



INTELLECTUAL PROPERTY POLICY

Version	2.0
Short description	Intellectual Property Policy
Relevant to	Researchers
Approved by	University Council
Responsible officer	Deputy Vice-Chancellor Planning, Research and Extension
Responsible office	Office of the DVC (PRE)
Date Revised	<hr/>
Related University documents	University Statutes
Related legislation	University Charter Universities Act (2012)
Key words	Intellectual, Property, Ownership, Exploitation

APPROVAL

The University of Eldoret having been awarded its Charter on 11th February 2013, set on a growth path guided by its vision of “being a Premier University that natures global leaders and innovators.

As part of laying its foundation, the University developed its Statutes in November 2013 followed by its first Strategic Plan (2014-2019). The second strategic plan 2019-2024 is now in place and operational. The University has so far developed a number of policies which have been instrumental in facilitating the streamlining of processes and activities. This University Intellectual Property Policy shall operate in compliance of IP related Laws of Kenya.

I would like to thank the University Management for preparing this IP policy. It is hoped that with this policy in place, students from across the country and beyond will fulfill their desire to study at University of Eldoret. By virtue of the authority vested in me as the Chairman of the Council of the University of Eldoret and in reference to the approval granted by the Council in its meeting of 7th January, 2021, I hereby sign this Intellectual Property Policy on this 7th Day of January, 2021.



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Dr. Ismail Buro Hassan
CHAIRMAN OF COUNCIL

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FOREWORD

The University of Eldoret is one of the Public Universities in Kenya. Prudent management of institutions such as a university requires guiding instruments in its operations. Among such important governance instruments are policies. It is with this backdrop that the University has set out to develop relevant policies and the Intellectual Property Policy is one of them.

VICE-CHANCELLOR
University of Eldoret
Akenga

Professor Teresa A.O. Akenga, PhD, UNSW (Australia), MSc. BEd. (KU), MRSC, MBS
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DEFINITION OF TERMS

Benefit Sharing Agreement: An agreement that stipulates how co-inventors, innovators and Indigenous communities, licensors and licensees, employers and employees and indigenous owners of inventions, among other stakeholders that are directly party to the agreement can share benefits arising from the commercialization of an intellectual property.

Collaborative Research Agreement: A contract that governs cooperation between two or more persons in the systematic investigation of a particular subject in an effort to discover new knowledge or to develop new processes or products.

Confidentiality [Non-Disclosure] Agreement: means a signed agreement that allows one party to discuss their confidential information, including their work and ideas with other interested parties, and legally binds all the parties to keep the information confidential and not to disclose it to third parties.

Copyright: An IP right pertaining to the exclusive legal right, given to an author or an assignee of a literary, artistic or scientific work.

Council: means University of Eldoret Council as established by the University of Eldoret Charter 2013.

Genetic Resource: means the inherited Bio Property inherent in living forms and endowed with socio-economic value: They are the building blocks of life for all people and the natural environment, and maintaining genetic diversity ensures that the web of life can continue for future generations.

Indigenous knowledge: means established traditions and practices of certain regional, indigenous, or local communities, encompassing the wisdom, knowledge and teachings of these communities and with value for development; for example

usefulness to environmental conservation, food security, health, among other things.

Industrial Design: An IP right that protects the ornamental or aesthetic aspect of an article. An industrial design may consist of three dimensional features such as the shape of an article or two dimensional features, such as patterns, lines or colour.

Intellectual Property (IP): All outputs of creative endeavor in any field that can be protected either statutorily or not, within any jurisdiction, including, but not limited to, all forms of copyrights, design right, whether registered or unregistered, patent, patentable material, trademarks, know-how, trade secrets, rights in databases, information, data, discoveries, mathematical formulae, specifications, diagrams, expertise, techniques, research results, inventions, computer software and programs, algorithms, laboratory notebooks, business and research methods, actual and potential teaching and distance learning material, university's name, badge and other trademarks associated with the operations of the university, Tangible Research Property, and such other items as a university may from time to time specify in writing.

Intellectual Property Rights (IPRs): A right that is had by a person or by a company to have exclusive rights to use its own plans, ideas, or other intangible assets without the worry of competition, at least for a specific period of time. These rights can include copyrights, patents, trademarks, and trade secrets.

Integrated Circuits or Layout Designs: this is 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 the interconnections of an integrated circuit intended for manufacture.

Invention Disclosure: means a formal description of a discovery, innovation, invention, or such other IP that is confidentially made by the inventor to the authorized officer of the University or such other legal office for purposes of protection.

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

Licensing Agreement: means signed contract to third parties to put to use intellectual property developed by another party, where such licensing can be inclusive or exclusive.

