



**JOMO KENYATTA UNIVERSITY OF
AGRICULTURE AND TECHNOLOGY**

INTELLECTUAL PROPERTY POLICY (IPP)

ISO 9001:2008 Certified

FORWARD

Recognising the need to ensure that any knowledge and technology resulting from research activities is made available to society, there is the need to encourage innovation and original research and other intellectual activities performed by any person working under the auspices of the University, whose independently conceived work is aimed at providing new frontiers in knowledge.

In order to encourage the development and maximum accessibility of discoveries it may occasionally require the obtaining of intellectual property rights and that such rights have the potential to result in benefits to both the government and the citizens of Kenya and to the research programmes of JKUAT.

JKUAT hereby adopts the Intellectual Property Policy on all matters relating to the management of inventions, discoveries and their associated intellectual property rights.

It is anticipated that this policy will serve as useful a tool in guiding future management of intellectual property and related issues at the University.



Prof Mabel Imbuga

Vice Chancellor

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Vision

*A University of global excellence in Training,
Research and Innovation for Development.*

Mission

*To offer accessible quality training, research and
innovation in order to produce leaders in the fields
of Agriculture, Engineering, Technology, Enterprise
Development, Built Environment, Health Sciences
and other Applied Sciences to suit the needs of a
dynamic world.*

DEFINITION

1. Assignment means the execution of a written agreement by the innovator, assigning all of the innovator's rights, titles and interests in and to an innovation to the University. Innovations are assignable as of the time they are conceived or reduced to practice.
2. Associate means any postgraduate students, postdoctoral fellows, visiting scientists and any other individuals participating in research sponsored or hosted by the Jomo Kenyatta University of Agriculture and Technology (JKUAT), or making significant use of University's facilities, funds or other resources.
3. Collaborative Research means research in which JKUAT undertakes with a third party.
4. Copyright means written materials, directions, computer programs and similar types of informational material that is new and unique. Protection ensures the innovator's or University's right, 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.
5. Council means the Council of the University established under Section 15 of Jomo Kenyatta University of Agriculture and Technology Act, 1994.
6. Direct Costs means expenses associated with the protection, patenting and licensing of intellectual property. Such costs do not include the salaries or other overhead costs of Jomo Kenyatta University of Agriculture and Technology.
7. Disclosure means written submission to Intellectual Property Office on standard invention/innovative Disclosure Forms, the description of any invention/innovation that an inventor/innovator believes he/she has made.
8. Discoveries means to find or learn an innovation or invention and be the first to find.
9. Education means to train the mind, character and abilities.

10. Employee means any person who receives salaries or wages from Jomo Kenyatta University of Agriculture and Technology or any person or corporate body who is contracted by the University and is paid an allowance, commission, honoraria or fees or any other form of remuneration.
11. Employer means Jomo Kenyatta University of Agriculture and Technology.
12. Indigenous Knowledge and Resources shall mean knowledge and resources that can be related to a particular community or locale, or group thereof, but that would not be considered to be in the public domain at an international level.
13. Industrial Design means 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.
14. Innovation means a new and useful art, process, machine, manufacture or composition of matter which is not obvious, or any new and useful improvement thereof which is not obvious, capable of being used or applied in trade or industry and includes an alleged innovation, but not only patentable innovators but also innovations/invention 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.
15. Innovator means inventor or creator or creators, breeder or breeders and is understood to mean the person or persons who actually devices an innovation or creates a work or breeds a plant as defined by Industrial Property Act 2001, Copyright Act 2002 or Seeds and Plants Varieties Act Cap. 326 of the Laws of Kenya.
16. Inventor means all persons whether from the faculty, staff and other persons employed by Jomo Kenyatta University of Agriculture and Technology, whether full or part time, visitors and researchers and any other persons including students who invent or innovate using University resources.
17. Intellectual Property means creation of human mind (intellect) and comprises of patent, utility model, industrial design, trademark,

geographical indications, layout designs, trade secret, copyright and plant breeder's rights.

