

# **UNIVERSITY OF IBADAN INTELLECTUAL PROPERTY POLICY**

**(as approved by the  
Committee of Provost, Deans and  
Directors on 19 July 2012)**

**(AWAITING CONSIDERATION BY  
SENATE)**



**2012**

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## **EXECUTIVE SUMMARY**

The primary function of the University of Ibadan is to provide education, conduct research, public service (consultancy and services) and disseminate and create knowledge. In carrying out this function, intellectual property assets, which have both academic and economic values, are created. There is therefore a need for a defined system of management of these assets to the advantage of the university and the society at large.

### **BRIEF BACKGROUND FOR THE INITIATIVE**

The U I Intellectual Property (IP) Policy is born out of the need to have guidelines in place for proper IP management. In order to strengthen commercialization, there is a need to develop and establish a protective mechanism for IP asset falling within the U I framework. In this era of globalization, digital society and knowledge-based economy, the need for IP policy cannot be overemphasized. The policy on one hand is an instrument for protecting IP; on the other hand, it facilitates optimal utilization of intellectual knowledge generated from institutions within and outside the country. It therefore sets forth the rules to harmonize the conflicting interests of stakeholders relating to ownership of IP, distribution of income, marketing, commercialization and licensing of patents and intellectual property developed by University of Ibadan academic staff, administrative and support staff and students.

### **GOALS AND OBJECTIVES**

The goals of the policy are to protect the intellectual property generated at the U I, to promote the progress of science and technology; and to ensure that discoveries, inventions and creations generated by staff and students are utilized in ways most likely to benefit the public. Its objective is to provide a framework, within which the University of Ibadan IP is developed, managed, and effectively harnessed for the benefit of the University, the inventor/author and the general public.

## CONTENT OF THE POLICY

The policy is divided into 10 parts.

- a. Part 1 deals with the goals and objectives of the policy. Its main goal is to protect IP assets generated at the University of Ibadan. Its objective is to provide a framework within which the UI IP assets are developed, managed, and effectively harnessed for the benefit of the University, the inventor/author and the general public. The policy makes provisions for coverage of the policy – persons and IP assets, ownership of IP assets, rights and obligations of the UI and the inventor/ author, disclosure of intellectual property, commercialization of IP, distribution of income.
- b. Persons and IP Assets covered are discussed in part 2 of the policy. The provisions of the policy are applicable to staff, both academic and non academic, undergraduate, postgraduate and visiting students, former employees, postdoctoral researchers, independent contractors and consultants, Non-employees who use University funds, facilities or other resources, or participate in University-administered research, including visiting lecturers, industrial personnel and fellows, regardless of obligations to other companies or institutions.  
IP assets covered include, Patents, trade and service marks, utility models (such as indigenous innovations), U I logo, industrial designs, copyright in literary and artistic works, geographical indications, new plant varieties, trade secrets (confidential data, information or compilation used in research and business), technology based material in online courses and distance learning, research proposals, traditional knowledge and any other intellectual property-related assets that may be created by persons covered under the policy.
- c. The third part makes provisions relating to ownership of IP assets produced by those to whom the policy is applicable whether within the UI, using UI funds and facilities, involves third party interest or produced outside the UI by an individual to whom the policy applies.
- d. Part 4 deals with disclosure and reporting of research. This part imposes a duty to disclose on the author/ inventor/researcher. The process of disclosure is discussed; issues relating to confidentiality and conflict of interest are also treated. Issues relating to IP management were also raised. This is to be handled within the

institutional framework already in place, namely, the Centre for Entrepreneur and Innovation, the IPTTO and the relevant faculties, institutes or college.

- e. Part 5 – Commercialisation of IP Assets. Here the commercialization plan was laid down. Issues such as costs, assignment of rights, distribution of income and other incidental matters were discussed.
- f. Part 6 deals with Copyright in IP assets. Copyright was treated separately because the law relating to ownership is different. Ownership lies with the author who is expected to grant an exclusive royalty-free license to the UI.
- g. Part 7 makes provisions in respect of software and inventions. These are jointly owned by the inventor and the UI except there is a third party interest involved or it was made in a field unrelated to the inventor's normal scope of duty. Also raised in this section was the issue of Internet and distance learning projects. Ownership of IP assets will be subject to separate agreement between the staff concerned and the UI.
- h. Part 8 deals with the use of UI name and identity. These can only be used with the written consent of the UI and such consent having not been withdrawn.
- i. The 9<sup>th</sup> part of the policy makes provision for an IP Board. The board will consist of 7 members to be appointed by the VC following nominations by the appropriate Dean or Director. Each member is to serve for an initial period of one to three years (as designated by the VC) and a subsequent term of three years. The functions of the IP Board are also laid down in this section.
- j. In part 10, provisions are made for dispute resolution.
- k. Lastly, Part 11 states that the Policy be reviewed every 3 years.

Definitions of terms used in the policy are contained in the Annexure to the policy. A brief introduction to IPs and IP rights; a list of the legislations referred to in the policy were also given in the annexure.





