



PREFACE

Kenyatta University Intellectual Property Policy is aimed at protecting Intellectual Properties created by staff, students and University associates. The policy covers the following Intellectual Property Rights: patents, copyrights, trade secrets, new-plant varieties, trademarks, utility models, and industrial designs. It also considers issues related to research collaboration, confidentiality in material transfer, disclosure of invention, ownership of invention, distribution of revenues, and disputes. The policy is intended to create a transparent framework for facilitating and regulating R&D activities and creative works with potential for generating Intellectual Properties and a motivating environment for its staff, students and research associates.

Kenyatta University has various Schools with researchers in different disciplinary areas of Science and Arts that are engaged in active research or creative activities. Often, these activities lead to innovative findings or creative works that have potential for development into new products or new technologies with commercial possibilities. Protection of innovations through different forms of Intellectual Properties is a key mechanism of facilitating incubation of new technologies and industries, and thus of realizing specific elements of Kenyatta University Vision and Mission to build a vibrant centre of excellence in R&D and contribute to the process industrialization, poverty alleviation, and societal development as a whole in the country.

Different factors were considered in the development of this policy framework and the document was shaped by inputs and comments from key professionals and stakeholders, including the Managing Director of Kenya Industrial Property Institute, University lawyer and academic staff representing different Schools of Kenyatta University. It is hoped that the Policy will serve as a tool in raising general awareness on the value of intellectual properties, the code of practice that needs to be pursued to ensure that a potential innovation in one's



R&D activities can be protected, and the legal process involved in the protection of intellectual properties and their commercial development.

PROFESSOR OLIVE M. MUGENDA
VICE-CHANCELLOR





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LIST OF ABBREVIATIONS

CA	Confidentiality Agreement
CDA	Confidential Disclosure Agreement
CSRA	Collaborative and Sponsored Research Agreements
IP	Intellectual Property
IPRU	Intellectual Property Rights Unit
IPB	Intellectual Property Board
IPR(s)	Intellectual Property Right(s)
KIPI	Kenya Industrial Property Institute
KU	Kenyatta University
MTA	Material Transfer Agreement
R&D	Research and Development





I. PREAMBLE

Kenyatta University was inaugurated as a fully-fledged University in 1985.

University Vision: To become a dynamic, inclusive and competitive centre of excellence in teaching, learning, research and service to humanity.

University Mission: To provide quality education and training, promote scholarship, service, innovation and creativity, and inculcate moral values for sustainable individual and societal development.

Kenyatta University has highly trained and qualified academic personnel and seeks to acquire specialized laboratories and equipment, and excel in research and teaching in various disciplines. It is committed to excellence in both new and established knowledge, and to transmitting that knowledge to its students and the public. The staff and research students are engaged in research that has potential of generating innovations that can contribute to solving specific national and global problems. In fostering both research and its application, the University embraces and sustains positive intellectual, social and technological changes for a better future.

In its efforts to realize its vision, Kenyatta University (hereafter referred to as 'the University') has developed this Intellectual Property Policy (hereafter referred to as 'the Policy') in order to regulate the process of innovations and intellectual properties that emerge in its R&D activities and creative works in a responsible manner. The Policy seeks to manage innovations in such a manner as to benefit all stakeholders, including the University, the innovator(s) and the general public. The specific objectives of the policy include:

(I) To facilitate and enhance the transfer of University innovations derived from research and the dissemination of knowledge and technologies to the community.





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- (ii) To protect the rights of the University, its researcher(s), and sponsor(s).
 - (iii) To stimulate additional support for R&D on specific innovations by industrial partners resulting in the development of novel technologies and creative works for commercialization.
 - (iv) To derive additional revenue for support of University research and educational initiatives, as well as incentives for innovator(s) to create, disclose and protect.
 - (v) To limit infringement, improper exploitation and abuse of the University technologies and creative works.

II. DEFINITIONS

Assignment: The execution of a written agreement by the Innovator, assigning all of the Innovator's rights, titles and interests in an Innovation to the University. Innovations are assignable as of the time they are conceived or reduced to practice.

Collaborators/Associates of the University: Diploma, undergraduate and postgraduate students, postdoctoral fellows, visiting scientists, artists/musicians and any other individuals participating in research sponsored or hosted by the University, or making significant use of KU facilities, funds or other resources. Corporate associates such as companies and organizations that may take part in the activities listed in this definition are also included.

Copyrights: Written materials, artistic works, directions, computer programs and similar types of informational material that is new and unique. Protection ensures the innovator's and/or University's right is established at the point of innovation to prevent unauthorized copying of an original work of authorship fixed in a tangible medium of expression, as well as the right to prevent some limited types or uses of those works, such as public performances (see section VIII for details).





