



**Mount Kenya University**

**INTELLECTUAL PROPERTY POLICY**



## FOREWORD

In pursuit of its Vision and Mission, Mount Kenya University (MKU) acknowledges the pivotal role research, innovation and other intellectual activities play in socio-economic development of any society. Thus, the University is continually motivating its employees and collaborators not to adopt a “me-too” approach in research undertakings, but rather to explore novel and innovative strategies.

The evidence that MKU is giving research a high priority is embodied in various policy documents including the MKU Research Policy. Also, the University has underlined the importance of research through funding initiatives such as the recently launched Internal Research Grant termed as the “Vice-Chancellor’s Grant” to fund researchers and innovators. The University recognizes that incident to exploration and validation of novel ideas in research, innovation and other intellectual activities, new frontiers of knowledge are birthed.

It is thus the University’s object to protect the rights of the individual, the University and any collaborating entity. Thus, the University endeavours, *inter alia*, through this Intellectual Property Policy to provide the necessary protections and incentives to encourage both the discovery and development of new knowledge and creative works, and their subsequent exploitation for the socio-economic development of the Kenyan people and the Region in line with the objectives of Vision 2030 and the Millennium Development Goals.

**Prof. Stanley Waudu**  
**The Vice-Chancellor**  
**Mount Kenya University**

**Date.....**

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## LIST OF ABBREVIATIONS

<b>MKU:</b>	Mount Kenya University
<b>IP:</b>	Intellectual Property
<b>R&amp;D:</b>	Research and Development
<b>TRP:</b>	Tangible Research Property
<b>IPMO:</b>	Intellectual Property Management Office
<b>MTA:</b>	Material Transfer Agreement
<b>EIDC:</b>	Enterprise and Innovation Development Centre
<b>CDA:</b>	Confidential Disclosure Agreement
<b>IPR:</b>	Intellectual Property Right
<b>IPMC:</b>	Intellectual Property Management Committee
<b>KIPI:</b>	Kenya Industrial Property Institute

## DEFINITIONS

In this Policy, unless the context otherwise requires, the following terms shall have the meanings assigned to them. It should be noted that other definitions not captured in the subsequent section are in accordance to the Industrial and Property Act, 2001:

**Academic Materials:** Materials used for pedagogical purposes including, but not limited to, recorded and live digital, video, and audio presentations; photographs, films, graphic illustrations, transparencies, and other visual aids; programmed instructional packages; computer programs and data bases; and books, booklets, monographs, articles, scripts, study guides, syllabi, tests, and other items that accompany, or are used to present or demonstrate, the above described materials;

**Copyright:** An original work of authorship which has been fixed in any tangible medium of expression from which it can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device, such as books, articles, journals, software, computer programs, musical works, dramatic works, videos, multimedia products, sound recordings, paintings, pictorial, sculpture or graphical works.

**Industrial Designs:** The aspect of a useful article/item, which are ornamental or aesthetic and include the shape, pattern, line or color of products of industry, handicraft, technology or architecture;

**Innovation:** A new or original or improved product or process;

**Innovator:** Scientist, researcher, author or performer. This includes a staff member (researchers and non-researchers), undergraduate and graduate students, candidates for masters and doctoral degrees, pre-doctoral and postdoctoral fellows, including any other person employed by the University, whether full or part-time, emeritus staff while at the University, visiting faculty and researchers, adjunct staff and professors, company representatives, administrators and any other persons who create or discover applicable intellectual property using the University resources or who receives funds or other rewards for their services (work-for-hire), work done through research whether or not funded by the Government, or those who voluntarily assign their intellectual property to the University;

**Invention Disclosure:** The written submission to the Intellectual Property Management Office (IPMO), on the standard or prescribed invention or innovation disclosure forms available from IPMO, of a written description of any Invention that an Innovator claims he or she has made or owns;

**Inventions:** New, useful, and non-obvious ideas and/or their reduction/translation to practice that result in, but are not limited to, new products, devices, processes, and/or methods of producing new and/or useful industrial operations and materials; any article useful in trade; any composition of matter, including chemical compounds and mechanical mixtures; biological materials including cell lines, plasmids, hybridomas, monoclonal antibodies, and genetically-engineered organisms that are industrially useful or that have commercial potential; new varieties of plants; any new design in connection with the production or manufacture of an article including computer software, data bases, circuit design, prototype devices and equipment; and any improvement upon existing processes or systems;

**Inventors or Creators:** The person(s) responsible for the conception, ideas, and content of Inventions and other works. Support staffs such as research assistants, photographers, artists, producers, computer programmers, printers, and others who contribute to the works shall not be considered inventors or creators unless they have evidentially and substantially influenced the original or novel aspects of the works;

**Integrated circuits or layout designs:** The three-dimensional disposition, however expressed, of the elements of computer circuit, at least one of which is an active element and of some or all of the interconnections of an integrated circuit intended for manufacture;

**Intellectual Property:** This refers to the legal rights in and to a Work as provided by applicable statute, regulation or judicial decision, including, without limitation, patent, copyright, trademark, service mark, trade secret, domain name, any new original or useful process, machine, composition of matter, life form article of manufacture, software, literary, artistic, musical work, or tangible property including new or improved devices, circuits, chemical compounds, drugs, genetically engineered biological organisms, data sets, software, musical processes, or unique or innovative uses of existing inventions that may or may not be patentable, copyrightable, trade “markable” or protectable under any other form of intellectual property;

**Patent:** An exclusive right granted for an invention, 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 or commerce or public life;

**Service mark:** Includes any word, phrase, logo, name, symbol, device, sign or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and uses or applies to register, identify and distinguish his/her, services from those of others;

**Sponsored Agreement:** This shall mean grants, contracts, subcontracts, and other agreements between a Sponsor and the University for the purpose of conducting research, instruction, training, and other activities at the University, or using University staff for compensation;

**Tangible Research Property:** Anything having a physical embodiment such as cell lines, software, devices, and compositions of matter irrespective of whether or not protectable under any intellectual property regime;

**Trade mark:** Includes any word, phrase, logo, name, symbol, device, sign or any combination thereof, used by a person or which a person has a bona fide intention to use in commerce and uses or applies to register, to identify and to distinguish his/her goods from those of others;

**Trade Secret:** Includes confidential data, information or compilations used in research, business, commerce and industry and confer advantage on one having the right to use it. The information has commercial value because it is secret or confidential. There must be an intention to keep such information confidential;

**Utility Model:** Any form, configuration or disposition of element of some appliance, utensil, tool, electrical or electronic circuit, instrument, handicraft mechanism or other object or any part of the same allowing a better or different functioning, use, or manufacture of the subject matter or that gives some utility, advantage, benefit, saving or technical effect not available either in Kenya or other regions of the world before and includes microorganisms or other self-replicating material, products of genetic resources, herbal as well as nutritional formulations which give new effects.