# **UNIVERSITY OF IBADAN INTELLECTUAL PROPERTY POLICY**

## **PREAMBLE**

The University of Ibadan (U I), founded in 1948 is the premier university in Nigeria. It consists of 13 faculties, 4 institutes, 10 centers, the College of Medicine and a postgraduate school. The vision of the U I, is to be a world-class institution for academic excellence geared towards meeting societal needs. One of its missions is to transform into a research-driven institution by expanding the frontiers of knowledge through provision of excellent conditions for learning and research.

The primary function of the University is to provide education, conduct research, public service (consultancy and services) and disseminate and create knowledge. In carrying out this function, intellectual property assets, which have both academic and economic values, are created. There is therefore a need for a defined system of management of these assets to the advantage of the university and the society at large.

## **BRIEF BACKGROUND FOR THE INITIATIVE**

The U I IP Policy is borne out of the need to have guidelines in place for proper IP management. In order to strengthen commercialization, there is a need to develop and establish a protective mechanism for IP asset falling within the U I framework. In this era of globalization, digital society and knowledge-based economy, the need for IP policy cannot be overemphasized. The policy on one hand is an instrument for protecting IP, on the other hand, it facilitates optimal utilization of intellectual knowledge generated from institutions within and outside the country.

## 1. GOALS AND OBJECTIVES OF THE POLICY

An important function of the University of Ibadan is carrying out original research at the cutting-edge and to use the outcomes of its diverse research activities to meet societal needs. To this end, certain prerequisites must be met. These include; funding, remuneration, infrastructure.

Experience of universities and Research & Development (R&D) institutions in developed countries and also some countries in Asia and Latin America has shown that significant income can be generated through consultancy, research and development from sources such as:

- royalties and fees from licensed IPRs based on staff innovations and inventions;
- consultancy services;
- research contracts;
- sponsored research;
- University owned companies and joint ventures.

The University of Ibadan as one of the foremost universities in Africa is therefore seeking an active involvement in consultancy and R&D activities as a means of disseminating knowledge and technology transfer and more importantly generating income for teaching support and income for staff.

For the purposes of this Policy, Intellectual Property shall mean all patents, copyright, databases rights, topography rights, rights in designs, trademarks, rights to prevent passing off, plant breeders' rights, knowhow and all other intellectual or industrial property rights, in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world.

This Policy therefore sets forth the rules to harmonize the conflicting interests of stakeholders relating to ownership of IP, distribution of income, marketing, commercialization and

licensing of patents and intellectual property developed by University of Ibadan academic staff, administrative and support staff and students.

### 1.1. GOALS

The basic goal of this Policy is therefore set forth:

- to protect the intellectual property generated at the U I;
- to promote the progress of science and technology;
- to ensure that discoveries, inventions and creations generated by staff and students are utilized in ways most likely to benefit the public.

### 1.2. OBJECTIVES OF THE POLICY

The objective of this Policy is to provide a framework, within which the University of Ibadan IP is developed, managed, and effectively harnessed for the benefit of the University, the inventor/author and the general public. These objectives are stated below:

- to protect the traditional rights of scholars
- to control the products of their scholarly work;
- to ensure that the commercial results, financial or other, are distributed in a fair and equitable manner that recognizes the contributions of the inventors and the institution as well those of as any other stakeholders;
- to ensure that both intellectual property and other products of research are made available to the public through an efficient and timely process of technology transfer;
- to establish standards for determining the rights and obligations of the University of Ibadan, the creators of intellectual property and their sponsors, with respect to inventions, discoveries and works created at the institution;
- to encourage and assist in the provision of mutually beneficial rewards for the university and its staff who transfer intellectual property to the public through commercialization and licensing;
- to ensure compliance with applicable laws and regulations and enable the university to secure sponsored research funding at all levels of research;

- to create an environment that encourages and expedites the dissemination of discoveries, creations and new knowledge generated by researchers for the benefit of the public.
- To ensure that its name and insignias are properly used, especially that the use of its name or insignia to imply association with the institution is accurate and appropriate and that it receives a fair share of any commercial fruits from the use of its names.

### 1.3. SCOPE OF THE POLICY

In order to harmonize the various conflicting interests of stakeholders and achieve broad-based objectives, this intellectual property policy addresses, amongst others, the following issues:

- coverage of intellectual property policy;
- ownership of intellectual property;
- rights and obligations of UI and the inventor/author;
- disclosure of intellectual property;
- Commercialization of IP;
- distribution of income;

## 2. COVERAGE OF THE INTELLECTUAL PROPERTY POLICY

### 2.1. COVERAGE OF THE POLICY

#### 2.1.1. Persons Covered

a) *Academic staff*: Includes all teaching and research staff, and visiting scholars employed by the university permanently or temporarily.

b) *Any person employed by the University who does not fit into any other category*: Where a student is also an employee, he/she is considered staff with regard to intellectual property as a result of his/her employment and as a student with regard to other intellectual property created as a result of his/her student work. A full time non-academic employee who is also taking one or more courses is considered to be staff for the purpose of intellectual property.

c) *Undergraduate, postgraduate and visiting students*: Any full-time or part time graduate and post graduate student regardless of whether he/she receives financial aid from the University or from external sources. It is the responsibility of students who are also employees of outside organizations to resolve any conflicts between this policy and provisions of agreements with their employers prior to committing themselves to any undertaking at the University that may involve the development or creation of intellectual property.