Industrial Design: Is the ornamental or aesthetic aspect of an article. It may be the shape, the patterns, lines or colour of an article. Industrial designs are what make an article attractive and appealing; hence they add to the commercial value of a product and increase its marketability (see section VIII for details).

Innovation: A new and original idea or item of Intellectual Property (IP).

Innovators: Scientists, artists, researchers, faculty, staff (researchers and non-researchers), undergraduate and graduate students, candidates for masters and doctoral degrees, postdoctoral and pre-doctoral fellows, including any other persons employed by the University, whether full or part-time, emeritus faculty while at the University, visiting faculty and artists, researchers, adjunct faculty and professors, company representatives, administrators and any other persons who create or discover applicable IP using University resources or who receive funds or other rewards for their services (work-for-hire), work done through research/creativity whether or not government funded, or those who voluntarily assign their IP to the University.

Intellectual Property (IP): Any new process and product that can be of use, machine, composition of matter, life form, article of manufacture, software, hardware, copyrighted work, or tangible property, including new or improved devices, circuits, chemical compounds, drugs, genetically engineered biological organisms, data sets, musical processes, or unique and innovative uses of existing inventions that may or may not be patentable or copyrightable. It is created when something new and useful has been conceived or developed, or when unusual, unexpected, or non-obvious results, obtained with an existing invention can be practised for some useful purpose. It can be created by one or more individuals each of whom should be an innovator, must have conceived of an essential element or have contributed substantially to its conceptual development.



Invention: A novel, non-obvious idea or concept that has been reduced to practice that has been demonstrated to work and has utility.

Invention Disclosure: The written submission to Intellectual Property Rights Unit (IPRU) of Kenyatta University, on standard invention disclosure forms available from IPU Office, of a written description of any invention that an innovator believes he/she has made.

Know-How: Refers to the actual human technical skills derived from experience in working on a certain technology. It may or may not be part of trade secret. Licensing of most new technologies work best when accompanied by transfer of know-how, either through training, manuals or secondment of personnel to the licensor until the licensor's personnel are able to effectively utilize the invention.

License: A contract under which the owner of patent or other forms of intellectual property transfers certain rights in the intellectual property to another party. In exclusive license, rights are transferred to only one party.

Net Royalties: Gross royalties less any and all costs and/or expenses incurred by the University in the course of protection and maintenance of the intellectual property and technology transfer.

Patent: A patent is a monopoly granted to protect an invention(s) from adaptation by competitors for a specified period of time (see section VIII for details).

Reassignment: The execution of a written agreement by the University assigning all the University's right, title and interest in and to an innovation back to the innovator(s) who had originally assigned their right, title and the innovation.





Scholarly Work(s): Work(s) developed by innovator(s) as teaching materials, created by students in the course of University-sanctioned learning and staff in the course of conducting research work that has a purpose of disseminating information resulting from research, or studies such as books, articles, manuscripts, dissertations, theses and reports, and novel activities that are not institution based.

Service Mark: A symbol, word, number or design used by a service provider to identify his/her/its own services and to distinguish them from services of others.

Trade Secrets: Trade secrets comprise confidential data or information used in research, business, commerce or industry. Trade secret information may be shared or disclosed under the terms of a Confidentiality Agreement. It may be created in sponsored research projects, where the sponsor may require the university to preserve the secrecy of the information.

Trademark: Any word, phrase, logo, name, symbol, or device, or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and applies to register, to identify and distinguish goods, including a unique product, from those manufactured or sold by others and to indicate the source of the goods, even if that source is unknown (see section VIII for details).

Utility Model: Is an invention that does not meet all the requirements of patentability such as novelty and non-obviousness but has an industrial potential. In Kenya, the Industrial Property Act, 2001, facilitates protection of utility models (see section VIII for details).

Work-for-hire: A work prepared by University employee within the scope of his or her employment who receives funds or other rewards for their services.





III APPLICABILITY OF THE POLICY

Kenyatta University Intellectual Property Policy applies to all staff, Research students and collaborators/associates of the University.

1V KENYATTA UNIVERSITY INTELLECTUAL PROPERTY AGREEMENT

1. All individuals subject to this Policy shall sign the Kenyatta University Intellectual Property Agreement (Annex 2).
2. Heads of Departments of the University shall be responsible for ensuring the signing of the Kenyatta University Intellectual Property Agreement by its employees and associates, normally at the time of the individual's initial association with University.
3. Where an individual subject to Annex 2 has an obligation under previous intellectual property agreement(s) on a specific innovation, the two sets of obligations will be reconciled.

V COMPLIANCE PERIOD

After the IP Policy is commissioned, members of staff will be given up to three months to study and sign Annex 2, during which period any disparity arising from prior agreements will be considered and harmonized.