18. Invention means novel idea or concept that has been reduced to practice that has been demonstrated to work.
19. Know-How means to the actual human technical skills derived from experience in working on a certain technology. It may or may not be part of a trade secret. Licensing of most new technologies works 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 optimally utilize the invention.
20. Licence means contract under which the owner of a patent or other form of intellectual property transfers certain rights in the intellectual property to another party. In exclusive licence, rights are transferred to only one party.
21. Net Revenue means the remaining proceeds after deducting all direct costs necessary for obtaining protection for, and licensing, applicable intellectual property.
22. Net Royalties means gross royalties less any and all costs incurred by the University in the course of protection and maintenance of the intellectual property and technology transfer.
23. Patent refers to a monopoly, granted to protect an innovation/invention(s) from competitions for a specified period of time.
24. Private Sector means the non-public sector.
25. Research means the investigation undertaken in order to discover new facts and examining a problem in order to get additional information.
26. Reassignment means 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 innovators who had originally assigned their right, title and the innovation, to whoever the University shall designate in writing.
27. Scholarly Works means works developed by innovators/authors as teaching materials, created by students in the course of University-sanctioned learning, 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 institutional based.
28. Service Mark means 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.
 29. Significant use of University resources shall mean using University funds, time, office, laboratories, equipments, facilities or other resources administered or belonging to the Jomo Kenyatta University of Agriculture and Technology. However Jomo Kenyatta University of Agriculture and Technology does not construe the use of library as constituting significant use of University resources.
 30. Sponsored research means the University being contracted by a private organization to undertake research.
 31. Students means a person registered by the University for the purpose of obtaining a qualification of the University or any other person who is determined by the Senate to be a student.
 32. Trade Secrets means Knowledge that is maintained in secrecy for the purpose of gaining a competitive advantage. This type of protection can last as long as the secret is maintained.
 33. Training means to teach a particular skill.
 34. University means Jomo Kenyatta University of Agriculture and Technology established under Section 3 of Jomo Kenyatta University of Agriculture and Technology Act, 1994.
 35. Trademark means 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.
 36. Units (Academic and Administrative Units) means department/ faculty/ institute/ directorate/ center as the case may apply for purposes of further the mission and objective of the University.

37. Utility Model means an invention that does not meet all the requirements of patentability but has an industrial use. In Kenya, the Industrial Property Act, 2001, protects utility models.
38. Visitor shall mean visiting scientists and any other individuals participating in research, teaching or marking examinations sponsored or hosted by Jomo Kenyatta University of Agriculture and Technology, or making significant use of University's facilities, funds or other resources.
39. Work-for-hire means work prepared by a University employee within the scope of his or her employment who receives funds, commission, fees or other rewards for their services.

II. ABBREVIATIONS

JKUAT: Jomo Kenyatta University of Agriculture and Technology

IP: Intellectual Property

IPR: Intellectual Property Rights

IPO: Intellectual Property Office

IPC: Intellectual Property Committee

JKUATES: JKUAT Enterprises Limited

VC: Vice Chancellor

DVC: Deputy Vice Chancellor

RPE: Research Production and Extension

APD: Administration Planning and Development

AA: Academic Affairs

CA: Confidential Agreement

KIPI: Kenya Industrial Property Institute

R&D: Research and Development

CDA: Confidential Disclosure Agreement

IPPAF: Intellectual Property Policy Acceptance Agreement Form

IDF: Innovator Disclosure Agreement

MTA: Material Transfer Agreement

TK: Traditional Knowledge

CSRA: Collaborative and Sponsored Research Agreement

PIC: Prior Informed Consent

III. INTRODUCTION

Jomo Kenyatta University of Agriculture and Technology is a educational institution duly established under Jomo Kenyatta University of Agriculture and Technology Act, 1994. It was established as an Agricultural, Science and Technology University and to realise that mandate there is need to have a comprehensive and enabling Intellectual Property Policy.

In its efforts to realise its vision, mission and objectives, JKUAT continues to put emphasis on enhancing the following amongst others:

- (i) Quality education and training
- (ii) Quality Research, Innovation and Development
- (iii) Transfer of knowledge from the University and the utilisation of the same for the creation of national wealth.
- (iv) Linkages with industry, business and government through consultancy, research contracts and commercialisation of inventions, innovations and research findings.
- (v) Infrastructure and facility for Research and Development in the University.

In pursuit of its Mission, new creations, innovations, inventions and discoveries often result to situations that require intellectual property protection. Intellectual Property Rights (IPRs) today commands more attention nationally and globally than ever before. The knowledge-led economy is based on the protection of Intellectual Property (IP) products.

Intellectual Property facilitates technology development and transfer of technology within the nation and from external sources as it allows the exploitation of existing resources through licensing and other means.

When activities in research and development produce commodities of commercial value at an industrial scale, the sharing between partners of the economic benefits arising there from can be a cause of serious controversies in the absence of a policy to guide the management of such benefits.

In order for research and development institutions to sustain innovations and inventions, harmonious working conditions and formalised agreements with industry on ownership of developed knowledge and sharing of benefits accruing from commercialization of research results have to be developed.

