



**UNIVERSITY OF NAIROBI**

**INTELLECTUAL PROPERTY POLICY**

**2006 (Revised 2013)**

**FOREWORD**

The University of Nairobi has a long history of contributing to national development through its research activities. It recognizes that the public benefits from new products, processes, plant varieties and other intellectual creations resulting from discoveries, inventions and creative activities by the University staff, students and associates in the course of their University activities.

Recent developments in national legislation, policy reorientation and changes in the University governance structure, in particular the Kenya Constitution 2010, Vision 2030 and the new Division of Research, Production and Extension have necessitated amendments of the Intellectual Property Policy of 2006. In addition, the need to align the University with the best intellectual property management practices of peer institutions worldwide necessitated the positioning of the Intellectual Property Management Office so that it can spearhead timely identification, protection and commercialization of University of Nairobi Intellectual property assets for the benefit of individual creators, University and society. The aim of the University policy on Intellectual Property is therefore to make available IP to industry and others for the public benefit, while providing recognition to individual inventors and encouraging the prompt and open dissemination of research results.

The University Management recognizes the problem of low levels of disclosure of research results due to corresponding low levels of awareness of IP and lack of appropriate motivational packages for creativity. In this regard, the University is committed through the implementation of this policy, to optimize the environment and incentives for research and the creation of new knowledge.

This Policy is applicable to all staff, students, individuals and institutions associated with the University regardless of obligations to other companies or institutions unless otherwise agreed.



**PROFESSOR G.A.O. MAGOHA**  
**VICE - CHANCELLOR**

28/4/13

**DATE:**

## TABLE OF CONTENTS

FOREWORD .....	I
1.0 VISION.....	III
1.1 MISSION .....	III
ARTICLE 1: OBJECTIVES .....	1
ARTICLE 2: USE OF TERMS .....	1
ARTICLE 3: GOVERNING LAWS.....	5
ARTICLE 4: ADOPTION .....	5
ARTICLE 5: IMPLEMENTATION .....	5
ARTICLE 6: NOTIFICATION AND COMPLIANCE .....	5
ARTICLE 7: SCOPE OF THE POLICY.....	6
ARTICLE 8: OWNERSHIP OF INTELLECTUAL PROPERTY .....	6
ARTICLE 9: SIGNIFICANT USE .....	7
ARTICLE 10: TECHNOLOGY TRANSFER AND MANAGEMENT OF INVENTIONS, INNOVATIONS, NEW VARIETIES OF PLANTS, NEW ANIMAL BREEDS AND OTHER UNIVERSITY OF NAIROBI INTELLECTUAL PROPERTY.....	7
ARTICLE 11: WAIVER OF UNIVERSITY RIGHTS .....	8
ARTICLE 12: INSTITUTIONAL FRAMEWORK FOR INTELLECTUAL PROPERTY AND TECHNOLOGY TRANSFER.....	8
ARTICLE 13: PUBLICATION AND CONFIDENTIALITY .....	9
ARTICLE 14: DISCLOSURE .....	9
ARTICLE 15: INTELLECTUAL PROPERTY COMMITTEE (IPC) .....	9
ARTICLE 16: DISTRIBUTION OF TANGIBLE RESEARCH PROPERTY .....	10
ARTICLE 17: CONFLICT OF INTEREST OR COMMITMENT .....	10
ARTICLE 18: EQUITY.....	10
ARTICLE 19: ROYALTY DISTRIBUTION .....	11
ARTICLE 20: USE OF THE TRADE MARK, NAME AND LOGO OF THE UNIVERSITY .....	12
ARTICLE 21: DISPUTE RESOLUTION.....	12
ARTICLE 22: RECOGNITION .....	12
ARTICLE 23: TRADITIONAL KNOWLEDGE, GENETIC RESOURCES, CULTURAL EXPRESSIONS AND SOCIO-CULTURAL INNOVATIONS .....	12
ARTICLE 24: INTELLECTUAL PROPERTY DONATIONS .....	13
ARTICLE 25: CONSULTANCY .....	13
ARTICLE 26: OWNERSHIP OF EQUIPMENT AND INFRASTRUCTURE .....	13
ARTICLE 27: PROFESSIONAL, PRODUCT LIABILITY AND INDEMNITY .....	13