d) *Post-doctoral researchers*: For the purpose of this policy although post-doctoral associates may be hired as staff, they are considered to be in the same category as post-doctoral fellows/trainees because their work is considered to be part of their training.

e) *Former employees, students, staff and all others listed in paragraphs (a-d) above*: In the absence of any written agreement to the contrary, intellectual property generated while employed by the University shall be subject to ongoing rights and obligations as though the person is still employed by the University.

f) *Independent contractors or consultants*: Persons hired by the University on a limited basis, for a limited purpose as specified in a contract, are considered staff with respect to any intellectual property arising from any use of University resources. The rights and obligations of the parties shall be determined by contract between the University and the contractor.

g) *Non-employees* who use University funds, facilities or other resources, or participate in University-administered research, including visiting faculty, industrial personnel and fellows, regardless of obligations to other companies or institutions.

### 2.1.2 **IP Assets and Rights Covered**

Subject to the definition ascribed under this Policy and the laws governing the same in Nigeria, and without limiting the generality of the term IP, this policy envisages the following intellectual property assets: Patents, trade and service marks, utility models (such as indigenous innovations), U I logo, industrial designs, copyright in literary and artistic works, geographical indications, new plant varieties, trade secrets (confidential data, information or compilation used in research and business), technology based material in online courses and distance learning, research proposals, traditional knowledge and any other intellectual property-related assets that may be created by persons covered under this policy.

### 2.2. **U I Rights in Incidental Inventions**

In recognition of the contribution the U I community as a whole makes in support of innovation at UI, inventor(s) shall grant to the UI an irrevocable, perpetual, non-

exclusive, royalty free world-wide **right to use** “incidental inventions” in the UI’s non-profit educational and research activities.

### 3. OWNERSHIP OF INTELLECTUAL PROPERTY ASSETS

#### 3.1. Ownership by the University of Ibadan\*

(a) The University of Ibadan shall own any intellectual property that is made, designed, discovered or created by its members of staff, research students, visiting scholars in the course of their employment and responsibilities and/or makes significant use of University of Ibadan’s resources in connection with its development.

(i) A researcher may not be considered to have made significant use of the university resources if:

- the inventor receives advance written approval of the proposed use from the institution;
- academic or other R&D uses of facilities and equipment have priority;
- the inventor compensates the university for the fair market value of the facilities and equipment (as actually charged by the institution to outside users);
- the inventor is not using the institution’s committed time because the activities are permitted “Individual Consulting and Outside Activities” (it is advisable to have a policy on Individual Consulting and Outside Activities);
- the inventor does not use any institution-provided funds or institution administered funds in connection with the activity.

(ii) Insignificant use of university resources includes use of library facilities, facilities available to the general public and occasional use of office equipment and office staff.

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\* The UI shall own the Intellectual Property Assets developed by persons covered by this Policy, subject to third party rights. Be that as it may, the rights accruing to these IP Assets shall reside on the researcher/author/inventor. Consequently, the Ui shall be saddled with all obligations attached to ownership rights.

(b) Where ownership/control of scholarly works resides in the University, the latter shall consult with the author(s) on plans for publication.

(c) The University of Ibadan shall ensure that its members of staff, research students and visiting scholars, are made aware of their duty to assign and actually assign to the University of Ibadan all inventions, creative or artistic works or any other intellectual property assets developed in the course of their research while at University of Ibadan or anywhere using University of Ibadan's resources.

#### **3.1.1. Ownership of Commissioned Work**

The University of Ibadan shall own any intellectual property (including exempted scholarly works) that is made, discovered or created by any person specifically hired or commissioned by the University of Ibadan for that purpose unless otherwise provided by written agreement between the person and the University of Ibadan.

#### **3.1.2. Ownership under Externally Sponsored Research**

(a) Ownership of intellectual property in any work made, discovered or created in the course of research funded by a sponsor pursuant to a grant or research agreement shall be governed by the terms of the grant or agreement as approved by the University of Ibadan.

(b) Where the University of Ibadan is a joint inventor with one or more individuals from other institutions or business entities and income is shared between the University of Ibadan and such other entities, the intellectual property shall be jointly owned by the University of Ibadan and such other entities, and the rights to use the invention and the distribution of royalties among the University of Ibadan and such other entities shall be negotiated after confidential disclosure of the invention, but before the patent application is filed.

### **3.1.3. Ownership by Researcher/Inventor/Author**

(a) The University of Ibadan acquires ownership in all intellectual property any new and useful process of discovery, art or method, machine, manufacture, or improvement thereof made or conceived by an individual, provided such invention and/or copyrightable work was made:

- during a research or other assignment given to such researcher/inventor/author pursuant to a research project, grant or contract, or any other University of Ibadan administered program; or
- utilizing facilities, equipment, funds, or other contributions of the University of Ibadan; and provided that,
- the University of Ibadan has not entered into a research grant or contract agreement with express provisions to the contrary.