As a public institution of higher learning, Jomo Kenyatta University of Agriculture and Technology has a pivotal role to play in the achievement of national development goals and vision 2030. This is well spelt in the current Jkuat strategic plan. Alignment and coordination of sector-specific operational focus with Kenya Vision 2030 will create synergies to drive the achievement of national development aspirations.

Cognizant of the role that protection of Intellectual Property Rights (IPRs) have to play in enhancing more innovations, inventions, research findings and new creations and optimising returns on the investments in research and maintaining sound financial management. JKUAT has developed this IP policy in order to safeguard IPRs.

The University further recognizes that the various activities of its researchers, students and employees may produce innovations and other creative works that further supports the goals and objects of the University.

This necessitates the establishment of a comprehensive Intellectual property policy to guide the process of innovation and management of products of this process.

The Intellectual Property policy allows the University, researchers, employees, research sponsors and research collaborators to share in the economic potential of the ideas and creative works. It also will permit effective technology transfer.

With the foregoing background and information and given the volume of research and innovation activities, going on at JKUAT, the University needs an IP Policy, which will guide on management of IP and technology transfer decision-making.

The Vision

A University of global excellence in Training, Research and Innovation for Development

The Mission

To offer accessible quality training, research and innovation in order to produce leaders in the fields of Agriculture, Engineering, Technology, Enterprise Development, Built Environment, Health Sciences and other Applied Sciences to suit the needs of a dynamic world

The motto

Setting Trends in Higher Education, Research and Innovation.

VII. JKUAT FUNCTIONS AND OBJECTIVES

Jomo Kenyatta University of Agriculture and Technology (JKUAT) is a public university and it is mandated to do research, teach, and disseminate knowledge in the fields of agriculture, science, engineering and technology.

The objectives of the University inter alia include:

1. To provide directly or indirectly or in collaboration with other institutions of higher learning, facilities for University education (including agriculture, scientific, cultural, technological and professional education), and integration of teaching, research and effective application of knowledge and skills to the life, work and welfare of the citizens of Kenya.
2. To participate in the acquisition, discovery, transmission, preservation and enhancement of knowledge and to stimulate the intellectual participation of students in the economic, technological, agricultural, professional and cultural development of Kenya.
3. To play an effective role in the development of science, agriculture, engineering and technology in conjunction with the industry and to provide extension services so as to contribute to the social and economic development of Kenya.

VIII. OBJECTIVES OF THE POLICY

The objectives of the IP Policy shall be:

- (i) To govern the disposition of the Intellectual Property generated at the University in order to stimulate additional support for research by industry partners resulting in the innovation of novel technologies and creative works for commercialization.
- (ii) To facilitate and enhance the transfer of the University's innovations and inventions derived from research and the dissemination of knowledge for the national and global community.
- (iii) To promote the progress of Science and Technology and ensure discoveries, innovations, inventions, and creations generated by the staff and students of JKUAT are utilized in ways most likely to benefit the public.
- (iv) To motivate further research and development in order to enhance national development.
- (v) To derive additional revenue for the support of the University research and educational initiatives, as well as a personal incentive for innovators to create and disclose. This will promote creativity and innovation.
- (vi) To create a framework for the University's activities by providing transparent and secure environment for staff, students and associates to innovate and create.
- (vii) To create an enabling environment that encourages and expedites the dissemination of the new knowledge generated by JKUAT researchers for the greatest benefit to JKUAT and the public through efficient and timely processing of technology transfer.
- (viii) To protect the traditional rights of scholars to benefit from the products of their scholarly work.
- (ix) To ensure that the commercial results, financial, or otherwise, are distributed in a fair and equitable manner that recognizes both the contributions of the innovators/inventors and the University as well as any other stakeholders.

- (x) To establish standards for determining the rights and obligations of the University, innovators/ inventors and other stakeholders with respect to innovations/inventions, discoveries and works created at the University.
- (xi) To encourage and reward JKUAT staff who innovate, invent and create intellectual property .
- (xii) To ensure compliance with applicable National Laws and Regulations, relating to intellectual property.
- (xiii) To discourage the infringement of Intellectual Property Rights (IPRs), improper exploitation and abuse of University technologies and creative works.
- (xiv) To promote the economic development of local as well as the national and global community, by supporting the formation of new companies using the University technologies and creative works.
- (xv) To do all such other things that may be deemed incidental or conducive to advance and to the attainment of the above objectives or any other functions and objectives of the University.