Material Transfer Agreement: means a contracts that governs the transfer of one or more materials important for biological, engineering, chemical, physical science applications with defined properties, from owner (or authorized licensee), to a third party who wishes to use the material for research purposes.

Patent: means an exclusive right granted by a government for an invention, which is a product or a process that provides a new way of doing something or offers a new innovation and useful technical solution to a problem.

Plant Varieties: means an assemblage of cultivated individuals which are distinguished by any character (morphological, physiological, cytological, chemical or others) significant for the purpose of agriculture, horticulture or forestry, and which when reproduced (sexually or asexually) retain their distinguishing characters.

Project Funding Agreement: means a signed research funding agreement.

Senate: means University of Eldoret Senate as established by the University Charter 2013.

Support staff: means all the non-teaching staff and students who assist the inventor (s)

Trademark: means a distinctive sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise.

Trade Secret: consists of confidential scientific, technical, business, commercial and financial information not publicly known data or information used in research, business, commerce or industry.

University: means University of Eldoret as established under the University of Eldoret Charter, 2013.

Utility Model: means an invention which does not meet all the requirements of patentability but has an industrial use.

Vice-Chancellor: Vice-Chancellor of University of Eldoret as described in the University Charter 2013.

1.0 INTRODUCTION

1.1 About University of Eldoret

The University of Eldoret is located 9 km from Eldoret Town, on the Eldoret-Ziwa road. Its foundation can be traced back to 1964 when it was started as a Large Scale Farmers' training centre. It was converted to a Teachers' training college in 1984 and consequently renamed Moi Teachers' training college. In 1990, it was converted into a campus of Moi University and was renamed Chepkoilel Campus offering natural and applied sciences. It later became a constituent college of Moi university through a legal notice No. 125 of 13th August 2010 and took on the name Chepkoilel University College. The journey of transformation ultimately led to award of charter on 11th February 2013 as an independent fully pledged public university and the name changed to University of Eldoret. The University has nine schools which are; schools of Agriculture & Biotechnology, Business & Management Sciences, Education, Economics, Engineering, Environmental Studies, Human Resource Development, Natural Resource Management and, Science. The University prides itself in providing quality education, training, research and consultancy services in Science, Agriculture and Technology to meet the needs and aspirations of a dynamic society. The University has established a Town Campus in Eldoret Town, housed in MUSCO building and has a Liaison Office in Nairobi housed on the 12th Floor of Pension Towers.

1.2 University Vision

A premier university that nurtures global leaders and innovators.

1.3 University Mission

To provide quality education, training, research, and consultancy in science, agriculture and technology that meets the needs and aspirations of a dynamic society.

1.4 Core Values

At University of Eldoret, we are committed to:

- Integrity
- Innovativeness
- Customer satisfaction
- Competitiveness
- Equity

- Responsiveness
- Inclusivity

1.5 Motto

Flame of knowledge and innovation

1.6 Objective of the University

1. To attain 90% completion rate of students admitted in respective programmes annually.
2. To increase on the adequacy of facilities and infrastructure that are in-line with applicable statutory and regulatory requirements.
3. To increase internal research funding by 5% annually.
4. To disseminate at least 60% of research findings to communities annually.
5. To train 2% of staff annually.
6. To achieve performance targets as set in the University performance contract.

2.0 INTELLECTUAL PROPERTY POLICY PROVISIONS

2.1 Creation of the Intellectual Property Policy

The University of Eldoret Intellectual Property Policy is hereby created, and shall be known in the short form as the University Intellectual Property Policy. The Policy shall operate in compliance of IP related Laws of Kenya, including The Copyright Act 2001 (2009), The Seeds and Plant Varieties (Plant Breeder's), Regulations, 1994 (2002), The Trade Marks Act (2002), The Industrial Property Act, 2001 (2001), The Copyright (Amendment) Act No. 9 of 1995 (1995), The Trade Marks (Amendment) Act No. 5 of 1994 (1994), The Seeds and Plant Varieties Act (1991), The Trade Marks (Amendment) Act, No. 1 of 1984 (1984), and the relevant Rules and Regulations, and treaties.

2.2 Objectives of the IP Policy

The objectives of the Intellectual Property Policy shall be to:

- i. Promote the progress of science and technology and ensure discoveries, innovations, inventions and creations generated by the staff and students of UOE are utilized in ways most likely to benefit the public;
- ii. Protect the rights of scholars to benefit from the products of their scholarly work;
- iii. Develop criteria for determining the role and obligations of University of Eldoret, Inventor(s) and other stakeholders with respect to inventions, discoveries and works created at the University;
- iv. Make guidelines for recognition of IP ownership;
- v. Govern the disposition of IP generated at the University;
- vi. Create an enabling environment for generation and expedite the dissemination and application of the new knowledge by University researchers for the greatest benefit to University and the public through efficient and timely processing of technology transfer;
- vii. Provide for fair and equitable distribution of benefits accruing from IPs;
- viii. Promote, preserve, encourage and aid scientific investigation and research;
- ix. To encourage and reward University of Eldoret staff who innovate, invent

and create Intellectual Property;

- x. Make provisions for sensitizing staff and students on IP.