## **1.0 INTRODUCTION**

### **1.1 Preamble**

Mount Kenya University (MKU), hereafter referred to as “the University” recognises and encourages the individual effort and ingenuities on the part of its Schools, employees, students and collaborators leading to the creation of intellectual property. It is the University’s intent to protect the rights of the individual, the University and any collaborating entity, and to effectuate reasonable and appropriate sharing of revenues in the event these creations have commercial value. Thus, the University appreciates that Intellectual Property Policy is necessary to:

- provide the necessary protections and incentives to encourage both the discovery and development of new knowledge and creative works, and their exploitation for the public benefit, and to guide capacity building and the generation of revenue for the University and the inventor(s);
- ensure the delivery of innovative or improved products, inventions, publications and technologies in the country, the region and beyond while preventing their misappropriation by others for profit making;
- fulfill the terms of sponsored agreements and other contracts relating to the development of the intellectual property;
- create a reasonable and workable policy that enables an efficient administration of the intellectual property issues, and that accounts for the constant advance of science and technology;
- negotiate access to other proprietary rights and technologies required for product development.

The Kenya Government regulations require that discoveries from research conducted at the National Universities be reported promptly and appropriate patents applied for by the University. The University therefore has the obligation to protect intellectual property emerging from research funded from whatever sources by the prompt filing of appropriate patent applications. Except as otherwise provided by the Senate approved policy or legal instruments, any discoveries or inventions which result from research work carried out by, or under the direction of any employee of the University, or from funds under the control of, or administered by the University, or which come as a result of any employee’s duties with the University, or which have been developed in whole or part by the utilization of the University resources or facilities, shall belong to the University and shall be used and controlled in such a manner as to produce the greatest benefit to the University and the public.

### **1.2 Vision of the University**

To be an African role model of excellence in science, technology, education and training.

### **1.3 Mission of the University**

To provide world class teaching, research and innovative extension services for sustainable scientific and technological development.

### **1.4 Strategic objectives of the University**

The strategic objectives of Mount Kenya University are to:

- promote excellence in teaching, research and community service;
- increase access and equity to quality higher education;
- produce graduates who can apply scientific knowledge in a fast changing technological world;
- undertake cutting edge research for generation of knowledge;
- disseminate knowledge to the society;

- stimulate innovations in applied science and technology;
- equip learners with critical thinking and problem solving skills;
- equip learners with both theoretical and practical skills in scientific and technological fields;
- contribute positively to the welfare of humanity and human advancement;
- stimulate learners' intellectual growth.

## 1.5 Rationale

There is need for the University to have an intellectual policy to:

- enhance collaboration with other institutions and individuals;
- protect the interest of the University;
- promote demand driven research;
- generate income for the University;
- take care of the conflicting interests of the various stakeholders
- promote creativity and innovation;
- expedite knowledge and technology transfer;
- reward staff for inventiveness and protect their interests;
- ensure equitable sharing of commercial benefits;
- spell out obligations of all stakeholders in IP generation and commercial utilization;
- expedite commercialization of research outcomes through incubation and industrial collaborations.

## 2.0 POLICY MISSION

To create awareness of Intellectual Property Rights (IPR), promote creativity and facilitate the development of viable innovations for social and economic development.

## 3.0 POLICY OBJECTIVES

- To create awareness within the University community on IPR and its importance;
- To optimize the environment and incentives necessary for research and for the creation of new knowledge;
- To ensure compliance to the Policy within the University and in all collaborative Research and Development (R&D) arrangements with other partners;
- To protect the Intellectual Property (IP) rights of the University, its creators, innovators, inventors, collaborators, research sponsors and the public;
- To encourage innovation disclosures and protection;
- To ensure fair and equitable distribution of all benefits accruing from all innovations, creations and inventions;
- To promote linkages with industry and stimulate research through developing and utilizing novel technologies and creative works for commercialization and plough back resources to the University and to the sponsoring parties.

## 4.0 APPLICABILITY AND COMPLIANCE

- All staff, students, fellows, collaborators, persons and institutions shall be required to comply with the provisions of this Policy and sign the *Mount Kenya University Intellectual Property Agreement Form* (Annex 2). In furthering such requirement, all participants will sign Agreements on innovations, inventions and Proprietary Information in accordance with this Policy. All applications and/or processes in the University shall be subject to this Policy.

- ii) Where a collaborator is already subject to the terms of an intellectual property policy of his or her parent institution, he or she shall inform the University of such an obligation in a timely manner. The University shall then proceed either to negotiate a waiver of the parent institution's policy or to agree to the waiver of the terms of this Policy. Where issues arise which are not covered by the terms of the agreement, this Policy shall be applicable.

## 5.0 GOVERNING LAWS

- i) This policy shall be interpreted in a manner consistent with other MKU Policies, all applicable Laws of Kenya, and
- ii) Where necessary, the laws of other countries may be applicable.

## 6.0 SCOPE OF THE POLICY

The Policy shall cover but not limited to the following: Patent; Trade Mark and Service Mark; Copy rights and Neighboring rights; Industrial Design; Utility Model; New Plant Varieties; Trade Secrets and Know how; Integrated circuits or layout designs; Geographical Indications; Tangible Research Property (TRP) and genetic resources including living organisms; Traditional Knowledge and Folklore; Domain names; Sound or visual recordings; Multimedia presentations; Models, machines, devices and prototypes; Designs, drawings and plans; Apparatus, instrumentation; Computer programs and databases Biological material or specimen; Chemical compounds and other composition of matter.