IX. UNIVERSITY RESPONSIBILITIES UNDER THE INTELLECT PROPERTY POLICY

Recognising that the University's core functions are teaching, research, innovations and technology transfer for commercialization and industrialization and improvement of living conditions of Kenyans, the University administration shall:

1. Establish an Intellectual Property Office (IPO) for effective intellectual property management and technology transfer.
2. Provide financial, legal and technical support to the Intellectual Property Office.
3. Establish a committee to oversee the intellectual property management and technology transfer in accordance with this Intellectual Property Policy consistent with the University's Act, Statutes, vision, mission and strategy.

1. The Intellectual Property Office (IPO)

There shall be an Intellectual Property Office established under the Vice Chancellor's office.

The functions of the IPO shall be to: -

1. Promote technology transfer in a manner consistent with this policy.
 2. Advise the IP Committee on the decision to, and the feasibility of, obtaining intellectual property protection for an innovation or invention and on which grounds such protection would be sought.
 3. Advise the IP Committee as to the amendment of this policy and all matters pertaining to intellectual property administration.
 4. Provide advise and support to all staff and associates of JKUAT regarding this policy through continuous education and sensitization programs.
 5. Liaising with Kenya Industrial Property Institute (KIPI) and other IP protection offices for the purposes of intellectual property protection including linking with intellectual property agents where necessary.
2. Establishment of Intellectual Property Committee (IPC)
- (i) JKUAT shall establish an IPC committee which shall comprise of the following members:-
 - Vice Chancellor - Chairperson
 - Deputy Vice Chancellor (Research, Production and Extension)
 - Deputy Vice Chancellor (Academic Affairs)
 - Deputy Vice Chancellor (Administration, Planning and Development)
 - Registrar (RPE)
 - Registrar (Academic Affairs)
 - Registrar (Administration, Planning and Development)
 - Managing Director JKUATES
 - Deans of Faculties and School(s)
 - Directors of Research Institutes

- University Legal Officer
- Head of IPO.
- Faculty Representatives
- Principals of Colleges
- WTO University Representatives
- Finance Officer

Co-opted members:

- The innovator/inventor
- Head of Department of the innovator/inventor
- Representatives of any collaborative Institution

(ii) Functions of Intellectual Property Committee

The functions of IPC shall include:

1. To establish procedures for technology transfer consistent with the IP Policy.
2. To establish guidelines to deal with areas of conflict of interest in the context of technology transfer and commercialization.
3. To provide guidelines on the necessity of bridging works to facilitate availability of an innovation or invention and the need to seek IP protection to form partnerships for the carrying out of such bridging works.
4. To provide guidelines on the transfer and licensing of any intellectual property held by JKUAT.
5. To establish guidelines and procedures for disclosure of IP.
6. To evaluate all innovations disclosed in a timely manner.
7. To grant approval and advise the innovators or inventors concerning the publishing of material related to their innovations or inventions whether for academic, distribution or defensive purposes.
8. To initiate exemption, review and amendment of the IP policy and all matters pertaining to the IP administration.

9. To receive, hear and determine the disputes arising from the terms of the policy or implementation of this policy.
10. To provide guidance in the setting up of new companies by the University, innovators/inventors and other entrepreneurs using University innovations or inventions and ensuring compliance with the policy and other University policies.

X. SCOPE OF POLICY

1. This policy shall apply to all units of the University and to all University's administrators, scientists, researchers, faculty, staff, and to employees who are not regular faculty members and students. To all innovators/inventors including administrators, scientists, researchers, faculty staff (researchers and non-researchers), all students, candidates for doctoral degrees, postdoctoral and predoctoral fellows, including those and any other persons employed by the University whether full or part-time, emeritus staff while at the University, visiting staff and researchers, external examiners, adjunct faculty and professors, company representatives and any other persons who create or discover applicable intellectual property using University resources or who receive funds, commissions, fees and honoraria or other rewards for their services(work for hire) work done through research, nationally funded, or those who voluntarily assign their intellectual property to the University.
2. Where an external researcher is already subject to the terms of the Intellectual Property policy of his or her parent institution he or she shall inform JKUAT of such an obligation before JKUAT IP Policy becoming effective. 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.
3. Where issues arise which are not covered by the terms of the agreement, this policy shall be applicable.
4. Where there is conflict, inconsistencies or repugnancy, the relevant law and the terms of sponsored programme agreements and other contractual arrangements undertaken by the University or one of its units in good faith, this policy will govern.
5. All persons covered by this policy are expected to sign the University's Intellectual Property Policy Acceptance Agreement Form (IPPAF).

XI. OWNERSHIP OF INTELLECTUAL PROPERTY

The University recognizes that teaching, research and innovation/invention involve complex relationships among several parties such as individual innovators/inventors, external research sponsors and various departments.

