| 06. IPA | Intellectual property assignment |
| 07. LA | License agreement |
| 08. IPCO | IP co-ownership agreement |
| 09. CRA | Contract research agreement |
| 10. PIAA | PI acknowledgment agreement |
| 11. RSA | Revenue share and assignment-out agreement |
| 12. NVA | New Venture agreement |
| 13. BCA | Brock Consultancy agreement |
| 14. BSA | Brock Service agreement |
| 15. MTA | Material transfer agreement |
| 16. OA | Option agreement |
| 17. EA | Evaluation agreement |
| 18. MSA | Material Sales agreement |

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