(b) Inventions and/or copyrightable works made by an inventor/author/researcher exclusively on his or her own time and without the aid of any University of Ibadan resources are the sole property of the inventor/author/researcher, and:

- Patents/copyright from such inventions/copyright works should be administered so as not to involve the name, facilities, or resources of University of Ibadan;
- Time spent in administering such patents/copyrights should conform to the University of Ibadan policy on outside activities by an employee ;
- In order to avoid a conflict of interest, inventor/author/researcher should not patent inventions and/or copyright works which are in the specific field of the investigator's work in University of Ibadan's research programs without permission from the University of Ibadan;
- Inventor/author owned intellectual property may, upon acceptance by the University of Ibadan, be assigned to the University of Ibadan at the option of the inventor/author for administration under University of Ibadan intellectual property policies, or in accordance with a specific agreement between the inventor/author and the University of Ibadan.

### **3.1.4. Ownership of intellectual property in students work**



Where students generate IP in the course of their study or research they will own that IP in their own right unless one of the following applies:

- (i) they hold a sponsored studentship under which the sponsor has a claim on the arising IP; or
- (ii) the student has made significant use of U I's resources ( U I's administered fund, funded time, facilities or equipment) in connection with the research;
- (iii) they participate in a research programme wherein the arising IP is committed to the sponsor of the research; or
- (iv) they generate IP which builds upon existing IP generated by, or is jointly invented with U I employees or associates; or
- (v) they are, or have the status of, U I employee (in which case they are treated by U I and the law as employees).

3.1.5. **Theses and dissertations:** the texts of all student theses and dissertations, and works derived from such works, are considered 'exempted scholarly works'. Consequently, the students will own copyright in the scholarly work subject to a royalty-free license to the institution to reproduce and publish.

In **3.1.4. (iii) and (iv)** above, students will be required to assign that IP to U I, and in respect of revenue generated by that IP, the student will be treated on the same basis as U I employees.

3.1.6. **Research Conducted at Outside Organisations:** Where a staff visits other educational or other organizations with a view to discussing research ideas or conducts research elsewhere during research or sabbatical leave, he/she must ensure that appropriate agreements regarding intellectual property rights are concluded prior to the visit. Unless otherwise agreed, such research shall be deemed to fall within the normal course of the staff member's employment, and any resulting intellectual property would vest in the U I.

### **3.2 RIGHTS AND OBLIGATIONS OF INVENTOR/AUTHOR/RESEACHER AND THE UNIVERSITY OF IBADAN**

Intellectual property management involves continuous interaction and exchange of information which sometimes may not be easy to manage without having clear rights and obligations of the parties concerned. These rights and obligations are discussed hereunder.

#### **3.2. The Inventor/Author/Researcher**

##### **3.2.1. Rights of the Inventor/Author.**

(a) In case the IP asset relates to a patent, the rights of the researcher shall be governed by sections 2(2) and 6 of the Patents Act Cap P2 LFN 2004 which is the right to be named as an inventor, the right to receive royalties/economic benefits arising from the exercise of any or all rights stipulated by the Act.

(b) In cases where the intellectual property asset relates to copyright or neighbouring right, the rights of the author shall be as provided under sections 12, 13 and 26 of the Copyright Act Cap C28 LFN 2004.

(c) With regards trade marks the provisions of sections 5 and 6 of the Trade Marks Act Cap T13 LFN 2004 which deals with rights given by registration.

##### **3.2.2. Obligations of the Inventor/Author**

The inventor/author shall have the following obligations:

- a. To report and disclose research activities as soon as possible to the dean of his/her faculty, Departmental head, supervisor or unit administrator who shall subsequently relay the report to the IPTTO;
- b. To offer effective cooperation with the IPTTO in evaluation of the research to assess its potential;
- c. To disclose all potential conflicts of interest to the U I,
- d. To abide by all commitments made in a license, sponsored research and other agreements, laws relating to privately funded research
- e. To arrange for the safe keeping of all records and documents necessary for the protection of the U I's interest in the intellectual property;
- f. To provide such assistance as may be necessary throughout the technology transfer process, to protect and affect the transfer of the intellectual property;

- g. To take precautionary measures against public disclosure of the said research results until the evaluation process is completed and a decision whether to pursue IP protection or not has been made.

### 3.2.3. **Obligations of the U I**

The U I shall have the following obligations:

- a. To exercise due diligence in handling all matters pertaining to the disclosure of research activities;
- b. To raise awareness among staff on IP issues;
- c. To provide support, where necessary, in terms of monetary consideration and infrastructural facilities in order to foster effective administration of IP;
- d. To obtain legal protection for the IP for the interests of the institution and creator of the IP against unauthorized use by a third party or;
- e. To advertise and commercialize the IP assets as deemed appropriate for the interest of the U I, researcher and the general public;
- f. To assist the inventor/author where necessary, in finding an external partner or financial support;
- g. To endeavour to negotiate and manage IP-related agreements to the best advantage of the author/inventor and the institution;
- h. To ensure that such agreements are consistent with IP policy and respective guidelines.

### 3.3. **Surrender of Intellectual Property to an Individual**

- (a) Where the U I does not express an interest in seeking patent protection, it will on request assign to the inventors the rights in the invention, subject only to sponsorship restrictions. In this case, the U I will notify the inventor in writing of the assignment of rights.
- (b) In all cases in where the invention is assigned to the inventor, the university will retain the right to a non-exclusive, nontransferable, irrevocable, royalty-free, worldwide license on the invention for research and educational purposes. Where it is in the interest of U I to it may retain ownership of the invention, but give a sole license to the inventor(s).