VI ADMINISTRATION

1. Structure

(a) The University shall establish Intellectual Property Rights Unit (IPRU) headed by a director. The director shall run the office assisted by the Intellectual Property Management Board (IPB). The Board shall be appointed by the Vice-Chancellor. The University legal officer shall be a member of IPB.

(b) The Board shall meet at least once every month.





(c) When a meeting of the Board is convened for the purpose of considering an invention, disclosure of invention or ownership of invention, the inventor(s) and one representative from the collaborating institution(s), if any, shall also be invited participate.

(d) The director in consultation with IPB shall take charge of the following:

- (i) Receive and evaluate innovation disclosures from inventor(s)
- (ii) File for protection of inventions that meet patenting criteria and in which the University has a claim to ownership
- (iii) Evaluate the need for bridging work to facilitate the commercialization of an invention and the need to form partnerships for the carrying out such work
- (iv) Make arrangements to transfer and/license to a third party, where appropriate, of any IP held by the University
- (v) Ensure security and confidentiality of information disclosed to the Board and providing written consent for access and use of such information
- (vi) Ensure that all the staff and associates of the University uphold the University IP policy
- (vii) Provide information and organize sensitization seminars to all the staff on IPR
- (viii) Make recommendations for amendments of the policy as need arises

2. Financing

(a) Funds shall be made available for the Intellectual Property Rights Unit and will comprise:

- (i) Such funds as may be allocated by the University.
- (ii) Such funds as may accrue in the course of performance of its functions.
- (iii) All funds accrued from any other source, such as donations and grants.

(b) The financial year of IPRU shall remain that of the University. IPRU shall provide estimates of income and expenditure at least three months before the commencement of each financial year that shall be submitted to the Finance Office for approval. The annual





estimates shall make provisions for:

- (i) Seminars and other related activities
- (ii) Finances for filing patents
- (iii) Any other finances that may be required in the performance of its functions.

VII DISCLOSURE OF INVENTIONS/INNOVATIONS

(A) A disclosure of an invention/innovation is a forward description of the invention/innovation that is confidentially made to the IPRU for the purpose of record, evaluation, processing, and where appropriate, protection and exploitation. As inventions/innovations are made and ideas evolve, the owner(s) of the invention or idea at the University will be required to follow the protocol as detailed below:

- (i) Immediately notify the IPRU by means of a disclosure on the prescribed form when it becomes apparent that an invention, discovery or technical development has been made
- (ii) The disclosure shall contain at least the following information
 - a. Title of the invention/innovation
 - b. Name of the inventor(s)/innovator(s)
 - c. Technical details of the disclosure
 - d. Justification for believing and evidence that the disclosure constitutes a patentable invention
 - e. Information on any agreements entered into to facilitate the development of the innovation
 - f. Sponsorship, if any, and other resources used in the development of the invention/innovation
 - g. Design date and date put into practice
 - h. Collaborators and/or partners
 - i. Publication dates (existing or projected)
 - j. Any other information that may prove useful in making a determination to protect





the intellectual property.

(iii) The IPRU shall receive, sign and date the disclosures.

(iv) The disclosures so received shall be treated with the necessary confidentiality.

(v) The IPRU in consultation with the IPB shall evaluate the disclosures and, where appropriate, recommend the necessary measures to be taken to protect and exploit the invention/innovation.

(vi) The inventor(s)/innovator(s) shall be obliged to :

A. Cooperate with the IPB in its endeavor to protect and exploit the invention/innovation

B. Take necessary steps and abide with the recommendations by the IPB with respect to protection and exploitation of University IP

C. Avail any information that may be requested by the director for the purpose of expediting protection and exploitation of University IP

D. Make clear to those with whom they collaborate or partner their obligation to the University.

(b) Copyrightable works and materials are automatically protected. However, these can be registered with Kenya Copyright Board.

(c) IPRU director shall periodically brief the Vice-Chancellor the status of disclosures and related matters.

VIII PROTECTION OF INVENTION/ INNOVATIONS

The director, through the Board, and in consultation with the Vice Chancellor, will seek IP protection for an invention/innovation in which the University has interest on the basis of the following criteria:

(i) Where protection of IP with potential for application is considered advisable to ensure availability of any creation, invention and developments therefrom.

(ii) Where the IP protection is necessary to form partnership or undertake collaboration for carrying out bridging work or for trading to gain access to the IPR



of others that is vital to the availability of the invention to the public.

Important types and scope of protection include but are not limited to the following.

1. Patent

A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new, innovative and useful technical solution to a problem in industry. In Kenya, a patent provides protection for a period of 20 years.

A patent owner has the right to decide who may or may not use the patented invention for the period in which the invention is protected. The patent owner may give permission to, or license to other parties to use the invention on mutually agreed terms. The owner may also sell the right to the invention to someone, who will then become the new owner of the patent.