## **Preamble**

The University of Nairobi (UoN) has the largest concentration of scholars and researchers in the country and is the centre for Intellectual life, a locus of research activity extending the boundaries of knowledge, a resource for professional development and a key player in the growing global network of scholarship. The University strives to discover practical uses for theoretical knowledge and to speed up the transmission of information to the Kenyan nation and the world. In fostering research and its practical application the University will continue to be a catalyst for positive intellectual, social, cultural and technological change.

The radical and unstoppable scientific and technological advances of the latter part of the 20<sup>th</sup> century have ushered in daunting challenges in the appropriation and use of products of human intellect. In particular, there are concerns for the public interest in new products and processes resulting from discoveries or inventions made by researchers in connection with and related to their research activities. Moreover the growing application and use of communications media, educational technology, and computer programs in research raise new and complex problems relating to the proper and equitable distribution of rewards and obligations. The challenge to find fair and equitable ways and means to distribute and reward efforts among the different stakeholders, that is, the inventors or authors, the institution for which they work, outside sponsors and, more important today, the community in which the work is conducted, is real indeed.

Accordingly, research institutions have undergone a profound transition in their attitudes toward and interactions with a variety of external organizations and actors. Policies concerning intellectual property rights, conflicts of interest, and patent, license agreements, to name but a few, have begun to consume enormous amounts of time and thought in these institutions.

For the UoN, as for other institutions, the need and concern to properly manage its intellectual property and the intellectual property of others is paramount. Inventions, discoveries, copyrightable works, and other creative works that have the potential to be brought into practical use may be developed by the UoN employees within the scope and in the course of their duties or through the use, by any person, of the UoN resources such as facilities, equipment and funds. In the same vein, the UoN may benefit from using of intellectual property of others. It is in light of these realities that the UoN has taken time to examine its role and to reaffirm its commitment to basic principles and proper management of intellectual property.

Thus, the UoN formulated this Policy in 2006 (Revised, 2013) to guide its management, staff and students, including associates, concerning the development, ownership, management and marketing intellectual property.

The University of Nairobi hereby provides revised Intellectual Property Policy that encourages the development of inventions, innovations and other intellectual creations for the best interest of the public, the creator, and the research sponsor, if any. The Policy is further intended to protect the interests of all concerned by ensuring that the benefits of such property accrue to the public, to the inventor, to partners and to sponsors of specific research.

### **1.0 Vision**

A world-class University committed to scholarly excellence.

### **1.1 Mission**

To provide quality university training and to embody the aspirations of the Kenyan people and the global community through creation, preservation, integration, transmission and utilization of knowledge.

**Article 1: Objectives**

- a) To protect the rights of the University, its innovators, inventors, breeders, research sponsors and the public;
- b) To eliminate the infringement, improper exploitation and abuse of the intellectual property assets belonging to the University and/ or its customers;
- c) To optimize the environment and incentives for research and for the creation of new knowledge;
- d) To promote linkages with industry and stimulate research through developing and utilizing novel technologies and creative works for commercialization;
- e) To promote creativity and innovation; and
- f) To ensure fair and equitable distribution of all benefits accruing from all innovations, inventions and breeding activities.