2.3 Scope of the Policy

2.3.1 Application this Policy

This Policy shall apply to all employees, students, collaborators, partners and guests of the University.

2.3.2 Areas of potential IP:

- i. Software;
- ii. Hardware, including equipment;
- iii. Models, including computer or industrial models;
- iv. Modeling tools;
- v. Audio or visual recordings, including audiovisuals;
- vi. Educational/training materials and tools;
- vii. Methods and/or techniques;
- viii. Solutions to technical problems;
- ix. Environmental remediation technologies;
- x. Quality/accreditation systems or processes;
- xi. Design/artistic projects;
- xii. A new name for a product, service or program, logo or slogan;
- xiii. New plant varieties;
- xiv. Novel chemicals either natural or synthetic;
- xv. Products of genetic engineering.

2.3.2 Types of IP policy

Intellectual Property, for the purpose of this policy, is defined as the tangible or intangible results of research, development, teaching, or other intellectual activity.

Intellectual Property may include the following:

- i. Patents

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- ii. Utility Models
- iii. Industrial Design
- iv. Copyright in literary work and geographical indications
- v. Trade and Service Marks
- vi. New Plant Varieties
- vii. Trade Secrets and Know-how
- viii. Integrated circuits or layout designs
- ix. Tangible Research Property (TRP) and genetic resources and
- x. Traditional Knowledge and Folklore

2.4 Institutional Framework for Intellectual Property Policy Operations

2.4.1 Office Concerned with IP Management

- i. The operations of the Policy shall be domiciled in the Office of the Deputy Vice-Chancellor in charge of Planning, Research and Extension hereinafter referred to as DVC - (PRE).
- ii. There shall be created an Intellectual Property Management Office (IPMO) whose functions shall be to:
 - a) Promote Intellectual Property development and technology transfer in a manner consistent with the University's mission, vision and objectives;
 - b) Develop procedures, rules and regulations for technology transfer which are consistent with other University policies and the avoidance of conflicts of interest.
 - c) Review, negotiate and make recommendations on all agreements that convey or affect the intellectual property of the University;
 - d) Receive and evaluate all innovation or invention disclosures in a timely manner;
 - e) Source for and facilitate acquisition of IP from external sources as need may arise;
 - f) Prepare and approve reports listing the titles and brief descriptions of

all innovations or invention disclosures received;

- g) Coordinate reporting requirements and other obligations to research sponsors regarding innovations developed under a research contract or grant, including but not limited to, obligations to the Kenya Government;
- h) Sensitize researchers, students and other staff on the importance of Intellectual Property and other related issues;
- i) Promote awareness and enthusiasm for generating exploitable intellectual property amongst researchers. Advise the innovators, inventors, breeders and creators concerning the publishing of material related to an innovation, whether for academic, distribution or litigation purposes;
- j) Enhance the capacity and documentation needed to perform technology searches, formulate IP applications and providing such services to the public through the Technology & Innovation Support Centre (TISC);
- k) Receive, process and submit any disputes arising from the terms or implementation of this policy before the Intellectual Property Committee of Senate for determination;
- l) Provide advice and support to all staff and associates of the University regarding this Policy;
- m) Provide guidance in setting up companies by the University innovators or using University innovations and ensuring compliance with this Policy and other relevant University policies and regulations;
- n) Process applications for protection, including patents, copyright, trademark, utility model and other applications with the relevant national, regional and international organizations.
- o) Provide annual reports of IP in which the university has a proprietary interest and;
- p) Perform such other responsibilities that may be required to comply

with state laws with regard to the university IPs and the IP Policy.