Once a patent expires, the protection ends, and an invention enters the public domain, that is, the owner no longer holds exclusive right and the invention becomes available for commercial exploitation by others, free of charge. Care should be taken not to infringe the provisions of patent law even when protected information is used for teaching or research unless the law allows the innovator to have such information used for such purposes while the protection is in force.

2. Copyrights

Copyrights is a legal term describing rights given to creators for their literary and artistic works. The works covered by copyright include literary novels, poems, plays, reference works, computer programmes, databases, films, musical compositions and choreography, artistic work such as paintings, drawings, photographs, sculptures, architecture, maps, multimedia creations and technical drawings. The owner of a





copyright holds the exclusive right to use or authorize others to use the work on agreed terms. The owner of the work can prohibit or authorize its reproduction, public performance (play or musical work), recording, broadcasting, translation/adaptation (novels or screen plays) and availability (website). In Kenya, Copyrights are protected by Copyright Act, 2002.

3. New Plant Varieties

The University is involved in research in the development of new plant varieties. In Kenya, new plant varieties are currently protected under the Seeds and Plants Varieties Act Cap 326 of the Laws of Kenya, by giving the breeder limited monopoly rights over the varieties they have created by way of registration system for plant varieties.

4. Trademarks

A trademark is a distinctive sign, which identifies goods or services as those produced or provided by a specific person or enterprise. The system helps consumers identify and purchase a product or service because its nature and quality, indicated by its unique trademark, meets their needs. A trademark provides protection to the owner of the mark by ensuring the exclusive right to use it to identify goods or services, or authorize another to use it in return for payment. Trademarks promote initiative and enterprise by rewarding the owners with recognition and financial profit. Trademark protection also hinders the effects of unfair competitors, such as counterfeiting. In Kenya, trademarks are protected under the Trademarks Act Cap 506.

5. Utility Models

These are inventions that do not meet all the requirements of patentability but have industrial potential. They encourage indigenous innovativeness, particularly in small and medium scale enterprises as well as protection of utility models is facilitated by Act 2001.





6. Industrial Design

An industrial design is the ornamental or aesthetic aspect of an article. The design may relate to shape, patterns, lines or colors of an article or a set of articles. Industrial designs are applied to wide variety of products of industry, handicrafts, technical, medical, housewares, electrical and architectural. Industrial design is what makes an article attractive and appealing; hence it adds to the commercial value of a product and increase its marketability. Protection gives the owner exclusive right against unauthorized copying or imitation of the design by third parties. The duration of protection is generally five years, renewable twice for further period of five years each. Industrial designs are protected in Kenya under the laws promulgated in the Kenya Industrial Property Act 2001.

IX OWNERSHIP OF INTELLECTUAL PROPERTIES

The University recognizes that research and invention frequently involve complex relationships among several parties including individual inventors, external research sponsors and various departments of the University. This section of University IP Policy is designed to clarify the rights to ownership among these several parties and to provide guidelines for determination of ownership under different types of research arrangements.

1. Invention Made With University Resources

When any invention is produced by an employee or associate of Kenyatta University in the course of official duties, or making more than incidental use of University time and resources, all rights and obligations relating to such invention shall belong exclusively to the University subject to the following conditions:

- (i) The University shall be fully responsible for any and all expenses, fees and any other charges resulting from the application for, granting, or maintenance of, intellectual property rights





(ii) Where an invention reaches the stage of commercialization, the University shall forward a share of royalties accruing to it to the inventor, and where appropriate, the initial source of the indigenous knowledge, according to the arrangements outlined in Section XII of this Policy

(iii) Where an intellectual property right held by the University under this clause is not being worked or licensed, the inventor may apply to the Vice-Chancellor to succeed to the intellectual property right, or for a license to work such intellectual property right, on terms to be mutually agreed between the inventor and the Vice-Chancellor

(iv) Where an invention is not subject to any agreement expressly stating otherwise.

University resources include the following:

- (a) Office, laboratory space, equipments
- (b) Computer hardware, software and support
- (c) Research, teaching and laboratory assistants
- (d) Supplies and utilities
- (e) Funding for research
- (f) Any other resources as determined by IPB Board.