This section of the University Intellectual Property Policy is aimed at clarifying the rights to ownership among these parties and to provide guidelines for determination of ownership of intellectual property.

1. Innovation/Invention made with University Support

The University shall own all intellectual property either developed by faculty, staff, students, visitors or others which has been innovated or invented as a result of participating in the University's programmes, support, facilities, or funds channelled through the University, including, but not limited to; any disclosure of innovation, discovery, trade secret, technology, scientific or technical development, license, computer software, institutional works, plant variety, data research records, laboratory notebooks, regardless of whether subject to protection under patent, trademark, copyright or other laws.

2. Innovation/Invention made without University Support

All innovations or inventions made by an innovator or inventor without the University support and without any relation to the employment or service contract and without the use of the University's resources, data, means, materials, installations or equipment shall belong solely to the innovator or invention. The innovation or invention must be initiated and work conducted and work perfected while the innovator or invention is outside normal University service, that is, during the innovator's or inventor's unpaid leave, or after office hours.

The innovator or inventor shall notify in writing the University of the innovation /invention and the intention to apply for registration of ownership.

3. Ownership of Scholarly work

The University will not own/ have IP rights in scholarly works including work developed by researchers or instructors or lecturers as teaching materials or work created by students in the course of the University-sanctioned learning or work that has a purpose of disseminating

information resulting from research or studies such as books, articles, manuscripts, dissertations, thesis and reports, fine artwork and drawings that are not an institutional work, musical composition and dramatic and non-dramatic literary works related to the faculty member's professional field. This is regardless of the medium of expression, unless such work is commissioned by the University or a component institution of the University, or as a work-for-hire.

XII. UNIVERSITY RESOURCES

The University resources shall include:

- (i) Laboratory, workshops space, office, equipment and research material,
- (ii) Computer hardware, software, support and internet time,
- (iii) Research, teaching, laboratory assistants and support, generated data and laboratory notes,
- (iv) Supplies and utilities,
- (v) Funding for research,
- (vi) University time,
- (vii) University logo.

Innovations made without any relation to the employment or service contract and without the use of University resources shall belong solely to the employee as the innovator/inventor.

XIII. OFFER OF INTELLECTUAL PROPERTY

If an individual or organization chooses to offer to the University certain intellectual property in which the University has no claim, the University may accept ownership of the intellectual property provided that the offer is made through the IP office. The IPO shall forward the request to IPC for evaluation. The IP committee will evaluate the offer and advise the University accordingly.

XIV. PUBLICATION AND CONFIDENTIALITY

An author or innovator or inventor shall not publish any form of information relating to research or innovation or invention before consulting the IP Office. After the consultations, the IP office shall communicate to the author or innovator or inventor, the go ahead to publish the information.

Provided that the author or innovator or inventor is entitled to publish his/her information at the expiry of sixty days (60) from date of receipt of the publication if there is no communication from the IP office.

XV. DISCLOSURE OF INNOVATION/ INVENTION

The following applies relating to innovation/invention disclosure;

1. When it first becomes apparent that an innovation/invention, discovery or technical development has been made, the innovator/inventor shall immediately notify the IP office by means of an Innovator Disclosure Form (IDF).
2. An innovation disclosure shall include but not be limited to the following,
 - (iii) Information about the innovator(s) or inventor(s).
 - (iv) Technical details of disclosure.
 - (v) Detailed justification for believing that the disclosure constitutes a patentable innovation/ invention.
 - (vi) Information on any agreements entered into to facilitate the development of the innovation/ invention.
 - (vii) Facts concerning subsequent activities undertaken and planned.
 - (viii) Information regarding any resources understood to include information that contributed to the innovation/ invention.
 - (ix) Information the innovator/ inventor may have relating to other activities relating to the innovation/ invention at the University or elsewhere and:
 - (x) Any other information that may prove useful in making a determination as to IP protection.

3. On receipt of the disclosure, the head of the IPO shall prepare for the IPC, a report listing the titles and abstracts of each disclosure received.
4. The IPO in consultation with the IPC will recommend a search at KIPI, Copyrights Office, Trademarks office or Plant Varieties Protection Office to determine if the innovation has any protectable value.
5. Based upon the findings of the IPC, the IPO will implement the resultant recommendations.
6. The IPO will find out from the innovator/invention if there was any information or agreements entered into to facilitate the development of the innovation.
7. Having made the disclosures above, the innovator(s)/inventor(s) shall have the following responsibilities: -
 - (i) Cooperate fully with IPO in marketing, licensing, registration, litigation and other areas in protection and transfer of University IP.
 - (ii) Taking all reasonable steps requested by the head of IPO, including the execution of assignments and other requests necessary for evaluation of the item and the protection by patent or other IPRs.
 - (iii) Making their obligations to the University clear to those with whom they make agreements with and the innovator/inventor shall disclose other parties to the agreement with a current statement of this policy.