2.4.2 Intellectual Property Committee (IPC)

There shall be established the Intellectual Property Committee of Senate. The Intellectual Property Committee of Senate shall comprise:

Deputy Vice-Chancellor (PRE) - Chairperson Head of IPMO - Secretary
Director, Research & Innovation Director, Quality Assurance
Director, Industrial Links, Partnerships & Collaborations Director, Board of
Postgraduate Studies
Registrar, Academic Registrar, Planning
Three School Representatives Finance Officer
Legal Officer University Librarian

Co-opted members

Inventor/innovator
Dean of School of Inventor/innovator
Head of Department of Inventor/innovator
Representative of any collaborating institutions

The functions of the IP Committee shall include:

- i. Review the University IP guidelines, rules and regulations for approval by Senate;
- ii. Develop the appropriate agreement, licensing and contract and memoranda of understanding documents for approval by Senate;
- iii. Reporting to the Vice-Chancellor on IP matters, including the need for protection, licensing, contracting, commercialization or waiver of right over such IPs;
- iv. Review IP disclosures, agreements, licenses, and contracts, memoranda of understanding;
- v. Identify and call upon independent business expertise relevant to the

disclosed area to review the potential for commercialization, and report on the outcome of the reviews and the way forward;

- vi. To initiate exemption, review and amendment of the IP policy and all matters pertaining to the IP administration;
- vii. To receive, hear and determine the disputes arising from the terms of the policy or implementation of this policy.

2.5 Ownership of IP

2.5.1 General Principle

The university recognize that the employees, researchers, visitors, partners and students' activities may result in innovate and creative outputs.

The general principle with regards to ownership of IP created in the university is that the IP belongs to the University. However, the inventor will retain the right to be named and share the benefit deriving from exploitation/use of the right.

2.5.2 Inventor – Owned Intellectual Property

Inventors may retain full ownership right to IP provided that the following conditions are met;

- a) IP is not subject to a sponsored research or other agreement requiring ownership to reside in other party including the university.
- b) IP was not conceived, created, developed, or first reduced to practice with Significant Use of the university support.
- c) IP was not conceived, created, developed or first reduced to practice as a direct result of formal duties at the university.

2.5.3 Ownership of IP Created by Students

All works created by students during the course of their study at the university shall belong to the university provided that the students;

- Use substantial university resources;

- Use university-owned IP;
- Receive project-specific funding from the university or a third party engaged by the university;
- Use IP owned by another employee of the university or;
- Participate in a university project.

2.5.4 University Owned IP

The university retains full ownership of rights to;

- a) IP subject to the terms of a sponsored research or other agreement that grants the university rights of ownership;
- b) IP whose conception, creation, development or first reduction to practice involved Significant Use of university support;
- c) IP that was conceived, created, developed or first reduced to practice as a direct result of duties at the university;
- d) IP created by the researchers engaged in research or activities where the IP is created directly through their appointment or responsibilities at the university, including through participation in research projects, collaboration with other staff, supervision of students of the university or while they utilize the university facilities;
- e) Copyrighted material created as a work made for hire by operation of copyright law or pursuant to a written agreement with transferring copyright to the university;
- f) All IP created in the course of postgraduate students' research activities;
- g) IP created by employees of the university if the said IP was created within the scope of their employment or by written agreement with the university;
- h) All courses developed for teaching at the university.

2.5.5 Ownership of IP Arising from Sponsored Project/Collaborative and Contract Research

The following shall accrue to ownership of IP arising from sponsored projects/collaborative and contract research.

- a) The IP arising from sponsored or collaborative projects shall be owned by the university unless otherwise stated in the Contract Agreement;
- b) The ownership of IP arising from privately funded research will be negotiated as expressed in the Research contract and;
- c) The ownership of IP arising from work commissioned by the university will be owned by the university.

2.5.6 Ownership of IP for Research Conducted Outside the University

Ownership of IP for research conducted outside the university shall be governed by the following principles;

- a) Where a staff of the university visits other research/educational institutions or other organizations with a view of discussing research ideas or conducts research elsewhere during research or sabbatical leave, they must ensure that appropriate agreement regarding IP rights are concluded prior to the visit;
- b) Unless otherwise agreed, such research shall be deemed to fall within the normal course of the staff member's employment and any resulting IP would be vested in the university.

2.5.7 Ownership of IP Arising from Consulting Agreements and Other Business Activities

- a) IP created under consulting agreement with any third party or other business activities is owned as provided in the consulting agreement or other applicable agreement or law, except in cases where consulting or other work involves Substantial Use of University Facilities that is not the subject of a written agreement with the university.
- b) The university shall make claim to IP rights arising from wholly private consultancy work, provided no use is made of its resources or facilities.

These provisions include, but are not limited to, computer software written by staff

employed by the university.