2. Intellectual Property Made Without University Resources

Individual inventor(s)/creator(s) will own an IP if it was made or developed without University resources. The inventor/creator will inform the University of the IP and the intention to apply for ownership. The University shall review and make a determination of whether the University support or resource was used to develop the invention/IP. If it is determined that this was not used in the development of IP, the University will inform the inventor/creator in writing within 30 working days following the report of the IP that the University acknowledges the inventor's ownership of the IP. The University will require a sworn statement that the IP was made without University resources. In case of





disagreement between the inventor and the University with regard to an invention, the dispute will be solved according to Section XV on Disputes. The following will also apply:

- (i) If within a period of one year of ceasing to be a member of staff or a student of the University, such a former member or a former student comes up with an invention, such invention shall be deemed to belong to the University unless there is a clear proof that the invention was fully conceptualized and developed without utilization of the University resources and time as per the time the person was a member
- (ii) If the University does not exploit an invention within ten years after the grant of IPR, the University shall reassign ownership to the inventor upon request
- (iii) Should the University not express an interest to pursue patent protection due to low commercial potential, ethics and morality issues etc., the University shall, in writing, reassign to the inventor(s) the rights to the invention within one year from time of official protection.

3. Ownership by a Financial Sponsor

- (i) The University shall own all IP(s) made, discovered, or created in the course of research funded by a sponsor, unless otherwise provided by written agreement between the University and the sponsor.
- (ii) Where a sponsor specified a technical problem to be solved by the research at the University and a researcher stumbles on a totally different and unrelated invention in addition to solving the sponsor's problem then the “accidental” invention shall belong to the inventor and the University.
- (iii) Where the University is involved in collaborative research with another institution(s) or business entity, the IP shall be co-owned and the distribution of royalties shall be governed by contractual agreement between the parties. Both institutions shall contribute equally towards expenses related to acquiring IPR and





Licensing.

4. Publications, Theses and Dissertations

- (i) Students' theses and dissertations are considered “Exempted Scholarly works”. The student will own the copyright subject to a royalty-free license to the University to reproduce and publish for the purpose of training and research in the University.
- (ii) The University shall protect the right of academic members, students and other employees to publish the results of their work, by ensuring that steps are taken to protect the IPR within twelve months from the date of the disclosure to the IP Board.
- (iii) For publication arising from contract research, the University researcher shall be allowed to publish unless otherwise stated in the contract.

X AGREEMENTS

Agreements form an important set of tools for protecting and managing intellectual property. They come in a variety of forms and sometimes are not restricted to IP matters alone but nevertheless may have ramification for the protection and management of the University IP. Consequently, the IP Board shall through the director, advise the Vice-Chancellor on the appropriate terms of such agreements before they are concluded. The IPB Board will review sections on agreements as need arises.

The following are more common types of agreements that often imply on IP protection:

1. Material Transfer Agreements (MTA)

The University considers that the transfer of materials between universities and research groups at other organizations is an important aspect of scientific cooperation. Researchers may wish to exchange a variety of materials (chemicals, plant- or animal-derived materials, cell lines, research animals or other materials) in order to facilitate a collaboration, initiate new research or enhance current investigations. Materials may be exchanged between the University and other universities in Kenya and beyond, national and international research institutions, or between the University and a commercial





entity.

The materials transferred out or into the University shall be subject to material transfer agreements (Annex 1). The material transfer agreements shall take into consideration the following:

- (i) The nature of the material
- (ii) The intended use of the material
- (iii) The party(ies) concerned
- (iv) IP policy/intent of the recipient and/or provider
- (v) Handling of any special shipping needs
- (vi) Any attendant's exposure to health and safety risks.

The director of IPRU shall keep a copy and also provide a standard MTA for routine use. Where need arises, the MTA may be modified under specific arrangements but such modification will need the approval of the IPB before the agreement is concluded and material is transferred.

2. Confidential Disclosure Agreements (CDA)

A disclosure can be made under the protection of a Confidential Disclosure Agreement (CDA) while a patent application is under evaluation. A disclosure made under the protection of a CDA is not considered public disclosure.

A disclosure made to the University staff under a CDA with other organizations may have implications on the IP of any inventions resulting from the use of such disclosure. The terms and conditions of the CDA shall be approved by the IP Board before the conclusion of agreements. A standard CDA shall be provided by the director of IPRU but may be modified with the approval of the IPB Board.

3. Collaborative and Sponsored Research Agreements (CSRA)

All collaborative and sponsored research agreements entered into by University shall





include the following elements:

- 1 Principles and modalities for the ownership and exploitation of any intellectual property rights that may result from the project, including provisions for dispute resolution
2. All parties sharing ownership of intellectual property rights resulting from the project shall contribute equally towards any and all expenses, fees and any other charges resulting from the application for, granting or maintenance of such rights or otherwise agreed
3. All parties sharing ownership of intellectual property rights resulting from the project shall have the right to apply their own policies and practices as regards any rights, obligations and royalties deriving from such rights
4. Where an invention disclosure is required by the terms of Section VII of this Policy, such disclosure shall be simultaneously provided to all collaborative partners; a disclosure provided under this Policy shall be considered a confidential document and all receiving parties shall be equally responsible for its maintenance as such
5. The functions assigned by the IPB in this Policy, where they concern subject matter relating to the collaborative or sponsored research project, shall be performed with the full participation of all partners and sponsors
6. Where issues arise which are not covered by the terms of the Agreement, this Policy shall be applicable
7. Where the collaborating institution has no intellectual property policy, Kenyatta University IP policy may apply subject to negotiations.