### 3.4. **Awareness Campaign of Intellectual Property**

Intellectual property is a relatively new concept in most higher learning institutions of developing countries such as U I. It is also an evolving concept whose principles and rules are continuously changing and adapting to new trends and developments in science, arts and technology. It therefore requires a defined approach geared at a massive awareness raising campaign and continuous training to keep abreast with new developments. To this end U I shall:

i. Ensure that the awareness campaign on intellectual property issues is set and is carried out at all levels through seminars, workshops and brief lectures by IP experts or any other available means as circumstances dictate.

ii. Encourage each faculty/institute/college to incorporate intellectual property as one of the compulsory/elective courses in their respective curriculum.

iii. Encourage and support the Intellectual Property/Technology Transfer Office (IPTTO) to publish flyers and brochures which addresses issues of IP for circulation to all departments and members of the U I.

## 4. **DISCLOSURE AND REPORTING OF RESEARCH**

Effective management of IP at the U I requires mutual and supportive relationship between U I and the persons covered under this policy.

### 4.1.1. **Duty to Disclose IP Asset(s)**

Persons covered under this policy shall disclose to the IPTTO any information available to them in course of carrying out a research which could potentially lead to intellectual property asset(s).

Therefore, U I shall:

1. Ensure that a system is put into place that will oblige persons covered under this policy to disclose any information with IP potentials which is acquired, developed or accessed while dealing or using U I resources;

2. Ensure, through the IPTTO, that IP Disclosure Forms are designed and are available for inventors and researchers.

3. Ensure that the information disclosed is kept confidential;

4. Ensure that those who access or deal with the information disclosed sign a separate undertaking which bind them not to disclose the said information to third parties unless authorised in writing by the IPTTO in consultation with the researcher.

#### **4.1.2. Procedure for Disclosure and Reporting of Research Activities with IP Potentials/ Value**

The disclosure of research activities shall follow the following steps:

- a) The researcher shall have the primary duty to report and make full disclosure of any research activity which he/she is carrying out using University resources to the Dean of the faculty or head of relevant department to which he/she is responsible, using the prescribed form (Disclosure of Information) designed by IPTTO;
- b) Upon receipt of the disclosure, the dean/head shall fill the research/invention form and communicate the same to the Intellectual Property Manager at the IPTTO to ascertain its intellectual property potential and the IP Manager shall make an entry in the Research notebook/register and open a file for the said researcher;
- c) Pursuant to provision (b) above, there shall be continuous communication between the IPTTO and the researcher/faculty/department on the progress of the research and on matters relating to steps which have been taken by the IPTTO to protect the research results.
- d) Covered persons shall notify the IPTTO of each actual invention and incidental invention using the Report of Invention form (ROI).

#### **4.1.3. Confidentiality**

- (a) It is a condition of employment or affiliation that individuals must familiarize themselves with and preserve the confidentiality of sensitive information which is made available to them during the course of their work.
- (b) All confidential information received in the Disclosure of Information form, Report of Invention form or under Research Contracts must be treated in confidence and can only be disclosed to those individuals who need access to the information as stated in the agreement or contract, provided they too observe the confidentiality obligations.
- (c) Individuals are advised that any non-confidential disclosures of IP generated during the course of U I activities may prejudice future programs of research, and/or commercial opportunities, such as a non-confidential disclosure of information pertaining to a patent application made prior to that application being submitted.
- (d) Individuals are requested to notify the IPTTO, as soon as possible, if they are concerned about inadvertent disclosure.
- (e) The provisions of this section shall apply to all university external examiners.

#### 4.2. **Conflict of Interest**

Conflicts of interest or commitment will be addressed generally in accordance with the terms of the University Policy on Conflicts of Interest in force from time to time.

#### 4.3. **Evaluation Period by the IPTTO**

- a) Unless there are justifiable circumstances to the contrary, the IP Manager shall communicate to the researcher as soon as possible but not later than ninety (90) days of receipt of the research/invention disclosure form whether or not will pursue rights under the said research.
- b) If the U I opts to pursue intellectual property protection, the IPTTO shall take timely measures to seek protection so that the researcher could make timely publication in professional or scholarly media of the research findings associated with the research and/or the timely completion of a student's thesis or dissertation.
- c) The U I, in consultation with the inventor/author, may elect to utilize the services of patent attorneys in organizing and deciding on the most appropriate way to harnessing the IP asset under the consideration.

#### 4.4. **Management of Intellectual Property**

The effectiveness of this policy largely hinges on the ability and willingness of the U I to set up IP structures within its current institutional framework.

##### **(a) The Intellectual Property and Technology Transfer Office**

The U I shall therefore ensure:

- i. That the Intellectual Property/Technology Transfer Office (IPTTO), established under the Centre for Entrepreneurship and Innovation (CEI), is equipped to coordinate, promote, advocate, audit, disseminate knowledge and protect IP assets at the University.
- ii. That the IPTTO is accorded sufficient resource support both financially, materially and in terms of human capacity.
- iii. That all faculties, departments, institutes and the College of Medicine address and handle matters pertaining to IP and integrate their activities and programs with the IPTTO.