## 7.0 DISCLOSURE

When it becomes apparent that an invention, innovation or creation has been made which might be subject to this Policy, the inventor, innovator or creator shall promptly notify Intellectual Property Management Office (IPMO) in the prescribed manner.

- a) An innovation, invention or creation disclosure must be prepared and submitted for each innovation, invention or creation conceived or first effectuated for practice under the University IP contract (Annex 2).



- b) The Disclosure shall include, but not be limited to, the following information:
- i) information about the inventor, innovator or creator;
  - ii) a summary of technical information;
  - iii) detailed justification for believing that the disclosure constitutes a protectable invention, innovation or creation;
  - iv) information on any agreements entered into to facilitate the development of the invention, innovation or creation;
  - v) facts concerning subsequent activities, undertaken and planned;
  - vi) information regarding any resources, understood to include information such as traditional knowledge that contributed to the invention, innovation or creation;
  - vii) information the innovator, inventor or creator(s) may have relating to other activities relating to the invention, at the University or elsewhere; and
  - viii) any other information that may prove useful in making a determination as to intellectual property protection.

## **8.0 PUBLICATION AND CONFIDENTIALITY**

- i) It is the policy of the University that the publishing and patenting or protecting innovation, creation or inventions are compatible. The University is dedicated to encouraging the customary manner of disseminating research results, while providing the means to protect rights to such property.
- ii) No individual shall publish, in any form, information relating to research for which an innovation, invention or creation disclosure has been submitted without the express written consent of the IPMO, provided that the consent shall not be unreasonably denied or delayed and the decision shall be communicated within a period of one month.
- iii) IPMO shall not disclose any information regarding the disclosure to a third party or use the information for their own benefit without the express written consent of the inventor, innovator, creator or the University.

## **9.0 OWNERSHIP OF INTELLECTUAL PROPERTY**

- i) The intellectual property rights vest, in the first instance, in the creator, inventor, or innovator, and as long as the inventor, creator or innovator is a staff member or student or has used funds and or facilities of the University, the University shall be entitled in principle to ownership of the intellectual property concerned, where the innovation is made within the scope and in the course of the employment or commission unless otherwise agreed.
- ii) All intellectual property conceptualized or developed by staff, in the course of normal duty, students, collaborators or as a result of participation in the University programmes, funds, facilities, support, or funds channeled through the University shall be owned by the University where:
  - The intellectual property was developed pursuant to the University sponsored or commissioned research agreement; or
  - The intellectual property was developed with significant use of facilities, resources or funds owned or administered by the University.
- iii) The University may allow ownership of intellectual property to inventor, innovator or creator in the following circumstances:
  - Where there has not been significant use of the University resources;
  - Where the innovator, inventor or creator had disclosed the nature and scope of his or her research and has been allowed to compensate the University for the use of the

- University's facilities and equipment as charged by the University to outsiders;
  - Where the University is involved in collaborative research with another person, institution, or business entity, in which case the intellectual property may be jointly owned and the distribution of royalties shall be governed by the contractual arrangements between the parties;
  - Where it has been expressly provided for in writing between the University and the Research Sponsor(s); and
  - Where it has been expressly provided for in writing between the University, staff, students, collaborators and others.
- iv) If the University cannot, or decides not to proceed in a timely manner to protect the innovation using an intellectual Property regime and/or to license or commercialize the invention, it may reassign ownership to the inventor, creator or innovator at the latter's request. This should be to the extent possible under the terms of any agreements that supported or related to the work.
- v) Students shall own any intellectual property that they make, discover, or create in the course of their research unless:
- The student has received financial support from the University in the form of wages, salary, stipend or grant funds for the research in which case the ownership shall be negotiable;
  - The student has made significant use of the University resources in connection with the research;
  - The research has been funded by a sponsor under a grant or sponsored research agreement, or is subject to a Materials Transfer Agreement (MTA), confidential disclosure agreement or other legal obligation that restricts ownership of the intellectual property.
- vi) The texts of all student theses and dissertations, and works derived from such works, are considered exempted scholarly works. The students shall own copyright in the scholarly work subject to a royalty-free license to the University to reproduce and publish the work. Students shall not be allowed to publish their theses and dissertations unless they have agreed in writing to restrictions that preclude or delay publication for purposes of patenting.
- vii) The University research contracts shall protect the right of the staff, students and other employees to publish the results of their work, provided that no publication shall occur until patent application or other move to protect intellectual property are sought, where appropriate.
- viii) 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.
- ix) Where an invention, innovation or creation reaches the stage of commercialization, the University shall forward a share of royalties accruing to it to the inventor, innovator or creator and any contributing indigenous or local community, according to the arrangements of this Policy.
- x) Where an intellectual property right held by the University under this clause is not being worked or licensed, the inventor, creator or innovator 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 upon between the inventor and the University.

## 9.1 Significant use

- i) The following shall not be regarded as significant use: salary, insurance or retirement plan contribution to or for the benefit of the inventor, use of library facilities, facilities available to the general public and occasional use of office equipment and office staff.
- ii) In addition, the following may not constitute significant use of University resources;

- The inventor, innovator or creator receives advance written approval of the proposed use from the University and compensates the University for the fair market value of the facilities and equipment (as actually charged by the University to outside users);
- The inventor, creator or innovator is not using the University's committed time; and
- The inventor, creator or innovator does not use any University-provided funds or University-administered funds in connection with the activity.

## 10.0 COMMERCIALISATION OF IPRS

- i) The University staff or student innovators, creators or inventors may request a license to commercially develop their University-owned innovations or inventions where such licensing would enhance the transfer of technology, is consistent with the University obligations to third parties, and does not involve a conflict of interest.
- ii) The University through the IPMO and Enterprise and Innovation Development Centre (EIDC) will pursue commercialization of all intellectual property by researching the market for the technology, identifying third parties to commercialize it, entering into discussions with potential licensees, negotiating appropriate licenses or other agreements, monitoring progress, and distributing royalties to the inventors, creators, innovators, authors and other parties in accordance with this Policy.
- iii) In order to facilitate the licensing and commercialization, the inventor, creator or innovator, as the case may be, shall execute necessary agreements and related documents pursuant to this Policy.