2.6 Ownership and Use of Specific Types of IP

2.6.1 Teaching and Learning Materials

The university shall own all teaching and learning materials that are:

- a) Developed by staff in the course of their duties while employed by the university;
- b) Otherwise created in the course of staff's employment, which shall be deemed to include in addition to any teaching and learning materials which: use significant resources of the university in their development such as multi-media materials, visuals or slide shows: video and audio material and presentations streamed or made downloadable over the intranet or internet and:
- c) Specifically commissioned by the university from a member of staff, whether in return for a special payment or not or are produced in connection with the university's module/course/programme including teaching and learning materials produced for issue to students for example, handouts, summaries, case studies, seminar papers, or any materials made available on the Virtual Learning Environment (VLE)

Exceptions to these provisions are:

- a) Teaching and learning materials produced by members of staff for their personal use and reference in teaching, for example personal notes and annotations to support teaching materials.
- b) Author(s) of such teaching and learning materials grant(s) the university a free, unconditional, irrevocable and perpetual, transferable, non-exclusive license to make available, use and copy such material for academic and administrative purposes.

For works commissioned by the university from a member of staff, which is to be produced outside the normal course of their duties (i.e. outside the course of their

employment), or from someone who is not a member of staff, the university will use a form of contract which makes it clear that all IP and IPRs in the work belong to the university. For avoidance of doubt, the university does not claim rights to pre-existing materials created by members of staff prior to their employment by the university, although adaptations and modifications made as a member of staff will be owned by the university.

2.6.2 Software

- a) The university owns all software and associated items that are developed by staff in the normal course of their duties or otherwise in the course of their employment.
- b) The university also retains ownership of all software and associated items that are the subject of any contract whereby ownership is with the university or that are developed by students in the specified circumstance.

2.6.3 Research Materials

The use of proprietary tangible property for research purposes, often biological material, either owned by a third party and transferred to the university, or owned by the university and transferred to a third party, should be a subject of a Material Transfer Agreement or Collaboration Agreement, which should include agreed terms on publication rights, ownership, management and commercialization of new inventions/innovations arising from use.

2.6.4 Theses and Dissertations

- a) The copyright for theses or dissertations shall belong to the student
- b) The texts of all students' theses and dissertations, and works derived from such works, are considered Exempted Scholarly Works. Therefore, the students will own copyright in the scholarly work subject to a royalty-free license to the institution to reproduce and publish.
- c) The license will remain in effect in the event that the author leaves the university.

- d) Where a patent application is being contemplated on an invention disclosed in a thesis or dissertation, regardless of ownership, external examiners or external subject reviewers must sign a confidentiality undertaking before being sent the thesis/dissertation.

2.6.5 Surrender/Assignment of Rights to the Inventor

- a) If the university elects not to file a patent application for an invention in which it has a proprietary interest, rights to the invention may be released to the inventor, who may file for an IP subject only to restrictions which may be imposed by prior agreement.
- b) If the university decides that it does not wish to pursue the commercialization of any IP, or that it does not wish to maintain an interest in that IP, it can, at its discretion, offer to assign its ownership to the creators of the IP, or to enter into an agreement to enable the IP to be used by the creators on mutually agreed terms.

2.6.6 Using IP Belonging to a Third Party

The university should endeavor to respect the IP Rights of third parties. This may include background IP used in a research project, IP generated at the university but owned by a third party, or IP owned by the university but licensed to a third party under terms which might restrict further use.

- vi. Apply reasonable judgment as to whether an invention has potential for commercial marketing;
- vii. Disclose IPs as soon as possible and to delay public disclosure until the evaluation process is completed and an application made for protection.

3.2 Intellectual Property Disclosures

- i. IP disclosures shall be made to the IPMO in stipulated format
- ii. Release of information concerning IPs to the public or unauthorized persons before seeking protection shall be considered premature disclosure of IP and shall vitiate any of the right to protection;
- iii. Premature disclosure shall be considered a violation of IP ownership terms and shall be dealt with in a manner to be provided for in IP regulations;
- iv. Authorized officers shall treat all disclosures as confidential and shall be prohibited from discussing any disclosure in part or its entirety to unauthorized persons;
- v. The IPMO shall publish in summary form any IP disclosures submitted through normal University Channels;
- vi. Any person contesting an IP disclosure shall do so using authorized tools and give detailed and technical reasons for such contest;

3.0 DISCLOSURES AND PROTECTION OF INTELLECTUAL PROPERTY

3.1 Obligations of the University

The university's office in charge of IP shall identify and encourage the disclosure of any information available to researchers in the course of carrying out research which could potentially lead to IP asset(s).