##### **(b) The Centre for Entrepreneurship and Innovation**

- i. the CEI shall designate the position of the IP Manager who shall head the IPTTO;

- ii. set the terms and conditions of service and the requisite qualifications for the holder of such office;
- iii. set- up or institutionalize, at the faculties, institutes and College of Medicine additional IP mandate which shall liaise with the IPTTO in all matters pertaining to IP;
- iv. ensure that deliberations and recommendations of the IPTTO are tabled before the IP Board for further actions.

#### 4.5. **Research Collaboration**

A holistic, cross-disciplinary and multidisciplinary approach to research is a trend in most of the modern research. Similarly, U I researchers are drawn into carrying out research with partners from different faculties, colleges or institutions. Such research collaboration arrangement may take the form of individual collaboration or institutional collaboration. Determination of IP rights becomes crucial in dealing with research collaboration. Consequently, the U I shall:

- i. Through the IPTTO, ensure that the terms under which the contract is entered take into account the intellectual property interests of U I, sponsor and researcher;
- ii. Coordinate management of sponsored research activities across the various academic units involved with a view to guarding against any contravention of the provisions of this policy;
- iii. Where the U I/researchers decide to share part of the project cost, taking account of the relative benefits to the institution and to the sponsor, the details of such a sharing arrangement shall be explicitly stated and shall be mutually agreed to by all parties concerned;
- iv. Ensure that both parties reserve the right to delay publication of research results for a specified period not exceeding 6-12 months;
- v. Allow the sponsor, under certain exceptional circumstances, to negotiate a longer delay period with U I, but only on submission of compelling reason(s) and with the agreement of the research staff involved;
- vi. Under no circumstance allow the sponsor the right to delay publication for an indefinite period of time.

### 5. **COMMERCIALIZATION OF INTELLECTUAL PROPERTY**

U I is a public institution, it is therefore duty-bound to serve the public to the greatest extent possible through, among other things, research activities that give solutions to socio-economic development challenges confronting the Nigerian society as a whole. Results or outcomes coming out of the research done by U I will only make worthwhile contribution to society in Nigeria and elsewhere if concrete measures are in place to translate research results into

applied knowledge. One of the widely used strategies to translate research results into applied knowledge is through commercialization of intellectual property.

Consequent from the above, the U I shall:

- a. Encourage transfer of intellectual property assets to the interested parties in a manner that preserves the interest of UI, the transferee, the researcher and the general public.
- b. Encourage and initiate setting-up of incubators, start-up and spin out companies with a view to making the intellectual property available to the public on fair and reasonable terms through licensing of IP.
- c. Ensure that the technologies and other IP assets developed at the U I are effectively marketed/advertised to potential users in the industry and other sectors and set-up fair terms of licensing while giving special preference to local manufacturers.
- d. Establish a system of quality control and monitoring mechanism to the licensee in order to make sure that such intellectual properties are used for the benefit of the majority Nigerians as opposed to further private interests.
- e. Ensure that commercial interests/benefits do not outweigh the public interests/good, thereby defeating the pursuit of research for curiosity purposes by providing support to those who pursue research for curiosity.
- f. Ensure that the capacity of IPTTO is enhanced through engagement of personnel who have legal and marketing expertise in intellectual property licensing;
- g. Ensure that all licensing or assignment agreement for transfer ownership of U I's intellectual property shall:
  - i. be subject to this Policy;
  - ii. include the terms necessary to fulfill the requirements and further this Policy;
  - iii. provide that the contracting entity bears the costs of obtaining protection for intellectual property, and
  - iv. money proceeds generated out of share interests be distributed according to agreed revenue distribution rules.
- h. Under certain circumstances, consider negotiating for equity shares in lieu of or in addition to monetary consideration under an agreement between the U I and an external entity relating to applicable intellectual property.



### **5.1. Stakeholders in the Process of Commercialization of Innovations, Inventions and Research Findings**

There are several stakeholders in the process of commercialization of innovations, inventions and research findings. These include:

- The University of Ibadan
- Researchers and inventors;
- Inventors' research groups and departments;
- Research assistants;
- Students;
- Postgraduate and postdoctoral fellows;
- Guest researchers;
- Sponsors/Collaborators;
- Technology transfer Unit;
- National Office for Technology Acquisition and Promotion;
- The Public.

### **5.2. Commercialization Plan**

(i) Within ninety (90) days of receipt of the Report of Invention (ROI) or a longer delay if accepted by all parties, IPTTO and the Inventor will prepare a mutually acceptable commercialization plan outlining the options to be considered for the development of the Invention or the Software. Such plan shall be prepared in the spirit of this policy and will address matters such as the need for further evaluation, additional research, intellectual property protection, seed funding, potential sources of financing, as well as delays. The plan shall outline the responsibilities of IPTTO and the Inventor in the commercialization process. The commercialization plan may result in the assignment to the Inventor of the rights of the University in the Invention or Software. Should IPTTO and the Inventor fail to agree on a mutually acceptable commercialization plan, the matter shall, at the Inventor's choice be resolved through the dispute resolution and appeals processes, or be resolved through the assignment of the Invention or Software to the Inventor.