## 11.0 INTELLECTUAL PROPERTY AGREEMENTS

There are several types of agreements involved in this policy, namely:

### 11.1 Material transfer agreements (MTA)

The University considers that the transfer of materials between Universities and Research groups or other Organizations is an important aspect of scientific cooperation. Researchers may wish to exchange a variety of materials (chemicals, plants or animal derived material, 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 commercial entity/entities.

When materials are being transferred, an MTA between the University and the receiving or providing organization must be signed. The MTA signed must be in line with Countries Access Benefit Sharing Commitments under Nagoya Protocols and other local regulatory frameworks. MTA forms (*Annex 1*) shall be available at the IPMO.

#### 11.1.1 Transfer of materials for scientific research

In some instances, there may be distribution of tangible material and related information which will be governed by the following;

- 1 All the tangible research material leaving the University will be governed by Material Transfer Agreement (MTA). Any proprietary information accompanying the tangible research property will be governed by confidentiality agreement obtained from IPMO.
- 2 When materials are being transferred, the following will apply:
  - i) The IPRs of the receiving and the providing organizations are addressed.
  - ii) The recipient of materials under the University MTA agrees not to claim ownership over the Material received (which shall remain the property on the University), nor to seek intellectual property rights over the Material, its components or related information.

- iii) The recipient will ensure that any subsequent person(s) or institution(s) to whom the recipient pass the material is bound by the provision of this MTA regulations and that the University is informed immediately.
- iv) The recipient shall ensure that all shipping needs are handled, and shall ensure compliance with all the requirements and regulations of the Material destination. Various legal guidelines such as bio-safety regulations and necessary permits must be sought from relevant government institutions.
- v) The University shall have a record of all the types of materials entering and leaving the University.
- vi) Any attendant health and safety risks are identified and prudent provision is made to address them.

## **11.2 Confidential disclosure agreements (CDA)**

Any person accessing proprietary information must sign confidentiality agreement with the University before access is permitted. 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 a University staff under a CDA with other organizations may have implications on the IP of any innovation/invention or resulting from the use of such disclosure. A CDA between the University and other institutions must be approved by the Intellectual Property Management Committee (IPMC). The use of confidential information by the University staff will be governed by the terms of agreement relevant to the contract research being undertaken. A CDA form shall be available at the IPMO.

## **11.3 Sponsored and collaborative research agreements**

An innovation, invention or creation may arise from research which has been funded or sponsored by third parties. In such cases the following shall apply:

- i) The ownership of IP shall be agreed in writing by the collaborators, partners, sponsors or any other persons and the University before the work begins, in the following cases:
  - Collaborative work involving persons employed by outside organizations;
  - Work that is supported either partially or wholly by one or more sponsors;
  - Projects where two or more persons collaborate;
  - Projects funded by external agency;
  - Collaborators on sabbatical leave or on study leave at the University;
  - IP developed by staff or students at other institutions.
- ii) If no written agreement exists before the innovator's, creator's or inventor's work begins then the University shall own all IP rights arising from work involving collaborators, partners or sponsors as itemized above.
- iii) The sponsor may be granted an option to acquire license rights to the inventions that arise under the agreement.
- iv) A collaborative research agreement shall inter alia cover the following elements:
  - Arrangement for the management and co-ordination of the project;
  - Responsibilities (including funding) and liabilities of the various parties;
  - Arrangements for the treatment of Intellectual Property;
  - Reporting and publication arrangements, access to results and confidentiality provisions;
  - Consequences of termination/default, and ways of handling disputes.
- v) Equipment purchased under a company/externally funded research contract or donated by a collaborating institution shall remain the property of the University on completion of the contract or as agreed by the Parties. The equipment(s) will be under the custody of

the department involved in research and innovation. Where more than one department is involved, the Office of Research and Development (R&D) shall determine the distribution of the equipment.

- vi) The University shall apply the terms of this policy to any IPR of which it receives ownership and where there are issues that arise which are not covered by the terms of the agreement.

#### 11.4 Licensing agreements

University-generated intellectual property may be licensed to external entities for further development and commercialization in exchange for a return on the accruing revenues.

The following shall apply in licensing:

- i) By mutual agreement with the inventor/creator/innovator, the University may license or arrange for licensing of production of a product arising from an innovation as invention owned by individuals who are employees of the University. The Head of IPMO shall determine whether, under certain conditions, the University will contract with a competent agency or firm for the licensing of certain innovations.
- ii) Assignment and license agreements entered into by the University shall *inter alia* include provisions, as appropriate, regarding:
  - a) Due diligence in patent or copyright protection and commercialization of the innovation/invention.
  - b) Reports on efforts and success in commercialization, access to records to assure compliance with the terms of the agreement, retention of University rights to use the innovation and extent of authority for subsequent licensing or reassignment.
- iii) The University's licensing and assignment agreements must be in compliance with applicable Laws, Regulations, University policies, and the terms of agreements with sponsors.
- iv) The IPMC may grant an exclusive license for use of University-owned policy properties to an external organization or to a University employee. Exclusive licenses typically will be granted for periods of ten years. They may include provisions for an option to renew the exclusive license for additional five years. In all cases where exclusive license is granted for a limited period, the University will retain an option to revoke the license in the event that the licensee does not demonstrate due diligence in the exercise of the license.
- v) License agreements with University employee (inventor/creator/innovator) 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 by the IPMC.
- vi) In keeping with the University's mission to disseminate new knowledge, and protect the public interest, IPMC will have the authority to retain royalty-free rights for use of the University owned innovations.