XI LICENSING ARRANGEMENTS

University-generated intellectual properties may be licensed to external entities for further development and commercialization in exchange for a share in the revenue generated. The director in liaison with the IPB shall be involved in all licensing negotiations on behalf of the University.

License agreements entered into by the University will include provisions, as appropriate, regarding due diligence in patent or copyright protection and





commercialization of the innovation, reports on efforts and success in commercialization, access to records to ensure compliance with the terms of the agreement, retention of University rights to use the innovation and extent of authority for subsequent licensing or reassignment. The University's licensing and assignment agreements must permit compliance with applicable laws, regulations, University policies, and the terms of agreements with sponsors.

The University will cover the necessary costs leading to licensing of innovations solely owned by the University and such costs will be offset against royalty income. The University will recover all expenses incurred for the protection and licensing of each University invention from its licensing proceeds before distributing the net proceeds remaining among the inventor(s), the inventor's department, and the University and the community as the case may be.

The University may grant an exclusive license for use of its intellectual property to an external organization or to a University employee. Such a license shall be for a period of five years with a possibility of extension for further periods of ten years.

The University shall reserve the right to revoke any license issued and shall exercise that right if the licensee does not demonstrate due diligence in exercise of the license or where the terms and conditions of the license are not being followed, including cases of exclusive licenses.

License agreements with the University employee-inventor(s) will normally include a provision that any continuing development of the IP with the use of University funds, facilities, or funds administered by the University may only proceed if reviewed and approved in accordance with the conflict of interest procedures as outlined in Section XV.





In keeping with the mission to disseminate new knowledge, the University will in all licensing instances (including cases of exclusive licenses) reserve the right to use the University intellectual property for further research, and education.

XII DISTRIBUTION OF REVENUE FROM ROYALTIES

For the purpose of distribution of royalties, gross income shall be defined as all income obtained from commercialization of an IP. Net income shall refer to the gross income less expenses incurred by the University for Processing, Protection, Maintenance and Licensing of the IP. When an invention made by an employee of the University is commercialized, the net income shall be distributed to the following:

- (i) Inventor(s)
- (ii) University
- (iii) Department of the inventor(s)
- (iv) Community

The net royalty income shall be distributed according to the following schedule:-

Annual Cumulative Net Income	Inventor(s)	University*	Department of Inventor (s)
Up to KSh. 1 million	80%	10%	10%
Above KSh.1 – 5 millions	70%	20%	10%
Over KSh. 5 million	50%	20%	30%

* Where a resource that was used to develop the IP was sourced from a Community, the University and Community will share the royalties equally.

The royalty income allocated to inventors shall be paid to them directly as personal income. In the absence of a written agreement to the contrary, multiple inventors shall receive equal portions of the inventor's share of the net revenue. When multiple inventors are located in different departments, this formula shall apply to the distribution of revenue due to the departments.





The inventor shall continue to receive his/her share of the royalties even after leaving the University. In the event of the death of the inventor, the legal successor shall continue to receive the royalties. Shares due to collaborating institutions shall be administered in accordance with prevailing policies and practices at those institutions.

XIII EQUITY SHARES

The University may negotiate for partnership or joint venture with any entity that has obtained a license to the University's innovation in exchange for royalty. The University may also negotiate for equity interests in lieu of, or in addition to, monetary consideration as part of an agreement with an external entity relating to applicable IPB. In such situations, the inventor(s) shall decide whether to take equity or royalty options.

Where the University takes an equity option, the proceeds generated from the sale of such equity shall be distributed in accordance with agreed policies on distribution of revenue.

XIV IMPLEMENTATION

This Policy shall not apply to existing written agreements between the University and/or innovator(s) with any external organization or individual concerning the development, legal protection or commercialization of specific IP entered into prior to the date on which Council adopts this policy. If an existing written agreement is renewed, revised or amended after the date on which the Council adopts this policy, reasonable attempts shall be made to conform with such agreement to the requirements of this policy as of the date on which it is renewed, revised or amended.

Thereafter, the University shall notify all person(s) subject to this policy of its terms as soon as possible after its adoption by University Council and at regular intervals.





XV DISPUTES

Disputes not solved by IP Board will be referred to the University Senate.

XVI EXCEPTIONS

The Vice Chancellor with the advice of the IPB may give exceptions to this policy and any terms in the University IP agreements. Such exceptions shall be in writing and shall not be to the extent that they shall surpass the overall aims and objectives of the University IP Policy.