**Article 2: Use of Terms**

In this Policy, unless the context otherwise requires, the following terms shall have the meanings assigned to them:

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

**Assignment:** A written agreement by the holder of intellectual property rights assigning all or part of the Innovator's/creator's/breeder's right, title or interest in or to an innovation, plant variety, animal breed and/or creative work of the University;

**Breeder:** Person who has bred or discovered and developed a plant variety or an animal breed;

**Commercialization:** Process through which any University of Nairobi Intellectual Property asset may be adapted or used for any purpose resulting in individual and/or corporate benefit;

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

**Equity:** Shares of stock or securities including, but not limited to, stock options, warrants or any other rights to purchase stock or securities;

**Genetic Resources:** Genetic material of actual or potential value;

**Geographical Indications:** Indications which identify a good as originating in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of a good is essentially attributable to its geographical origin;

**Gross Revenues:** All income received by the University under a license agreement but does not include research funds (unless the research funds offset future royalty obligations) and maintenance fees received under the license agreement;

**IA:** Industrial Advisory Sub-Committee

**Industrial Designs:** Those aspects of a useful article, which are ornamental or aesthetic and include the shape, pattern, line or colour of products of industry, handicraft, technology or architecture;

**Innovation:** A multi-stage process whereby organizations and/or individuals transform ideas into new/improved products, services or processes in order to advance, compete and differentiate themselves successfully in their market place.

**Innovation ecosystem:** System(s) of dynamic multi-channel network(s) of researchers, funders, entrepreneurs, legislators, experts and others where the dynamic process of innovation creation and experimentation takes place.

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

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

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

**Inventor, Innovator, Creator or Breeder:** A person responsible for the conception, ideas, and content of Invention and other works. Support staff such as research assistants, collaborators, photographers, artists, producers, computer programmers, printers, and others who contribute to

the works shall not be considered inventors or creators unless they substantially influence the original or novel aspects of the works.

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

**Intellectual Property:** Any new original or useful process, machine, composition of matter, life form, article of manufacture, software, literary, artistic, musical work, or tangible property including new or improved devices, circuits, chemical compounds, drugs, genetically engineered biological organisms and microbes, new plant varieties, data sets, software, musical processes, or unique or innovative uses of existing inventions that may or may not be patentable, copyrightable or protectable under any other form of intellectual property regime;

**IPC:** Intellectual Property Committee

**Intellectual Property Management Office:** The office established under the Deputy Vice Chancellor, Research, Production and Extension University of Nairobi to manage intellectual property matters.

**IPRSC:** Intellectual Property Review Sub-Committee

**Know-how:** Includes actual human artistic or technical skills derived from experience in working a certain art or technology;

**Licensing:** A marketing and brand extension tool that is widely used as one of the avenues for technology transfer and commercialization.

**Neighboring and related rights:** Rights that are related or auxiliary to copyright and include sound recordings, audiovisual works, broadcasts and performances;

**New Plant Varieties:** Varieties of plants, which have been discovered or bred, and which are new, distinct, uniform and stable and clearly distinguished by any characters (morphological, physiological, genetical, cytological, chemical or others) and which, when reproduced (sexually or asexually), retains its distinguishing characters;

**Net Revenue:** Gross Revenue less expenses associated with the protection or commercialization of innovation or invention;

**Net Royalties:** Gross royalties fewer expenses incurred in protecting or promoting the innovation or invention;

**Patent:** An exclusive right granted for an invention, which is a product or a process that provides a new, non-obvious way of doing something or offers a new innovative and useful technical solution to a problem in industry or commerce or public life;

**Person:** Includes both natural and juridical persons;

**Plant Breeders' Rights:** Proprietary rights in respect of new plant varieties;

**Publications:** Journal articles, books, manuals, textbooks, booklets, bulletins, policy briefs, guidelines, working and discussion papers, circulars, pamphlets, reports, information releases, exhibits, demonstrations, and other scholarly or popular writings regardless of medium;

**Reassignment:** The execution of a written agreement by the University assigning all or part of the University's right, title or interest in and to an innovation back to the innovator who had originally assigned his or her right, title or interest in and to the Innovation to the University;

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

**Staff:** Shall mean any person employed by UoN on contract or on permanent and pensionable terms;

**Socio-Cultural Innovations:** New ideas that resolve existing social, cultural, economic and environmental challenges for the benefit of people and the planet.