#### 11.5 Employee's IP agreement

The University shall have an IP agreement with all its employees, separate from employment contracts, to cover intellectual property issues. This is fairly standard practice internationally, which allows for a fair degree of flexibility, and emphasizes the importance of IPR issues. The policy is mostly administrative in that it assigns responsibility for the signing of agreements and requires everybody to sign, except in exceptional circumstances. Since Human Resources Department handles other staff contractual issues, it shall be responsible for enforcing employee IP agreement. It is important to note that:

- i) All the University employees are subject to this Policy and shall sign the University Employee's/*Collaborator's* IP Agreement (Annex 2)
- ii) The Human Resources Department of the University shall be responsible for ensuring the

- signing of the University Employee IP Agreement by its staff and associates, normally at the time of the individual's initial association with the University
- iii) Where an individual subject to this Article has previous obligations under an alternative intellectual property agreement, this Policy shall be subject to the terms of the IPMO.

### **11.5.1 Conflict of interest or commitment**

1. Any of the following factors may signify a conflict of interest, which will be taken into account prior to waiving or licensing the University's rights to the innovators, inventors and creators under this policy:
  - an adverse impact on the University educational responsibility to its students;
  - undue influence on the employment commitment of the innovator, creator, inventor or author to the University in terms of time or direction of effort;
  - a detrimental effect on the University obligations to serve the needs of the general public; and
  - potential conflict of interest as defined in the national laws, the University code of ethics, regulations, policies and procedures
2. An employee shall disqualify himself or herself from participating in any licensing negotiations or other matters of technology transfer where the University is likely to be disadvantaged by such a decision in the following circumstances:
  - where an employee has an external relationship with a company that itself has a financial interest in a University project; or
  - where the University official serves on a board of a company that has financial transactions with the University; or
  - where an employee has equity holding or royalty expectations that could influence the decision; or
  - where the employee of the University is an interested party and by virtue of his or her position is likely to influence the decision.

## **12.0 TRADITIONAL KNOWLEDGE, FOLKLORE AND GENETIC RESOURCES**

- 1 The University shall provide for and endeavor to maintain in perpetuity the right to recognition to the suppliers of any and all indigenous knowledge or genetic resource in any intellectual property rights that it holds transfers or licenses. It shall be accessed through Prior Informed Consent (PIC) and mutually agreed terms on Access and Benefit Sharing.
- 2 Where an invention is developed that makes more than incidental use of knowledge and/or resources that can be related directly to a particular community or locale, the University will undertake all best efforts to ensure the applicability and availability of such invention to the relevant community or locale, understood to include the following:
  - Ensuring that any transfer or licensing of intellectual property rights by The University includes an allowance for the relevant community or locale's access to the invention on preferential terms; and, intellectual Property Policy.
  - Establishing systems for any necessary training, distribution or other bridging mechanisms that may be required for the relevant community or locale to make full use of the invention.
- 3 Where feasible, benefits shall be distributed equally between individuals and projects or organizations that benefit the community or locale as a whole. As far as possible individuals shall be assigned benefits on the basis of their relative contributions towards the provision of the knowledge and/or resources to the University. Projects and organizations shall be determined in collaboration with representatives of the said community or locale.
- 4 For knowledge and resources that are from a clearly definable geographic area or community that is either not subject to clear delineation or that is too large to allow for the feasible

distribution, then distribution of benefits accruing to local communities shall be forwarded to projects or organizations that are of general benefit to the community or locale.

### 13.0 DISTRIBUTION OF ROYALTY

- i) Revenues received as a result of licensing agreements in the form of cash royalties and/or equity holdings, shall be distributed in such a manner as to encourage the development of intellectual property, technology development and technology transfer in the University.
- ii) For the avoidance of doubt, “revenues” shall not include funds received for research support.
- iii) The University costs for filing, processing intellectual property applications and maintaining these rights shall be reimbursed from gross revenue prior to distributing royalties to innovators and departments.
- iv) The revenue distributable shall be net of all the expenses incurred by the University in protecting and commercializing the intellectual property, and defending or prosecuting any and all infringement suits that might arise.
- v) Where the University prevails and receives a financial settlement, the relevant innovator, departments and the University shall be reimbursed for their shares of royalties used by the University in prosecuting or defending the infringement. Any funds received in excess of the royalties shall be distributed in accordance with the formula or scheme under this Article.
- vi) The distribution of Net Revenues shall be made annually and in accordance with the following scheme:

Inventor(s)	30%
Collaborator(s)	10%
University	60%

The sharing ratios of the University’s 60% share shall be as follows:

(a) Central Administration	15%
(b) Faculty	5%
(c) Department	18%
(d) IPMO	9%
(e) Research Fund	15%
<b>TOTAL</b>	<b>60%</b>

- vii) In the event of multiple innovators, creator, inventors or authors, they will mutually agree as to the distribution criterion of the accruing income to them; and distribution of the innovator’s, creator’s, inventor’s or author’s share shall be made only upon receipt of a signed agreement among them.
- viii) The innovator’s share shall survive the termination of affiliation with the University and in the event of the death of the innovator his or her share shall inure to the benefit of his or her estate.
- ix) The University shall create and maintain an Endowment Fund which shall be paid gifts, contributions, and donations to support research and development in accordance with this Policy.
- x) Where there is more than incidental use of indigenous knowledge only (and not resources), any net benefits accruing to MKU, subject to any agreements to the contrary, shall be distributed as follows:
  - (i) Inventor(s): 33%
  - (ii) Community or Locale, a minimum of 20%
  - (iii) MKU: a maximum of 47%.

The relative shares of MKU and the community or locale shall be finalized by mutually agreed terms based on the relative contribution of the indigenous knowledge to the development of the invention.

xi) Where there is more than incidental use of indigenous resources only, any net benefits accruing to MKU, subject to any agreements to the contrary, shall be distributed as follows:

- |  |      |
|--|------|
| (i) Inventor(s):                       | 33%  |
| (ii) Community or Locale: a minimum of | 10%  |
| (iii) MKU: a maximum of                | 57%. |

The relative shares of MKU and the community or locale shall be finalized by mutually agreed terms based on the relative contribution of the indigenous resources to the development of the invention.