XVI. DISTRIBUTION OF MATERIALS FOR SCIENTIFIC RESEARCH

The University considers that the transfer of materials between Universities and research groups with other organizations is an important aspect of scientific co-operation;

1. Materials may be exchanged between the University and other Universities in Kenya and beyond, national and international research institutions, or between the University and or commercial entities or entity.
2. 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. The IPO will lay down the guidelines, procedures and prepare agreements for the distribution of all information and materials.

3. When materials are being transferred, the following will apply:-
 - (i) The IPRs of the receiving and the providing organization are addressed.
 - (ii) The recipient of materials under the University Material Transfer Agreement (MTA) agrees not to claim ownership over the material received, 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) Any transportation needs are handled.
 - (v) The University shall have a record of the types of materials that are entering and leaving the University.
 - (vi) Any attendant health and safety risks are identified and prudent provision is made to address them.

In order to address these concerns, an MTA between the University and the receiving or providing organization must be signed. (The MTA forms will be available at the University's Intellectual Property Office (IPO).

4. Equipment(s) purchased on externally funded research contract shall remain the property of the University upon completion of the contract. 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 Production and

Extension (RPE) shall determine the distribution of the equipment.

XVII. COMMERCIAL DEVELOPMENT

The University supports efforts directed towards commercialization of innovations/inventions. The IP may be licensed to external entities for further development and commercialization.

The University through IP Office may commission JKUAT Enterprises Limited (JKUATES) or other agents to pursue the licensing and regulating the use of the University IP by researching the market for the technology, identifying third parties to commercialize it, entering into discussion with potential licensees, negotiating appropriate licenses or other agreements, monitoring progress, and distributing royalties to the innovators/inventors/authors and other parties in accordance with the University royalty policy.

That no inventor, will have a sole monopoly nor be the sole licensee over an Innovation developed and Commercialised by the University.

The University will cover the necessary costs leading to licensing of innovation or invention and such costs will be a prior charge against royalty income. The University will recover all expenses incurred for the protection and licensing of each University innovation/invention from its licensing proceeds before distributing the net proceeds remaining among the innovator/inventor, the innovator's/inventor's department, and the University.

XVIII. EQUITY SHARES

The University may negotiate for equity shares either in full or partial in a partnership or joint venture with any entity that has sought to obtain a license to the University's innovation(s)/invention (s) in exchange for licence fees and royalties.

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 IP. In such situations, the innovator(s)/inventor(s) shall decide whether to take equity or royalty options.

XIX. CONFLICT OF INTEREST OR COMMITMENT

Where an employee or researcher has external relationship with a company that itself has a financial interest in a faculty research project, or where

University officials serve on Boards of companies that have significant financial transaction(s) with the University, or where an employee has equity holding or loyalty expectations that could influence the decision, or where the employee of the University is an interested party and by virtue of his/her position is likely to influence the decision making, he/she shall disqualify him/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.

Where an option to negotiate equity shares is taken by the University, the proceeds generated from the sale of such equity shall be distributed in accordance with agreed policies on distribution of revenue.

XX. ROYALTY DISTRIBUTION

1. General principles

The following principles shall apply relating to distribution of royalties that are realized after commercialization of the University's IP;

- (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 technology development within and technology transfer from the University.
“Revenues” shall not include funds received for research support.
- (ii) The University direct costs, shall be reimbursed from gross revenue prior to distributing royalties to innovators, departments, faculties, IPO and others.
- (iii) The direct costs shall include expenses and any other charges resulting from the application for granting or maintenance of the Intellectual Property Rights and any other expenses in connection to licencing, collection of income, and intimation (if any). Additional expenses may be charged before royalty distribution for proof -of -concept funding, IP marketing, market research and business plan development.

Ordinary administrative expenses will not be considered as direct costs and will not be charged on net royalties but where services

that would normally incur chargeable expenses are provided internally, an expense against relative net royalties shall be charged to avoid discriminatory results.