**Student:** Any person registered for an academic programme of the University of Nairobi;

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

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

**Trade Secret:** Includes confidential data, information or compilations used in research, business, commerce and industry and confer advantage on one having the right to use it;

**Traditional Knowledge:** Knowledge held and used by people who identify themselves as indigenous to a place based on a combination of cultural distinctiveness and prior territorial occupancy;

**UoN:** The University of Nairobi;

**Resources of the University:** Funds, supplies, equipment, physical facilities, personnel, and/or other services or property of the UoN. These include all tangible resources made available by University to inventors, including: office, laboratory and studio space and equipment; computer hardware, software and support; secretarial services; research, teaching and laboratory assistants;



supplies and utilities; funding for research and teaching activities, travel and other funding or reimbursements;

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

**Visitor:** Visiting professor, lecturer, researcher or scientist, and any other individual participating in research or teaching, sponsored or hosted by the funds or other resources of the University;

**Work for Hire:** A work prepared by a University employee within the scope and in the course of his or her employment with UoN and shall include expressly commissioned works for instructional, public service, or administrative use, by the UoN whether the person commissioned is an employee of the University or not;

### **Article 3: Governing Laws**

The policy shall be interpreted in accordance with the Kenya Constitution, applicable national laws, the University of Nairobi Act, the Statutes made thereunder, Regulations and Policies.

### **Article 4: Adoption**

This University of Nairobi reviewed Intellectual Property Policy shall become effective upon adoption and approval by the University Council.

### **Article 5: Implementation**

This policy shall be implemented in harmony with other University Policies. The Council may make appropriate changes to this Policy from time to time;

### **Article 6: Notification and Compliance**

- (1) All staff, students, fellows, visitors, persons and institutions shall be required to comply with the provisions of this Policy.
- (2) Where a visitor is already subject to the terms of an intellectual property policy of his or her parent institution he or she shall inform the UoN of such an obligation in a timely manner. The UoN shall then proceed either to negotiate a waiver of the parent institution's policy or to agree to the waiver of the terms of this Policy. Where issues arise which are not covered by the terms of the agreement, this Policy shall be applicable.
- (3) All UoN staff, students, fellows, visitors, persons and institutions shall be subject to this Policy and shall be required to sign the UoN Intellectual Property Policy Acceptance Agreement Form. In furthering such requirement, all participants will sign Agreements on innovations, inventions and Proprietary Information in accordance with this Policy and such Form shall be placed in their files with a copy to their Head of Department and the IPMO. All applications and/or processes regarding IP in the University shall be subject to this Policy.
- (4) Background IP of covered individuals (and/or previous employers' right thereto) shall be declared to IPMO within three months of engagement with UoN.

**Article 7: Scope of the Policy**

The areas covered by this Policy shall include the following:

Patent (including new animal breeds); Trade Mark and Service Mark; Copyrights and related rights; Industrial Designs; Utility Models; New Plant Varieties; Trade Secrets and Know how; Integrated circuits or layout designs; Geographical Indications; Tangible Research Property (TRP); Traditional Knowledge, Genetic Resources (including microbes), Cultural Expressions and Socio-cultural innovations.