## 14.0 EQUITY

- 1 The University may accept equity in lieu of full or part payment of royalties in addition to monetary consideration for intellectual property in a company pursuant to the provisions of this Policy.
- 2 The University acceptance of equity in consideration of licensing a University's innovation shall be based upon the principles of transparency, objectivity and fairness in decision-making and the pre-eminence of the education, research, and public service missions of the University over financial or individual personal gain. Such licensing activity shall be conducted in accordance with this Policy and other related University policies and guidelines.
- 3 The University shall handle all subsequent relationships with a licensee with whom the University has accepted equity in a commercial manner, pursuant to relevant University policies and guidelines.
- 4 The terms of an innovation license, other than those related to the acceptance of equity in the company by the University shall be consistent with University transactions for comparable innovations.
- 5 When the University accepts equity in a company as partial consideration for a license, the University shall take into account any legal restrictions and the wishes of each inventor, creator or innovator involved.
- 6 The University shall pay the Innovator's share of equity consistent with the formula established under this Policy for the distribution of royalties.
- 7 The University shall distribute cash upon conversion of equity to cash, in accordance with the royalty distribution formula under this policy.

## 15.0 CONSULTANCY

- i) Consultancy undertaken by staff as agents acting for or on behalf of the University shall be the subject of agreements or contracts with clients, and the income shall be distributed in accordance with the provisions of the Enterprise Policy of the University.
- ii) Private consultancy may have implications in terms of use of resources, time spent, professional and product liability and potential loss of revenue for the University. The University shall take professional advice to ensure:
  - Correct notification to clients that consultancy undertaken privately by the University's staff does not involve the University; and
  - Appropriate contract terms and insurance cover for the University consultancy contracts.

## 16.0 INTELLECTUAL PROPERTY DONATIONS

If an individual chooses to offer to the University any form of intellectual Property in which the University has no claim, the University may accept ownership or control of the intellectual property provided that:

- i) The person makes the offer through the IPMO as if the intellectual property has been created within the University;
- ii) The person discusses provisions and makes an agreement (including distribution of income provisions) with the IPMO;
- iii) The person guarantees that he or she owns all rights, titles and interests to the intellectual property, and that to the best of his or her knowledge, the intellectual property does not infringe upon any existing intellectual property;
- iv) The University may accept charitable donations of intellectual property from governmental or private organizations; and
- v) Upon the transfer of title in the intellectual property to the University, the intellectual property will be managed in accordance with this Policy.

## **17.0 ACKNOWLEDGEMENTS**

The University shall endeavour to acknowledge all persons who contributed to the invention, innovation or creation. The University shall provide for, and endeavor to maintain in perpetuity, the right to recognition of the department, individual inventors, creators, innovator and the suppliers of any and all indigenous knowledge or resources in any intellectual property rights that it holds, transfers or licenses.

## **18.0 ADMINISTRATION AND IMPLEMENTATION**

### **18.1 Institutional framework**

- i) The University will establish an intellectual property and technology transfer office (herein referred as the Intellectual Property Management Office) to maximize the value of intellectual property and technology to the staff, students, collaborators, the University and society.
- ii) The functions of Intellectual Property Management Office that will be under a Director are to:
  - promote Intellectual Property in a manner consistent with the University's vision, mission, and objectives and academic environment;
  - promote policies and procedures for technology transfer, and the avoidance of conflicts of interest, consistent with the University policies;
  - review, negotiate and approve all agreements that convey or affect the University's right to intellectual property;
  - coordinate reporting requirements and other obligations to research sponsors regarding innovation developed under a research contract or grant, including but not limited to, obligations to the Kenya Government;
  - advise the Vice-Chancellor on the decision to, and the feasibility of, obtaining intellectual property protection for an innovation;
  - advise the Vice-Chancellor on the measures necessary to facilitate access to an innovation, invention or creation;
  - advise the Vice-Chancellor on the transfer and licensing or commercialization of any intellectual property held by the University;
  - receive and evaluate all innovation, invention or creation disclosures in a timely manner;
  - prepare and approve reports listing the titles and brief descriptions of all innovations or invention disclosures received;
  - advise the Vice-Chancellor on any applications for the transfer, or licensing, of the University's rights to innovator, creator or inventor;
  - grant permission, request and advise the innovator, creator or inventor concerning the publishing of material related to an innovation, creation or invention, whether for academic or distribution purpose;
  - advise the Vice-chancellor as to any variation of this policy and Intellectual Property

- agreements;
- advise the Vice-Chancellor as to the amendment of this Policy and all matters pertaining to intellectual property administration, management and diffusion;
- receive, hear and determine disputes arising from the terms or implementation of this policy;
- provide advice and support to all staff and associates of The University regarding this Policy;
- provide guidance in consultation with EIDC in setting up new companies by the University innovator, inventor or creator and ensuring compliance to this Policy and other relevant University policies; and
- process, patent, copyright, trade mark, utility model and other applications with the Kenya Copyright Board, Kenya Industrial Property Institute (KIPI), Kenya Plant Health Inspectorate and other relevant, national, regional and international organizations.

## **18.2 Implementation: Intellectual Property Management Committee (IPMC)**

1. The University shall establish an Intellectual Property Management Committee.
2. The Intellectual Property Management Committee shall consist of five members nominated by the Vice-Chancellor from among the University staff and chaired by a senior member thereof.
3. Where the Intellectual Property Management Committee is meeting for the discussion of matters pertaining to particular Invention Disclosures, it shall also include as members:
  - The innovator, creator or inventor or a representative
  - A representatives of collaborating institutions
  - A representative of a community or locale, where more than incidental use has been made of any knowledge and/or resource that can be related directly to that particular community or locale.
4. The Intellectual Property Management Committee may appropriately co-opt other members for a specific meeting as need arises.
5. The functions of the Intellectual Property Management Committee shall be to:
  - i) Advise the University on the desirability and feasibility of obtaining intellectual property protection for an invention based on the grounds for which such protection would be sought;
  - ii) Advise the University/Vice-Chancellor on the necessity of bridging work to facilitate the availability of an innovation, creation or invention, and pursuant to Article herein, on the need to form partnerships for the carrying out of such bridging work to facilitate seeking intellectual property protection;
  - iii) Advise the Vice-Chancellor on the transfer and licensing of any intellectual property held by the University;
  - iv) Receive and evaluate all innovation, creation or invention;
  - v) Prepare and approve a report listing the titles and brief descriptions of all Invention Disclosures received since the last report;
  - vi) Advise the University on any applications for the transfer, or licensing, of the University's rights to an inventor;
  - vii) Grant permission, request and advice inventors concerning the publishing of material related to their inventions;
  - viii) Advise the Vice-Chancellor as to any variations of this Policy or the University Intellectual Property Agreement;
  - ix) Advise the Vice-Chancellor as to the amendment of this Policy;
  - x) Act as a panel for the resolution of any disputes arising from the terms or implementation

of this Policy and, where such action is unsuccessful, advise the Vice-Chancellor accordingly;