For purpose of disclosures and protection of IP generated where it has express interest, the University shall:

- i. Develop documentation, procedures and management support for licensing and management of technology;
- ii. Provide legal support, as deemed necessary and desirable, for defending and protecting the interests of the institutions and creators of the intellectual property against third-party claims or unauthorized use.
- iii. Assist the creator in finding a partner for technology development, or a sponsor;
- iv. Carry out negotiations and manage agreements to the best advantage of the IP creators and the institution;

3.2 Obligations of the Intellectual Property Creator

For purpose of disclosures and protection of IP generated where the University has express interest, the other party shall:

- i. Thoroughly and promptly disclose all inventions, discoveries and other works that belong to the institution;
- ii. Provide such assistance as may be necessary, throughout the technology transfer process, to protect and effect the transfer of the intellectual property;
- iii. Arrange for the keeping of all records and documents that are necessary for the protection of the institution's interest in the intellectual property;
- iv. The inventor must abide by all commitments made in license, sponsored research and other agreements, and laws relating to privately funded research;
- v. Promptly disclose all potential conflicts of interest to the university;

4.0 EVALUATION, REGISTRATION AND EXPLOITATION OF INTELLECTUAL PROPERTIES

4.1 Evaluation of Intellectual Property Disclosures

- i. The IPMO and the IP Committee of Senates shall be invested with the power to process, evaluate, and make recommendations on all disclosed IPs;
- ii. All IP disclosures shall be evaluated for completeness in the declaration, authenticity and originality and the possible type of protection;
- iii. The University shall develop and publish any other rules and regulations needed for safe keeping, handling and processing of all disclosed IPs.

4.2 Registration

- i. The Head of IPMO shall be responsible for pursuing registration of evaluated IPs after approval for such protection being granted by the Vice- Chancellor;
- ii. In pursuit of protection, the University and any other parties directly involved shall agree on type of protection, payment of costs, and final ownership distribution, which shall be reflected in the registration certificates;
- iii. The University shall meet all the cost of registration and renewal of such registration, if it is the sole owner of the IP. In a joint ownership the registration cost will be shared accordingly by the partners. The custodian of the original registration shall be the University, provided that the other party shall have an authenticated copy of the registration certificate;
- iv. In cases where IP shall be held as trade secret no registration shall be sought for the raw product, but trademarks or such other registrations may be obtained as appropriate.

4.3 Exploitation of Intellectual Property

The University shall exploit the IP that it owns in any of the following non-exhaustive ways:

- a. Licensing

This is where the university permits another entity to exploit the IP rights against payment of royalties. Ownership of the IP rights remain with the university. The parties to whom an IP right is licensed may choose to establish a start-up company to exploit the IP asset.

b. Assignment

This is where the university transfers (sells) the IP rights to a third party against a one-off payment. In this case, the university loses the ownership of the IP rights.

c. Self-exploitation of IP rights/Spin-off

This is where the university self-exploits the IP rights through establishment of a spin-off company.

A spin-off is a company created where the institution invests its own resources to self-exploit its IP rights. This is likely to include the transfer of existing university staff either on a permanent or secondment basis.

d. Joint venture

The university shall seek private partners to establish joint ventures to commercialize its IP. The private partners will bring the necessary financial resources and business skills to manage the joint venture. A valuation of the IP asset will be required to determine the equity/shareholding of the university.

5.0 CONFLICT OF INTEREST

Where an employee or researcher has external relationship with a company that itself has a financial interest in a research project, or where University officials serve on Board 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 disadvantage 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.

6.0 REVENUE COLLECTION MANAGEMENT AND DISTRIBUTION

6.1 Equity Shares

- i. 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;
- ii. University acceptance of equity in consideration for licensing an IP 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
- iii. The University shall handle all subsequent relationships with a licensee with whom the University has accepted equity in a commercial matter, pursuant to relevant University policies and guidelines;
- iv. 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;

- v. 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 share holder it had direct agreements or contracts with in relation to the IP;
- vi. The University shall pay the Innovator's share of equity consistent with the formula established under this Policy for the distribution of royalties;
- vii. The University shall distribute cash upon conversion of equity to cash, in accordance with the royalty distribution formula under this policy.

6.2 Revenue Collection/Distribution

- i. All revenue from commercialized IP owned by the University either in full or in part, shall be collected by the University;
- ii. The University shall deduct from all such revenue the valid direct costs due to the specific IP;
- iii. Then net revenue shall then be apportioned in the ratios agreed upon between the University and the other parties as per the royalty distributions schedule;
- iv. The other parties shall have a right to examine the financial books relevant to the IPs where they own shares.
- v. The distribution of Net Revenue shall be made annually and in accordance with the following scheme (Table 1).