**Article 8: Ownership of Intellectual Property**

1. The intellectual property rights vest, in the first instance, in the author, innovator, inventor, creator or breeder, and as long as the author, innovator, inventor, creator or breeder is a staff member or student of the University, the University shall be entitled in principle to ownership of the intellectual property concerned, where the innovation is made within the scope and in the course of the student program, staff employment or commission unless otherwise agreed in writing.
2. All intellectual property conceptualized or developed by staff, in the course of normal duty, students, visitors and others or as a result of participation in UoN programmes, funds, facilities, support, or funds channeled through the UoN shall be owned by the University when:
  - a) The intellectual property was developed pursuant to a UoN sponsored or commissioned research agreement; or
  - b) The intellectual property was developed with significant use of facilities, resources or funds owned or administered by the UoN.
3. The UoN may allow ownership of intellectual property in the following circumstances:
  - a) Where there has not been significant use of University resources;
  - b) Where the innovator, inventor, creator or breeder had disclosed the nature and scope of his or her research and has been allowed to compensate the University for the use of the University's facilities and equipment as charged by the University to outsiders;
  - c) Where the University is involved in collaborative research with another person, institution, or business entity, in which case the intellectual property may be jointly owned and the distribution of royalties shall be governed by the contractual arrangements between the parties;
  - d) Where it has been expressly provided for between the University and the research sponsor; and,
  - e) Where it has been expressly provided for between the University, staff, students, visitors and others.
4. If the University cannot, or decides not to, proceed in a timely manner to protect the innovation, invention or plant variety using an intellectual property regime and/or to license or commercialize the innovation, invention (including new animal breeds), creation, plant variety it may reassign ownership to the innovator, inventor, creator or breeder at the latter's request. This should be to the extent possible under the terms of any agreements that supported or related to the work.
5. Students shall own any intellectual property that they make, discover, or create in the course of their research unless:
  - a) The student has received financial support from the University in the form of wages, salary, stipend or grant funds for the research in which case the ownership shall be negotiable;
  - b) The student has made significant use of University resources in connection with the research;

- c) The research has been funded by a sponsor under a grant or sponsored research agreement, or is subject to a materials transfer agreement, confidential disclosure agreement or other legal obligation that restricts ownership of the intellectual property.
6. The texts of all student theses and dissertations, and works derived from such works, are considered exempted scholarly works. The students shall own copyright in the scholarly work subject to a royalty-free license to the University to reproduce and publish the work. Students shall be allowed to publish their theses and dissertations unless they have agreed in writing to restrictions that precludes or delay publication.
  7. University research contracts shall protect the right of the staff, students and other employees to publish the results of their work, but may allow one month for the filing of patent applications or other actions to protect intellectual property.

#### **Article 9: Significant Use**

The following shall be regarded as significant use: salary, insurance or retirement plan, contribution to or for the benefit of the inventor, use of library facilities, and occasional use of office equipment and office staff. However:-

- (1) Inventors, breeders, creators and/or innovators may not be considered to have made significant use of University resources if:
  - a) The inventor, breeder, creator or innovator receives advance written approval of the proposed use from the University and compensates the University for the fair market value of the facilities and equipment (as actually charged by the University to outside users);
  - b) The inventor, breeder, creator, or innovator does not use any University-provided funds or University administered funds in connection with the activity or facilities available to the general public.

#### **Article 10: Technology Transfer and Management of Inventions, Innovations, New Varieties of Plants, new animal breeds and Other University of Nairobi Intellectual Property**

- a) The University will strive to create an innovation ecosystem in which all the stakeholders will participate. In this respect, the University through the IPMO will pursue the exploitation of all intellectual property by researching the market for the technology, or new plant variety or new animal breed identifying third parties to commercialize it, entering into discussions with potential licensees, negotiating appropriate licenses or other agreements, monitoring progress, and distributing royalties to the inventors, innovators, authors and other parties in accordance with this Policy.
- b) In order to facilitate the exploitation of IP assets the inventor, creator or innovator, as the case may be, shall submit a detailed disclosure of the invention or innovation to IPMO to facilitate the taking of decisions on securing and/or reinforcing IP rights and exploitation options and, if necessary, executing assignment agreements pursuant to this Policy.
- c) If no potential licenses are readily apparent or the technology is deemed too narrow for a start-up company but the Intellectual Property Committee determines there is commercial potential and decides to pursue IP protection, IPMO will work with the inventor, creator or innovator to draft a non-confidential description of the invention/innovation which will be posted on the Homepage of

the official UoN website. The non-confidential description may also be faxed or mailed to potential licensees and availed to various technology listing services that promote university/industry technology transfer.