- xi) Advise the Vice-Chancellor on all matters relating to patent administration;
- xii) Provide advice and support to all staff and associates of the University regarding this Policy;
- xiii) To receive and evaluate innovation disclosures and, where possible seek appropriate protection within Kenya, the African continent, and beyond.
- xiv) To liaise with relevant bodies to steer the incubation of protected innovations toward viable commercial entities and, when and where appropriate, nurture local entrepreneurs to spearhead production and marketing of the products;
- xv) To work closely with EIDC to locate suitable commercial development partners and to negotiate licensing of intellectual properties;
- xvi) To protect the rights of the University, its innovators, creators, inventors, collaborators, research sponsors and the public;
- xvii) To eliminate the infringement, improper exploitation and abuse of the intellectual assets belonging to the University or the other persons;
- xviii) To optimize the environment and incentives necessary for research and for the creation of new knowledge;
- xix) To promote linkages with industry and stimulate research through developing and utilizing novel technologies and creative works for commercialization and plough back resources to the University and to the sponsoring parties;
- xx) To promote creativity and innovation; and
- xxi) To ensure fair and equitable distribution of all benefits accruing from all innovations and inventions;
- xxii) To promote appropriate consultations and periodically recommend amendments to the Policy where necessary.

## **19.0 EXEMPTION, REVIEW AND AMENDMENTS**

Exemptions and amendments of this Policy may be initiated by any interested party through the Head of the IPMO. The head of IPMO shall thereafter notify the IPMC the proposed exemptions or amendments for deliberation and consideration. Upon advice from IPMC the Vice-Chancellor may sanction approval of such exemptions or amendments. The Vice-Chancellor may, with the advice of IPMC, agree to variations of this policy and the University IP agreement by express written consent this will be on a case by case basis.

Variations made under this Clause will only be agreed upon on the premise that they do not in any way prejudice the overall aims and objectives of the University and this Policy. The University may waive IP rights to the inventor, creator or innovator if it determines not to protect, license or commercialize that intellectual property. The University may also waive intellectual property rights to the inventor, creator or innovator if it determines to abandon all efforts to protect or commercialize the intellectual property.

The Vice-Chancellor with the advice of the IPMC shall recommend amendments to this Policy for approval by Senate then for final approval by the Council. Such amendments should not be inconsistent with the existing aims and objectives of the University and this Policy.

This policy will be reviewed from time to time.

## **20.0 DISPUTE RESOLUTION**

1. Any party aggrieved by the decision of the IPMO shall have a right of appeal to the Vice-Chancellor upon which the Vice-Chancellor shall appoint a five member independent panel comprising of persons knowledgeable with the discipline.
2. The panel shall elect its Chair and Secretary.
3. The panel shall hear both parties to the dispute and any other person they deem fit.
4. In the event of any party being dissatisfied with the decision of the panel he or she shall have a right of appeal to the full University Council through the Council Chairman. The Council shall set up an independent panel to hear the appeal and report back to Council with its recommendations within one month from the date of appeal and Council shall determine and communicate its decision on the matter within one month from the date of receipt of the panel report.
5. Any dispute arising between the employer and innovator, creator or inventor in connection with the provisions herein shall be submitted to two arbitrators with each party to the dispute appointing one arbitrator and in case of a deadlock to two arbitrators and an umpire for a decision. Further, the innovator, creator or inventors and the University may opt to be represented by their legal counsels in such negotiations.
6. In case these measures fail to resolve the dispute, the relevant Kenyan laws shall apply.

## **21.0 USE OF THE TRADE MARK, NAME AND LOGO OF THE UNIVERSITY**

No person, institution or organization shall use the name, trade mark, service mark or logo of the University or any combination thereof for any application or process whatsoever except as provided for under the provisions of the University Charter and this Policy.

## **22.0 PROFESSIONAL, PRODUCT LIABILITY AND INDEMNITY**

1. The terms of all contracts entered by the University shall state that the University is absolved from liability, within the limits of the law and University shall not undertake to give indemnities to any person whatsoever.
2. The University shall not be held responsible for any consequences of any inaccuracies or omissions and no liability shall attach to the University for the effects of any products or process that may be produced or adopted by the sponsor, notwithstanding that the formulation of the product or process may be based on the findings of the projects.

## **23.0 TRANSITIONAL PROVISIONS**

- i) Subject to the provisions of Article on Exemptions, all Campuses, Schools, Departments and divisions shall ensure that their staff and projects comply with this Policy within a period of six (6) months of its entry into force.
- ii) During the six-month period any disputes arising from existing agreements shall be considered, to the extent possible, in the light of this Policy.

## **24.0 EFFECTIVE DATE OF THE POLICY**

This Policy will become effective immediately upon approval by the University Council and signature by the Vice-Chancellor.