Table 1: Royalty distribution schedule

1A. Sharing ratio where there are third parties involved in the invention/innovation	
Inventor/Innovator	40%
University	50%
Others (collaborators and communities in case of TK and Genetic resource based innovation)	10%
Total	100%
1B. Sharing ratios of University's 50% share	
Central Administration	7%
School	2%
Department	18%
IPMO	8%
Research Fund	15azq%
Total	100%
2A. Sharing ratio where no third party is involved in Invention/Innovation	
Inventor/Innovator	40%
University	60%
Total	100%
2B. Sharing ratios of the University's 60% share	
Central Administration	10%
School	2%
Department	22%
IPMO	10%
Research Fund	16%
Total	100%

6.3 Promotional/Career progression

The university shall recognize IP as a criterion for the promotion of the researchers and shall review and implement promotion guidelines that take into consideration IP

applications, grants and commercialization.

7.0 USE OF THE UNIVERSITY NAME AND LOGO

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 IPMO 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 shall apply.

8.0 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 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 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 chairperson.

9.0 TRADITIONAL KNOWLEDGE, GENETIC RESOURCES, CULTURAL EXPRESSIONS AND SOCIAL-CULTURAL INNOVATION

- i. The University recognizes the role of traditional knowledge, genetic resources and cultural expressions/socio-cultural innovations in the development of inventions innovation, new plant varieties and new animal breeds, new strains of microorganisms, bio-molecules including DNA markers, tissues, clones, cells, bio-chemicals and creative works.
- ii. The University shall be guided by the Laws of Kenya, formulate procedures and mechanisms for access to genetic resources, use of traditional knowledge and the sharing of benefits with holders of such knowledge and whether or not the intellectual property is commercialized by the University.
- iii. The University shall develop mechanisms for collection, characterization and conservation of potential benefit to the people of Kenya.

10.0 REVIEW

This Policy shall be reviewed in intervals of five (5) years or as need arises to ensure its continued application and relevance.

11.0 EFFECTIVE DATE

This Policy shall be effective on the 7th Day of January, 2021

ANNEX 1. IP POLICY RISK MATRIX

S. No	Risk event	Risk Factor	Risk Effects	Likelihood 1-5	Impact 1-5	Proposed mitigation	Responsibility
1	Copy right pirating	Ownership of copyright	Loss of royalties	2	2	Observation of IP laws. Violation punishable according to IP laws	All inventors
2	Patent Flouting	Unauthorized use of patented materials without permission of the owner	No payment of royalties by the user	3	3	Observation of IP laws Violation punishable according to IP laws	All innovators and inventors
3	Access to trade secrets	Unauthorized secret deals	Loss of revenue to the inventor	2	2	Observation of IP laws Violation punishable according to IP laws	All innovators and inventors.

ANNEX 3: INNOVATION DISCLOSURE FORM

INNOVATION DISCLOSURE FORM

This Intellectual Property Disclosure Form should be completed by the contributor(s) to a new invention or other Intellectual Property (IP). The purpose of this form is to record and provide information to assist in determination of the legal title and any potential third party claims to intellectual property rights associated with the IP. If in doubt, please disclose all information believed to be material to the creation of the intellectual property in question.

Please note, to be patentable an invention must be:

- *Novel*: An invention has to be new i.e. not previously described or part of prior art
- *Non obvious*: If the invention can be deemed to be obvious to a person skilled in the art to which the patent relates then it is not patentable
- *Useful*: The invention must have industrial application

1. Title of Invention or IP-----

2. Lead Inventor: -----

Name	Signature	Date
-----	-----	-----
Department	Phone	E-mail
-----	-----	-----

Employment Status (Staff, Student, Visitor, Courtesy, etc.)

3. Other Inventors

(i) -----

Name	Signature	Date
-----	-----	-----
Department	Phone	E-mail
-----	-----	-----

Employment Status (Staff, Student, Visitor, Courtesy, etc)

(ii) -----

Name	Signature	Date
------	-----------	------

ANNEX 2: GUIDELINES ON THE PROCESS OF CONSULTANCY IP POLICIES

The following guidelines provide a general framework for proper and effective Management of consultancy in university IP policies. In developing its IP policy, the university should endeavor to identify areas of overlapping obligations and responsibilities as well as conflicts that may arise as staff and researchers undertake consultancy work. To this end the university shall:

- a) Ensure the scope of consultancy work undertaken by staff and researchers is clearly defined and does not contravene institutional and national IP and research obligations, policies and regulations.
- b) Reserve the right to retain IP generated from staff and researchers' consultancy activities and agreements, if the IP developed is in an area that overlaps with the member's field of research.
- c) Ensure consultancy service agreements between staff/researchers and third-party clients do not convey any IP rights developed using university facilities and resources and/or developed through university grants or contracts.
- d) Carry out due diligence and ensure staff and researchers proceed with utmost caution in cases where consultancy service agreements they enter into call for rights to improvements to existing works and future inventions.
- e) Ensure staff and researchers engaged in approved external consultancy service disclose outputs, innovations and inventions generated in the course of the work to the university.
- f) Make provisions that restrict staff and researchers from providing consultancy services to third parties in areas where the university wishes to retain complete exclusivity, as circumstances may dictate.
- g) Make provision that limit the liability of staff and researchers engaged in consultancy services to third parties for any products created by such third parties, as a direct result of said services over which the consultants have no control.