- (iv) Should a situation arise where intellectual property infringement action is brought against the University, all royalties received during the period of action will be used to cover any legal cost. If University prevails and receives a financial settlement, innovators, faculties, departments, IPO and the University shall be reimbursed for their shares of royalties used as legal costs. Any funds received in excess of the royalties used should be the property of the University and will be used and /or distributed as the University so determines.
- (v) In the event of multiple innovators/inventor or authors, they will agree among themselves as to the distribution of the income accruing to the innovators or authors; distribution of the innovators'/inventors' or authors' share shall be made only upon receipt of a signed agreement between the innovators/authors.
- (vi) The innovator's/inventor's personal share shall survive termination of affiliation with the University and in the event of death of the innovator/inventor shall inure to his or her estate.
- (vii) The distribution of Net Revenues shall be made half yearly and in accordance with the scheme stated herein below.

2. Sharing Ratios

The net royalty income shall be distributed as follows: -

- (i) Where there are third parties involved in the innovation/invention the sharing ratios will be as follows: -
 - (a) Innovator/inventor – 30%
 - (b) University – 60%
 - (c) Others (collaborators and communities in case of TK and Genetic resource based innovation) 10%

TOTAL 100%
- (ii) In case there is no third party involved in innovation/ invention, the sharing ratio will be as follows: -

- (a) Inventor/Innovator - 40%
- (b) University - 60%
- TOTAL 100%
- (iii) The sharing ratios of the University's 60%* share shall be as follows:
 - (a) Central Administration 21%
 - (b) Faculty 3%
 - (c) Department 18%
 - (d) IPO 6%
 - (e) Research Fund 12%
 - TOTAL 60%

*The sharing ratios concerning the various units of the University should be prepared by the individual units and forwarded for approval to the Intellectual Property Committee in consultations with the Departments. The sharing should not take place until the approval by the Intellectual Property Committee.

XXI. IMPLEMENTATION

This policy shall become effective from the date of adoption by the University Council. This policy shall apply to any new agreement between the University and innovator(s)/inventor(s) with any external organization or individuals concerning the development, legal protection or commercialization of specific IP entered into after the date on which Council adopts this policy.

If an existing agreement is renewed, revised or amended after the date which the University adopts this policy, reasonable attempts shall be made to conform such agreement to the requirements of this policy as of the date on which it is renewed, revised or amended.

Pre-existing agreements that are not revised by the time the policy comes into force shall continue to apply as it was before the policy became effective, until expiry of the same.

Full implementation of the policy shall be within three (3) months from the date of approval by the University Council.

The University shall notify all persons who are affected by this policy of its terms as soon as efficiently possible after its adoption by the University Council and at regular intervals.

XXII. GOVERNING LAWS AND REGULATIONS

This policy shall be interpreted in a manner consistent with other University Policies, all applicable Kenyan and Local Statutes and Laws and implementing Regulations which include Kenyan Laws pertaining to ownership of Intellectual Property, confidentiality of debtor, conflict of interest policies and those regulating the use of human and animal subjects, as well as laws pertaining to conflict of interest, equity and freedom of information requests.

XXIII. EXEMPTION, REVIEW AND AMENDMENTS

Exemptions and amendments of this IP policy may be initiated by any interested party through the Head of the IPO. The head of IPO shall thereafter notify the IPC the proposed exemptions or amendments for deliberation and consideration. Upon advice from IPC the Vice Chancellor may sanction approval of such exemptions or amendments.

The VC may, with the advice of IPC, 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 VC with the advice of the IPC 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 every two years.

XXIV. INTELLECTUAL PROPERTY AGREEMENTS

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

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 or entities.

When materials are being transferred, the conditions on Rule XVI (3) (i) – (vi) above should be observed.

In order to address these concerns, an MTA between the University and the receiving or providing organization must be signed. MTA forms shall be available at the IPO.

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 IPC. 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 IPO.

3. Sponsored And Collaborative Research Agreements

Innovation or invention 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: -
 - (a) Collaborative work involving persons employed by outside organizations,
 - (b) Work that is supported either partially or wholly by one or more sponsors,
 - (c) Projects where two or more persons collaborate,
 - (d) Projects funded by external agency,
 - (e) Visitors on sabbatical leave or on study leave at the University,
 - (f) IP developed by staff or students at other institutions.
- (ii) If no written agreement exists before the innovator'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:
 - (a) Arrangement for the management and co-ordination of the project,
 - (b) Responsibilities (including funding) and liabilities of the various parties,
 - (c) Arrangements for the treatment of Intellectual Property,
 - (d) Reporting and publication arrangements, access to results and confidentiality provisions,
 - (e) Consequences of termination/default, and ways of handling disputes,

- (f) That the University shall apply the terms of this policy to any IPR of which it receives ownership,
- (g) That where there are issues that arise which are not covered by the terms of agreement, this policy shall be applicable.