### **5.3. Allocation of Costs**

Unless otherwise stated, all costs associated with the application for intellectual property protection and prosecution thereof for IP assets for which the U I is seeking to protect and to commercialize shall be borne by the U I.

### **5.4. Assignment of Rights**

Except in cases where the rights of the University are assigned to the Inventor(s), all rights to Inventions or Software that an Inventor wishes to develop for commercial purposes shall be assigned by the Inventor(s) to the University within thirty (30) days of completion of the commercialization plan, at the latest. Except for moral rights where they exist, which shall remain with the Inventor, the University shall then become the sole owner of all rights to the Invention or Software.

### **5.5. Distribution of Income Derived from the Commercialization of IP Assets**

The U I acknowledges the contribution of researchers and therefore accepts the need to financially reward the researchers as a means of encouraging/motivating further creativeness at the University. To achieve this, Income from the commercialization of an IP asset owned by UI shall be allocated as follows:

#### **5.5.1. ALLOCATION OF GROSS INCOME**

- a. 12% of the gross income shall be allocated to UI to cover expenses for services rendered and any indirect expenses incurred.
- b. All direct costs relating to processing commercialization and protection of IP assets shall be deducted from the gross income.

The balance of the income shall constitute the Net Income.

#### **5.5.2. ALLOCATION OF NET INCOME**

- a. 50% shall be allocated to the Inventor(s)/Author(s) in their personal capacity. This income shall be taxable.
- b. 25% shall be allocated pro rata to the environment(s) of the Inventor(s)/Author(s):
  - 8% shall be allocated to the University Research account of the inventor(s)/Author(s) for use in his/her research work;
  - 7% shall be allocated to the Department/Centre of the Inventor(s)/Author(s)
  - 10% shall be allocated to the Faculty/College/Institute where the Inventor(s)/Author(s) reside, to be administered by the Dean/Provost/Director.

These funds shall be applied for research only and shall not be allocated to any individual for personal gains.

- c. 25% shall be allocated to the Central account of the UI.
- d. In cases where there are co-inventors or co-authors each shall share the net income in proportion to their contribution as mutually agreed upon them from their share from the net income. If the joint inventors and co-authors fail to reach an agreement, then the income shall be distributed among them in a proportion based on contribution as determined by the IP Board.

### 5.5.3. SHARED OWNERSHIP

- a. That U I and the inventor/author shall have the option for a single upfront payment or running royalties from the licensing of IP;
- b. The proportional distribution system of income between inventors will also be employed for distribution between their academic/administrative units.

Provided that,

The above shall not be applicable to agreements made prior to the commencement of this policy. Where there is an existing agreement in respect of allocation of income, the terms contain therein shall be applicable until the expiration/termination of the contract.

5.5.3.Royalty Sharing: Where royalties are generated by U I as a consequence of commercializing a *Supported Invention*, royalties will be shared with the *Inventor(s)* as described below. The University shall have the right to modify the Royalty Sharing section of this policy.

- (a) Distributable Royalties: U I employs a single uniform structure for distribution of royalties to *Inventors, Authors* and *Contributors*. U I will distribute *Net Royalties* received by from the licensing or other distribution of its intellectual property or technology covered by this policy, as and to the extent provided in this policy. *Net Royalties* are calculated based on gross receipts consisting of cash and securities or other equity shares in an enterprise received by U I in return for use of its intellectual property, but do not include other non-cash benefits, sponsored research funding, or other financial benefits such as gifts.
- (b) Net Royalties equal those gross receipts that U I is entitled to retain, less:

- (i) U I's out-of-pocket costs and fees associated with securing, maintaining and enforcing intellectual property protection such as patenting and litigation expenses;
- (ii) out-of-pocket costs incurred by U I in the licensing of the intellectual property, and
- (iii) any out-of-pocket expenses in making, shipping or otherwise distributing biological or other materials (including, without limitation, *Unpatented Materials*).

## **5.6. Decision Not to Commercialize**

- (i) Following the disclosure of a potential IP asset to the University, the IPTTO shall decide whether it will pursue commercialization of such and shall inform the Researcher(s)/Inventor(s) of its decision within ninety (90) days of receipt of the Report of Invention.
- (ii) Should the Researcher(s)/Inventor(s) disagree with that decision, he or she may, in writing, refer the matter to the IP Board, who will accept or reject the IPTTO's recommendation and promptly communicate its decision to the Researcher(s)/Inventor(s).

### **5.6.1. Decision to Stop Commercial Development**

- (i) Once commercial development of an IP asset has been initiated, IPTTO may at some point in time decide to cease efforts toward commercial development.
- (ii) Where the Inventor disagree with that decision, he or she may, in writing, refer the matter to the IP Board, who will accept or reject the IPTTO's recommendation and promptly communicate its decision to the Researcher(s)/Inventor(s).

### 5.6.2. Appeal

Notwithstanding any other provisions in this policy, a decision made by the IP Board not to initiate commercial development or to stop on-going commercial development under shall be final and shall not be subject to Appeal.