XVII POLICY REVIEW

This policy will be reviewed every two years. The process of review shall involve writing of notices of such review to Heads of Departments of the University requiring them to forward any suggestions or concerns in the policy document that members of their departments may have. After receiving this information from departments, the IPB will convene a meeting to consider the reports from the departments and critically look at sections and clauses that may have been suggested for review.





ANNEX 1. MATERIAL TRANSFER AGREEMENT (MTA)

1. THIS MATERIAL TRANSFER AGREEMENT is made this _____ day of _____, 20__ BETWEEN _____ of Post Office Box Number _____ in the Republic of Kenya (hereinafter “LENDER”) of the part AND _____ Aforesaid (hereinafter “the BORROWER”) of the other part
2. In consideration of the mutual covenants contained herein and with the intention of being legally bound under the laws:
3. The “MATERIAL” covered by this agreement is defined as and includes the following _____ (hereinafter referred to as “MATERIAL”) developed by _____
4. BORROWER desires to obtain samples of the MATERIAL and the LENDER is willing to provide the MATERIAL to the BORROWER solely for the permitted uses and on the terms and conditions set forth in this agreement.
5. BORROWER agrees that this MATERIAL will not be released to any person other than the signatories of this Agreement except co-workers working directly under a signatory's supervision who have agreed to abide by the terms and conditions of this Agreement. No one is permitted to take or send this MATERIAL to any other location, unless prior written permission is obtained from the LENDER such permission will not be unreasonably withheld.
6. The MATERIAL has been developed over a substantial period of time at substantial expense and is of great importance to the LENDER business. BORROWER acknowledges that the LENDER is and will at all times the owner of the MATERIAL.
7. The BORROWER retains ownership of: (a) modifications which contain/incorporate the MATERIAL (except that the LENDER retains ownership rights to the MATERIAL included therein and those substances created through the use of the MATERIAL or modifications, but which are not progeny unmodified derivatives or modifications (those substances that do not contains the original MATERIAL progeny, unmodified derivatives of the LENDER. If either 2a or 2b results from the collaborative efforts of the LENDER and the BORROWER joint ownership may be negotiated.
8. This agreement and the resulting transfer of MATERIAL constitute a restricted non exclusive license for BORROWER to use the MATERIAL solely for not-for-profit purposes. MATERIAL will not be used for any purpose inconsistent with this agreement and in connection with any activity that is subject to consulting or licensing obligations to any third party. Upon completion of the work for which this restricted license is granted, MATERIAL, which has not been destroyed, will be disposed of as explicitly directed by the LENDER. THE LENDER retains title to the MATERIAL and BORROWER shall not obtain any ownership rights in MATERIAL.
9. MATERIAL is experimental in nature and it is provided AS IS WITHOUT WARRANTY OF ANY SORT, EXPRESSED OR IMPLIED, and INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. LENDER makes no presentation and provides no warrant that use of the MATERIAL by BORROWER will not infringe any patent of proprietary rights of third parties.





10. BORROWER agrees that it will follow all applicable laws and guidelines set forth by proper authority regarding the use and handling of such MATERIAL

11. BORROWER agrees that it will not use the MATERIAL in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the LENDER.

12. The BORROWER shall be responsible for any and all import/export requirements and regulations for the reception of such MATERIAL.

13. If the BORROWER intends to use such MATERIAL to determine if a commercializable system can be developed as a result of the BORROWER having received this MATERIAL whether patentable or not, BORROWER shall promptly notify the LENDER in writing of the substance of each such discovery and of the filing of any patent application thereon. BORROWER agrees to negotiate in good faith prior to marketing of such discovery compensation to be paid by the BORROWER to the LENDER. Giving consideration to the contributions of the parties to the discovery and its development, such compensation may include royalties in the gross sales value of the worldwide sales of such discovery derived from the MATERIAL

14. BORROWER shall provide LENDER with a manuscript of any proposed publication or presentation resulting from the study using MATERIAL at least sixty (60) days prior to submission thereof for publication or presentation. LENDER reserves the right to review any such manuscript and to require the removal of confidential matter in order to protect its proprietary rights and interests. LENDER shall notify BORROWER in writing within the sixty (60) day period concerning the removal of confidential matter and to suggest editorial modifications in the manuscript

15. BORROWER hereby agrees upon the request of the LENDER to provide the LENDER with a report of observations related to the MATERIAL by providing the LENDER with a report describing the results of such research using the MATERIAL. To the extent that it is able, BORROWER will acknowledge LENDER's contribution.