#### **Article 11: Waiver of University Rights**

- a) The University will waive intellectual property rights to the innovator, inventor, creator or breeder if it determines not to protect, license or commercialize that intellectual property.
- b) The University will also waive intellectual property rights to the innovator, inventor, creator or breeder if it determines to abandon all efforts to protect or commercialize such intellectual property.

#### **Article 12: Institutional Framework for Intellectual Property and Technology Transfer**

1. The UoN has established an Intellectual Property and Technology Transfer Office (herein referred as the Intellectual Property management Office) to maximize the value of intellectual property and technology to the staff, students, visitors, the University and society.

The Intellectual Property Management Office (IPMO) shall be headed by a Director.

2. The functions of Intellectual Property Management Office through the DVC, Research, Production and Extension are to:
  - a) Promote technology transfer in a manner consistent with University's mission, vision, objectives and academic environment;
  - b) Promote technology transfer, and the avoidance of conflicts of interest, consistent with UoN's policies, regulations and procedures ;
  - c) Review, negotiate and approve all agreements that convey or affect the UoN's right to intellectual property;
  - d) Coordinate reporting requirements and other obligations to research sponsors regarding innovation developed under a research contract or grant, including but not limited to, obligations to the Kenya Government;
  - e) Advise the Vice-Chancellor on the decision to, and the feasibility of, obtaining intellectual property protection for an innovation, creation, invention or new plant varieties;
  - f) Advise the Vice-Chancellor on the measures necessary to facilitate access to an innovation, creation, invention or new plant varieties;
  - g) Advise the Vice-Chancellor on the transfer and licensing or commercialization of any intellectual property held by the UoN;
  - h) Receive for evaluation by the appropriate committee as provided under this policy, all innovation, creation, invention or new plant varieties disclosures and process the same in a timely manner;
  - i) Prepare for approval, reports listing the titles and brief descriptions of all innovations or invention innovations, creations, inventions or new plant varieties disclosures received;
  - j) Advise the Vice-Chancellor on any applications for the transfer, or licensing, of the UoN's rights;
  - k) Advise the innovators, inventors, breeders and creators concerning the publishing of material related to them, whether for academic, distribution or litigation purposes, upon the Vice-Chancellors approval;
  - l) Advise the Vice-Chancellor as to any variation of this policy and Intellectual Property agreements;

- m) Advise the Vice-Chancellor as to the amendment of this Policy and all matters pertaining to intellectual property administration, management and dissemination;
- n) Receive disputes arising from the terms or implementation of this policy for determination by the Intellectual Property Committee and the Vice-Chancellor;
- o) Provide advice and support to all staff and associates of UoN regarding this Policy;
- p) Provide guidance in setting up new companies by the UoN innovators or using UoN innovations and ensuring compliance with this Policy and other relevant UoN policies, regulations and procedures; and
- q) Process, patent, copyright, trade mark, utility model, plant breeders' rights and other applications with the Kenya Copyright Board, Kenya Industrial Property Institute, Kenya Plant Health Inspectorate Service and other relevant, national, regional and international offices.
- r) Provide advice and support to all staff and associates of UoN on limitations regarding filing for IP protection in foreign jurisdictions.