Department

Phone

E-mail

Employment Status (Staff, Student, Visitor, Courtesy, etc.)

(iii) -----

Name

Signature

Date

Department

Phone

E-mail

Employment Status (Staff, Student, Visitor, Courtesy, etc.)

(iv) -----

Name

Signature

Date

Department

Phone

E-mail

Employment Status (Staff, Student, Visitor, Courtesy, etc.)

4. Period of research relevant to the creation of the intellectual property

From----- To: -----

5. Did the research relevant to the creation of the intellectual property above involve any in-kind support such as the provision of equipment or the transfer of materials from other parties?

Yes

☐

No

☐

If YES, please provide details. Please continue on a separate sheet if necessary.

6. Were any University funds or other resources used in making this invention (if yes, please explain).

7. Was any part of the invention made under a contract, or using funds, supplied by any outside organization? If yes, please give information below.

Source of funding	Grant/funding contact period	Reference no./account code (if available)

8. Date of invention and public disclosure

Please include the following information

- a) *Date of invention and how this was documented (include Laboratory book details and reference no.' where available)*

- b) *Have any disclosures been made? If so, when, where and how (this can include oral communication, journal, abstract, poster, newsletter publication (online or print), thesis). Accurate data is essential as prior disclosure may affect the possibility of obtaining patent rights*

9. List patents, publications, and/or commercial products or processes known to you showing a.) technology closest to this invention, and b.) closest known use of those elements or steps of this invention that differ from a.).

10. Indicate the potential commercial use of this invention (e.g., fields of use, advantages, estimate of value).

IMPORTANT NOTICE: THE INFORMATION WHICH YOU PROVIDE ON THIS FORM WILL BE USED BY UoE TO ASSESS THE OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS, POTENTIAL THIRD PARTY CLAIMS TO THOSE RIGHTS, AND OBLIGATIONS TO EXTERNAL SPONSORS. INCORRECT OR INCOMPLETE DETAILS COULD LEAD TO LITIGATION, THE REDUCTION OR LOSS OF EXPLOITATION REVENUES, OR THE INVALIDATION OF APPLICATIONS FOR INTELLECTUAL PROPERTY RIGHTS.

11. Use additional sheets to respond to the following and attach these sheets to this form.

- A. Describe the innovation in general terms.
- B. Describe in general terms objectives of the innovation.
- C. List the advantages of this innovation over previous innovations
- D. What is the "old" method or existing innovation?
- E. What specific features of this innovation makes it more advantageous to use than the previous approach?
- F. What markets could use this innovation?
- G. Describe in detail the steps that need to be taken to implement or construct or grow the innovation? (Attach a drawing if applicable).
- H. Are there alternative methods for implementing and/or construction?
- I. What is the stage of development for the innovation now? Describe plans for continued research and/or study on the innovation.
- J. Include any other information that is pertinent to the innovation
- K. List key words to describe the innovation.

This disclosure will become the first official University record of this invention. Before signing, please ensure, to the best of your knowledge, that all information provided herein is complete and accurate.

Signed and submitted by:

Lead Inventor's Signature

Date

Inventor's Signature

Date

Inventor's Signature

Date

Inventor's Signature

Date

N.B. CONTRIBUTORS COMPLETING THIS FORM SHOULD HAVE CREATED THE INTELLECTUAL PROPERTY IN QUESTION. HOWEVER, IT WILL NOT NECESSARILY BE THE CASE THAT ALL THOSE WHO COMPLETE THIS FORM WILL BE NAMED AS INVENTORS FOR THE PURPOSES OF LEGAL DOCUMENTATION INVOLVED IN THE PATENT PROCESS. UNDER PATENT LAW, FOR EXAMPLE, A PERSON IS ONLY A LEGALLY DEFINED INVENTOR IF HE OR SHE CONCEIVES THE IDEAL UNDERLYING THE INVENTION.

Departmental Endorsement: To the best of my knowledge, the above information is correct.

Head of Department

Signature

Date

Supervisor Endorsement for Inventions by UoE Students: To the best of my knowledge, the above information is correct.

Student Supervisor

Signature

Date

For UoE's Intellectual Property Management Office Use Only

Date Received-----

Acknowledged by-----

Sponsorship Rights Verified: Yes-----No-----

Copies Attached: Yes-----No-----

Innovation Disclosure No.-----