4. Licensing Arrangements (Agreements)

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

The following shall apply in licensing: -

- (i) By mutual agreement with the inventor/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 IPO 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 IPC 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(s)/ innovator(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 by the IPC.
 - (vi) In keeping with the University's mission to disseminate new knowledge, and protect the public interest, IPC will have the authority to retain royalty-free rights for use of the University-owned innovations.

XV. USE OF THE UNIVERSITY'S NAME

All written or broadcast material containing the University's name and logo for advertising, marketing or other promotional purposes pertaining to intellectual property, shall be submitted for approval to the Head of IPO prior to the use of such material.

The University's name shall not be used as an endorsement. A statement on the use of the University's name shall be included in all appropriate agreements between the parties and the University.

In case of any violation, appropriate University Regulations as stipulated in JKUAT Act 1994 shall apply.

XXVI. DISPUTE RESOLUTION

In the event an innovator or inventor has a grievance about the University's handling or the interpretation of this policy of his/her innovation/invention he/she shall apply for review to the Chairman of IPC.

In the event the party is not satisfied with the outcome of the review, he/she shall have a right of appeal to the Vice Chancellor who shall appoint a five-person panel (s) to deliberate on the dispute. Such panel shall exclude members of the IPC.

If the party is still aggrieved, he/she shall have a right of appeal to the University Council through its chairman.

In case these measures fail to resolve the dispute, the relevant Kenyan laws shall apply.

XXVII. TRADITIONAL KNOWLEDGE, FOLKLORE AND GENETIC RESOURCES

The University shall provide for and endeavour 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 benefit sharing.

FIRST SCHEDULE

JOMO KENYATTA UNIVERSITY OF AGRICULTURE AND TECHNOLOGY INTELLECTUAL PROPERTY AGREEMENT

I understand that the Jomo Kenyatta University of Agriculture and Technology is governed in the handling of intellectual property by its official policy titled “The JKUAT Intellectual Property Policy 2006 (JKUAT 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 JKUAT, the receipt of remuneration from JKUAT, participation in projects administered by JKUAT, access to or use of facilities provided by JKUAT, access to information provided by JKUAT, 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 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 that are produced in the course of official duties, or making more than incidental use of the University’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, provided that all such activities shall be undertaken at the expense of JKUAT.
3. That I shall immediately notify the Intellectual Property Office, by the means set out in the JKUAT Intellectual Property Policy, when it first becomes apparent that an innovation/invention discovery or technical development has been made in the course of official duties, or making more than incidental use of the University’s time and resources.
4. That I shall maintain full confidentiality regarding all information that has been the subject of an Innovation Disclosure. This requirement may be terminated by the express written consent of the Head of Intellectual Property Office 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 more than incidental use of University'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 consultation or other obligation to any third party, 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 University's Intellectual Property Policy.

In case that associates of the University have prior existing employment agreements that conflict with the terms of either this Agreement or the University Intellectual Property Policy, they should immediately contact the Intellectual Property Office, 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 petty 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 University Intellectual Property Policy.

9. To deliver promptly to the University when I leave the University for whatever reason, and at any other time as the University may request, copies of all written records which are the IP of the University as well all related memoranda, notes, records, schedules, plans or other documents made by, compiled by, delivered to, or manufactured, used, developed or investigated by University, which will at all times be the property of the University.
10. Not to disclose or use in my work any such information referred to in Paragraph 9 above to my new employer or any other entity or person for a period of ten (10) years after I leave the University (unless otherwise agreed in writing with University).
11. Not to disclose to the University or use in my work at University (unless otherwise agreed in writing with University the following;
 - (i) Any proprietary information of any of my prior employers of any third party, such information to include, without limitation, any trade secrets or confidential information with respect to the business, work or investigations or such prior employer or other third party.
 - (ii) Any ideas, writings, or intellectual property or my own which are not included in Paragraph 1 above within the scope of this agreement.
12. This agreement replaces all previous agreements in relation to whole or in part to the same or similar matters which I may have entered into with the University. It may not be modified or terminated in whole or in part except in writing and signed by an authorised representative of the University. Discharge of my undertaking to this agreement will be an obligation of my executives, administrators or other legal representatives or assignees.
13. That in the event of the cessation of my relationship with the Jomo Kenyatta University of Agriculture and Technology, I and my estate, heirs and assigns, shall continue to be bound by the terms of this Agreement and the terms of the University Intellectual Property Policy.



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Sign:

Inventor

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Sign:

For and on behalf of the University