#### **Article 13: Publication and Confidentiality**

- (1) The UoN shall encourage dissemination of research results, while ensuring adequate and timely protection of the rights to such property.
- (2) No individual shall publish, in any form, information relating to research for which an innovation or invention disclosure has been submitted without the express written consent of the IPMO provided that the consent shall not be unreasonably denied or delayed and the decision shall be communicated within a period of one month.
- (3) Inventors, Innovators, creators, and breeders shall take steps to maintain confidentiality of the disclosed intellectual property until protection has been obtained.
- (4) Inventors, Innovators, creators and breeders shall, in consultation with the IPMO, assess own work prior to public disclosure to determine whether it contains any potential protectable intellectual property and if so to expeditiously disclose it to IPMO on the intellectual property disclosure form prior to public disclosure.
- (5) Subject to 13(2) and 13(4), creators shall be free to deposit their works with the University of Nairobi Digital Repository in accordance with the university's Open Access policy.

#### **Article 14: Disclosure**

- (1) Disclosure of all innovations, creations, inventions and plant varieties and animal breeds shall be made to the IPMO in the prescribed manner.
- (2) An innovation or invention disclosure must be prepared and promptly submitted for each innovation or invention conceived or first actually reduced to practice.
- (3) Research notebooks shall be used in all research work with detailed and accurate records for intellectual property protection when necessary.

#### **Article 15: Intellectual Property Committee (IPC)**

- 1. There shall be an Intellectual Property Committee (IPC) consisting of College representatives, IPMO and Finance (Grants) Office.

The functions of the IPC shall be to:-

- i. Establish University IP policy guidelines
- ii. Advise DVC-RPE on IP matters
- iii. Review IP disclosures

2. The IPC shall have two sub-committees, namely, the Intellectual Property Review Sub-Committee (IPRSC) and the Industrial Advisory Sub-Committee (IA).
  - a) The Intellectual Property Review Sub-Committee shall be the formal technical arm of the IPC and shall be charged with the responsibility of:-
    - i. Identifying and inviting independent faculty expertise on the subject of disclosure;
    - ii. Determining the need (or otherwise) for seeking IP protection for a disclosed creation and advising the IPC accordingly.
  - b) The Industrial Advisory Sub-Committee shall be the formal university-industry liaison arm of the IPC and shall:-
    - i. Identify and call upon independent business expertise relevant to the disclosed area to review the potential for commercialization;
    - ii. Advise the IPC on the outcome of the review and the way forward.

**Article 16: Distribution of Tangible Research Property**

- (1) All the tangible research property leaving the University shall be governed by a Material Transfer Agreement (MTA). Any proprietary information accompanying tangible research property shall be governed by a Confidentiality Agreement.
- (2) The IPMO will provide guidelines, procedures and prepare agreements for the distribution/sharing of all information and materials.

**Article 17: Conflict of Interest or Commitment**

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

**Article 18: Equity**

- (1) UoN 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 provisions of this policy
- (2) University acceptance of equity in consideration of licensing a University innovation shall be based upon principles of transparency, objectivity and fairness in decision making and pre-eminence of the education, research, and public service missions of the University over

financial or individual personal gain. Such licensing activity shall be conducted in accordance with this and other related UoN policies and guidelines

- (3) The University shall handle all subsequent relationships with a licensee with whom the University has accepted equity in a commercial manner, pursuant to relevant university policies and guidelines.
- (4) The terms of innovation license other than those related to the acceptance of equity in the company by the University shall be consistent with University transactions for comparable innovations.
- (5) When the University accepts equity in a company as partial consideration for a license, the University shall take into account any legal restrictions and the wishes of each innovator or inventor involved.
- (6) The University shall pay the innovator's share of equity consistent with the formula established under this policy for the distribution of royalties, to the extent that the innovator has fulfilled obligations under this policy
- (7) The University shall distribute cash upon conversion of equity to cash, in accordance with the royalty distribution formula under this policy
- (8) If a creator, inventor, breeder or innovator holds equity in a UoN spin out company such will not share in UoN receipts.

#### **Article 19: Royalty Distribution**

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

a) Innovators/inventors/creators/breeders	40%
b) College, School/Department/Institute/Laboratory/Library	25%
c) University of Nairobi Intellectual property management office including other contributors	30%
d) Endowment fund for Intellectual Property Management Office	5%

**Total** **100%**

- (7) In the event of multiple innovators, inventors, creators or breeders, they will agree among themselves and execute an appropriate agreement thereon.