**Prof. Stanley Waudu**  
**The Vice-Chancellor**  
**Mount Kenya University**

**Signed.....**

**Date.....**

## ANNEX 1: MATERIAL TRANSFER AGREEMENT (MTA)

Whereas Mount Kenya University (MKU) desires to provide Research Material or associated information detailed hereunder on the terms and conditions hereinafter set forth, and whereas the Recipient/Borrower is ready and willing to accept the material and/or related information on the said terms and conditions. Now therefore the Parties hereby agree as follows:

- i. This Agreement covers the following “*MATERIAL(S)*”, related information and/or activities:
  - a). \_\_\_\_\_
  - b). \_\_\_\_\_
  - c). \_\_\_\_\_
- ii. Any activities involving the said MATERIAL and/or related information that are not expressly authorised by the provisions of this Agreement shall be considered as **expressly prohibited**.
- iii. The prohibition shall be understood so as to include, but not be limited to, any activities involving transfer to third parties, activities aimed at commercialisation or the claiming of rights of any kind over material and/or related information not specifically addressed by this Agreement.
- iv. The Borrower shall retain ownership of the following resultant from the said material:
  - a) Modifications/derivatives which incorporate the Material and
  - b) Substances created through the use of the Material or Modifications, but are Not Unmodified progeny or derivatives of the offered Material.  
However, in case of any creation/innovation/invention whose genesis is the Material, and which is resultant from collaborative efforts between the two Parties, joint ownership may be negotiated.
- v. The Borrower shall solely use the Material for not-for-profit purposes. The Material shall not be used for any purpose inconsistent with stipulations herein, and in relation to any activity that is subject to consulting or licensing obligations to any third party. The borrower also commits to dispose of the Material as per the dictates of the University.
- vi. The Recipient agrees not to use the Material in human subjects, in clinical studies, or for diagnostic purposes without explicit and written consent by the University.
- vii. The Borrower shall disclose to the University any manuscripts intended for submission for publication or any scheduled presentations at least 60 days prior to submission. The University reserves the right to review the manuscripts/presentations with an object of protecting its proprietary rights and interests. The University shall undertake to communicate such modifications or removal of confidential material within 30 days.
- viii. The Borrower shall grant the University a non-exclusive and royalty-free right to use for its internal research or educational purposes any information or new Material developed using the university’s parent material, whether patentable or not. The university shall not publish results

containing the Recipient's data without due acknowledgement to the latter.

- ix. Either of the parties may disclose Confidential Information to a government authority to the extent allowed by law or regulations 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 the other party receives advance notice.

This agreement will terminate when the recipient completes the primary intended purposes for which the Material was borrowed, or on 30 calendar days written notice by either of the parties to the other.

I, the Employee/The Collaborator hereby certify that I have read and understood the provisions of the Mount Kenya University's MTA.

**Recipient's/ Borrower's signature**

**The University**

**Signed.....**

**Signed.....**

**Date.....**

**Date.....**

**NAME (Printed/typed).....**

**Director, IPMO**

**ADDRESS.....**

## ANNEX 2: MOUNT KENYA UNIVERSITY INTELLECTUAL PROPERTY AGREEMENT

I understand that my duties as an employee/Collaborator of MKU may include some form of research and access to proprietary data. I agree that the facilities, equipment, funds, and/or stimulation provided to me by or through the University has greatly contributed to my effort and the conception and/or actualization to practice of discoveries, invention, development of apparatus, or software and/or the creation of related documentation, data, reports (hereinafter referred to as proprietary information).

In consideration of my employment/association with and/or studies in the University; and in order to settle in advance any question regarding the ownership of any patent or copyright which may be granted to me, or the rights in any proprietary information which may be developed by me,

*I agree that the University shall own any proprietary information that is conceived by me, either solely or jointly with others, during the course of my employment/association and/or through the use of facilities and/or equipment of the University, whether made during my usual working hours or otherwise, and the University also shall own any patents or copyrights relating to such proprietary information. I further agree that I will promptly and fully disclose such proprietary information to the University's IPMO.*

I will co-operate with the University in making application for Kenya and foreign patents or copyright at the request of and at the expenses of the University should it determine, in its sole discretion, that an application is warranted. I will do all acts required to assist the university in obtaining, maintaining, and enforcing patents and copyrights or other protecting proprietary interests in programs and software systems and in otherwise protecting proprietary information in any and all countries, all to be done without further compensation to me other than reimbursement for direct expenses in providing such assistance.

Upon request of the University, I will assign to its Management Board all proprietary information and/or application for patents and/or copyrights issued on such proprietary information based on my disclosure, with full rights, powers and privileges of ownership.

The University may:

- i) Determine in its sole discretion that the ownership of the proprietary information will not be retained by the University and it will notify me of the relinquishment of its rights to me.
- ii) Notify me that the proprietary information will be accepted on a provisional basis.
- iii) Accept the proprietary information.

The IPMO may assign the ownership of the proprietary information and/or application, patent, or copyright on such proprietary information back to me should it determine, in its discretion, that further expenses for development is unwarranted. I, the Employee/The Collaborator hereby certify that I have read and understood the provisions of the MKU Intellectual Property Policy 2012.

**Collaborator's/Employee's signature**

**The University**

**Signed**.....

**Signed**.....

**Date**.....

**Date**.....

**NAME**.....

**Director, IPMO**

## 1. TASKFORCE MEMBERS

- a) Prof. John H. Nderitu Deputy Vice-Chancellor, Research & Development
- b) Dr. Francis W. Muregi Director, Research & Development
- c) Dr. Ken Ramani Director, Publications
- d) Dr. Edith Wakori School of Pharmacy
- e) Samuel K. Mathenge Research Assistant

## 2. UNIVERSITY RESEARCH COMMITTEE

- a) Dr. David Nguti Dean, School of Social Sciences
- b) Prof. J.M. Malusu Dean, School of Education
- c) Dr. Edward K. Kamamia Dean, School of Pharmacy
- d) Mr. Kennedy Waweru Dean, School of Business and Public Management
- e) Mr. Harrison Mwangi School of Business and Public Management
- f) Ms. Ann Kariuki School of Business and Public Management
- g) Anne Karubiu School of Social Sciences
- h) Mr. Isaac Tonui School of Pure and Applied Sciences

## 3. STAKEHOLDERS

- a) Dr. Ethel O. Monda Kenyatta University
- b) Mr. T.T. Nganga Advocate
- c) Dr. Benson N. Kinyagia NCST
- d) Ms. Helen Koki Kenya Copyright Board
- e) Mr. Fredrick O. Otswong'o Kenya Industrial Property Institute
- f) Joseph Waganagwa Herbalist
- g) Millicent Ligare Mount Kenya University, Nairobi Campus
- h) Eunice Njuguna Kenya Industrial Property Institute





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