16. BORROWER hereby grants the LENDER a non-exclusive, world wide royalty-free right to use for its internal research purpose any information or new MATERIAL developed by BORROWER using the LENDER MATERIAL whether patentable or not. The LENDER agrees not to publish results involving BORROWER's data without citing its source and giving credit of authorship/creatorship to BORROWER provided that is desired by BORROWER

17. Either party may disclose the other party's Confidential Information to a governmental authority if such disclosure is required by applicable law or regulation or by order of court of competent jurisdiction, provided that such disclosure is subject to all applicable governmental or judicial protection available for like MATERIAL and reasonable advance notice is given to the other party.

18. BORROWER will exercise all reasonable precautions to protect the integrity and confidentiality of the MATERIAL and BORROWER shall maintain records of the location of all MATERIAL. BORROWER will not remove the MATERIAL from BORROWER's premises except to the extent necessary to fulfill it's obligations under this agreement.

19. This agreement will terminate on the earliest of the following dates: (1) when the MATERIAL becomes generally available from third parties, (2) on Completion of BORROWER's current research with the MATERIAL, (3) on (30) thirty days written notice by either party to the other or (4) on _____, 20__





20. This agreement shall be governed by the laws of _____
IN WITNESS WHEREOF, the parties have caused their duly authorized representatives to execute
this agreement.

Signed by
LENDER _____
Name _____ sign _____ Date _____

In the presence of Name _____ Sign _____ Date _____

Signed by
BORROWER _____
Name _____ sign _____ Date _____

In the presence of Name _____ Sign _____ Date _____





ANNEX 2. KENYATTA UNIVERSITY INTELLECTUAL PROPERTY AGREEMENT

I understand that Kenyatta University (KU) is governed in the handling of intellectual property by its official policy titled 'Kenyatta University Intellectual Property Policy 2006' (KU IP Policy), which I have read and understood, and I agree to abide by the terms of that Policy.

Pursuant to that Policy, and in consideration of my employment by KU, the receipt of remuneration from KU, participation in projects administered by KU, access to or use of facilities provided by KU, access to information provided by KU, and/or other valuable consideration, I hereby agree as follows:

1. That, subject to any agreement expressly stating otherwise, the University shall have ownership of all rights and obligations relating Copyrights of work commissioned by the University, Plant Breeders Rights, or any patentable inventions and innovations eligible for protection by other forms of intellectual property such as utility models, patents, trade secrets and other rights in information relating to useful articles of commerce that are produced in the course of official duties, or making significant use of KU's time and resources.
2. That I shall execute and deliver all documents and records and do any and all things necessary and proper on my part to effect the terms of paragraph 1 of this agreement.
3. That I shall immediately notify the Intellectual Property Management Committee, by the means set out in the KU Intellectual Property Policy, when it first becomes apparent that an invention, discovery or technical development, Copyrightable work, New Plant Variety has been made in the course of official duties, or making significant use of KU's time and resources.
4. That I shall maintain full confidentiality regarding all information that has been the subject of an Invention Disclosure. This requirement may be terminated by the express written consent of the Manager of the Intellectual Property or at such time that the information is clearly considered to be in the public domain, whichever may be the earlier.
5. That I shall make and maintain adequate and current records of all information relating to any research undertaken in the course of official duties, or making significant use of KU's time and resources, in such forms as written notes, tables, sketches, drawings, spectra, chromatograms, photographs, computer diskettes, computer software, databases and the like or reports relating thereto, which records shall be and remain the property of and available to the University at all times and which shall be surrendered to the University in the event of the cessation of our relationship.
6. That I shall undertake to preserve samples of all isolates, fractions, compounds or modifications of these that may be undertaken, all of which shall also be and remain the



property of and available to the University at all times and which shall be surrendered to the University in the event of the cessation of our relationship.

7. That I am now under no consulting or other obligation to any third person, organization or corporation in respect to any patentable inventions and innovations eligible for protection by other forms of intellectual property such as utility models or petty patents, trade secrets and other rights in information relating to useful articles of commerce or intellectual property rights thereof which are, or could be reasonably construed to be, in conflict with this Agreement or the terms of the KU Intellectual Property Policy.

NB: Where associates of the KU have prior existing employment agreements that conflict with the terms of either this Agreement or the KU Intellectual Property Policy, they should immediately contact the Intellectual Property Management Committee, as an alternative agreement may be necessary.

8. That I will not enter into any agreement that might create rights to any patentable inventions and innovations eligible for protection by other forms of intellectual property such as utility models or patents, trade secrets and other rights in information relating to useful articles of commerce, or intellectual property rights thereof which conflict with this Agreement or the terms of the KU Intellectual Property Policy.

That in the event of the cessation of my relationship with the University, I, and my estate, heirs and assigns, shall continue to be bound by the terms of this Agreement and the terms of the KU Intellectual Property Policy.

SIGNED at _____ this _____ day of _____ 20____
(Month)

Employee/Associate Signature Printed or typed name

Employee/Associate's address

Witness' Signature Printed or typed name