- (8) The inventor's, innovator's, creator's and breeder's royalty rights shall not cease upon the termination of employment with the University and/or death of the inventor, innovator, author and breeder and in the event of the death of the innovator his or her share shall inure to the benefit his or her estate.
- (9) The University shall create and maintain an Endowment Fund into which shall be paid royalties accruing from exploitation of intellectual property.

**Article 20: Use of the Trade Mark, Name and Logo of the University**

- (1) No person, institution or organization shall use the name, trade mark, service mark or logo of the University or any combination thereof for any application or process whatsoever except as provided for under the provisions of the UoN Act and this Policy.
- (2) All copyrightable material from UoN shall bear the copyright notification '©' UoN' and year of compilation/publication.

**Article 21: Dispute Resolution**

- (1) Any party aggrieved by the decision of the Intellectual Property Committee shall have a right of appeal to the Vice Chancellor upon which the Vice Chancellor shall appoint a five member independent panel comprising of persons knowledgeable with the discipline,
- (2) The panel shall elect its Chair and Secretary.
- (3) The panel shall hear both parties to the dispute and any other person they deem fit.
- (4) In the event of any party being dissatisfied with the decision of the panel he or she shall have a right of appeal to the full University Council through the Council Chairman. The Council shall set up an independent panel to hear the appeal and report back to Council with its recommendations within one month from the date of appeal and Council shall determine and communicate its decision on the matter within one month from the date of receipt of the panel report.

**Article 22: Recognition**

The University shall recognize and provide an appropriate mode for recognition in perpetuity of the Individual or class of inventors, innovators, creators, breeders and any and all the contributors based on their levels of contribution.

**Article 23: Traditional Knowledge, Genetic Resources, Cultural Expressions and Socio-cultural innovations**

1. The University recognizes the role of traditional knowledge, genetic resources and cultural expressions/socio-cultural innovations in the development of inventions (including new animal breeds), innovations, new plant varieties, new strains of microorganisms, bio-molecules including DNA markers, tissues, clones, cells, bio-chemicals and creative works.
2. The University shall, 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 whether or not the intellectual property is commercialized by University.
3. The University shall develop mechanisms for collection, characterization and conservation of plant, animal, human and microbial resources, and cultural expressions of known or potential benefit to the people of Kenya.



**Article 24: Intellectual Property Donations**

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

- (1) The donor makes the offer to the University through the IPMO as if the intellectual property has been created within the University;
- (2) The donor discusses provisions and makes an agreement (including distribution of income provisions) with the University;
- (3) The donor warrants that he or she owns all rights, titles and interests to the intellectual property, and that to the best of his or her knowledge, the intellectual property does not infringe upon any existing intellectual property;
- (4) The University may accept charitable donations of intellectual property from public or private organizations; and
- (5) Upon the transfer of title in the intellectual property to the UoN, the intellectual property will be managed in accordance with this Policy.
- (6) The University of Nairobi may donate Intellectual Property upon a written request or on its own motion.

**Article 25: Consultancy**

- (1) Consultancy undertaken by staff as agents acting for or on behalf of the University shall be the subject of agreements or contracts with clients, and the income shall be shared in accordance with UoN guidelines.
- (2) In case of a private consultancy, the University shall take professional advice to ensure:
  - a) Correct notification to clients that consultancy undertaken privately by the University's staff does not involve the University and,
  - b) Appropriate contract terms and insurance cover for the University consultancy contracts.

**Article 26: Ownership of Equipment and Infrastructure**

Any equipment/infrastructure bought/constructed under a company funded research contract or obtained through collaboration research shall remain the property of the University on completion of the contract or as agreed by the parties.

**Article 27: Professional, Product Liability and Indemnity**

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