### 5.7. Transfer of Rights

(i) The University shall assign its share of the rights to the IP assets to the Researcher(s)/Inventor(s) in the following cases:

a) Where the University declines to pursue commercialization, or decides to cease its efforts to commercialize the IP assets, under this policy.

b) The University has been unsuccessful in commercializing the IP assets within a reasonable period of time;

c) The University and the Researcher(s)/Inventor(s) agree that the Inventor(s) can successfully commercialize the IP assets independently of the University.

d) The Researcher(s)/Inventor(s) wish to develop the IP asset for the purpose of licensing or distributing it without profit, or for the purpose of putting it in the public domain so that it is easily accessible, and his or her plan to develop such asset is in accordance with guidelines developed and from time to time updated by the IP Board for that purpose;

e) the IPTTO and the Researcher(s)/Inventor(s) have failed to agree on a mutually acceptable commercialization plan, and the Researcher(s)/Inventor(s) has chosen not to take advantage of the dispute resolution mechanisms.

(ii) Written approval of the Chairman IP Board shall be obtained by the Researcher(s)/Inventor(s) before he/she enters into any commercialization agreement, including, but without being limited to, a license agreement, a shareholder agreement and an option agreement, that places him or her in a situation of potential conflict of interest, in particular in the case of an agreement with an enterprise in which the Inventor has a substantial interest.

## **5.8. Documentation**

Whenever rights are assigned to the Inventor under this policy, the University shall execute any document reasonably required for the purpose of protecting the IP asset and furthering its commercial development.

## **5.9. Invention with a Private-Sector Affiliation:**

Where an IP asset is developed by an Inventor who is receiving a salary from a private-sector enterprise for the purpose of working at the University, the University will consider licensing the private sector enterprise to use such IP asset on terms that will take into account the University's relative contribution.

## **5.10. Protection of Intellectual Property**

- (a) The University may seek patent protection or copyright registration of the intellectual property underlying the IP assets as appropriate. It shall not seek protection for IP assets that in its judgment do not have significant commercial potential.
- (b) The University shall cease to pursue protection of intellectual property where successful commercial development seems unlikely.

# **6. COPYRIGHT**

## **6.1. Ownership**

In relation to any work, the Author owns copyright. The Author is entitled both to determine how the work is to be disseminated and to keep any income derived from the work.

### **6.1.1. Exceptions**

Notwithstanding the above, Copyright in a work might not belong to the Author if:

- a) the work was created as a result of research sponsored by a third party pursuant to a written agreement with the University, wherein copyright is determined by specific terms of the agreement. Unless the terms of the agreement give ownership of copyright to the third party, copyright is owned by the University until all rights, such as a license or an option, granted to the third party under the agreement have been exercised or have become extinguished, at which point, the Authors becomes the sole owner of copyright;
- b) the work was created pursuant to a formal agreement with the University, wherein copyright is determined by specific terms of the agreement;
- c) the work contains Software as the primary constituent.

## **6.2. License to University**

The University is automatically granted a non-exclusive, royalty free, irrevocable, indivisible and non-transferable license to use, for its own academic purposes, all works created by an Author:

- (a) with University assistance; or
- (b) with the use of University equipment, facilities, or resources; or
- (c) in the course of academic duties or work in the course of study, research or teaching.
  - (ii). This license shall neither confer to the University commercial rights, nor the right to reproduce published works.

## **6.3. Dissemination of Works**

The University shall not disseminate works in a way that would allow persons who are not members of the University community to have electronic access to them. For the purpose of this section, the University's "own academic purposes" refers to research carried on at the University, by lecturers, students and staff of the University, and teaching by lecturers of the University to students registered at the University.

## **7. SOFTWARE AND INVENTIONS**

### **7.1. Ownership of Rights to Inventions**

Subject to the points mentioned below, the Inventor and the University jointly own the rights to Inventions created by an Inventor:

- (a) with University assistance; or
- (b) with the use of University equipment, facilities, or resources; or
- (c) in the course of academic duties or work in the course of study, research, or teaching.

### **7.2. Ownership of Rights to Software**

Subject to the provisions of this policy, the Inventor and the University jointly own the rights to Software created by an Inventor:

- (a) with University assistance; or
- (b) with the use of University equipment, facilities, or resources; or
- (c) in the course of academic duties or work in the course of study, research, or teaching; and in the case of Learnware, in the fields in which the Inventor has been teaching and doing research at any time during the six years preceding the date of creation of such Learnware.

### **7.3. Exception to Joint Ownership**

#### **7.3.1. Administrative and Support Staff:**

Notwithstanding the above, where the Invention or Software was created by an Inventor who is a member of the administrative and support staff of the University, as a result of activities covered by his or her Contract of Employment, the rights to such Invention or Software are owned by the University.



### **7.3.2. Specific Exceptions Applicable to Inventions:**

Notwithstanding the above and subject to the provisions in respect of the provision on joint ownership, the following categories of Inventions are not jointly owned by the University and the Inventor, and may be owned by the Inventor, the University, a third party, or jointly by two or more parties, as the case may be:

- a) where developed in the course of research sponsored by a third party pursuant to a written agreement with the University, wherein ownership rights are determined by specific terms of the agreement. Unless the terms of the agreement give ownership of the Invention to the third party, such Invention is owned by the University until all rights, such as a license or an option, granted to the third party under the agreement have been exercised or have become extinguished, at which point the Invention becomes jointly owned by the University and the Inventor;
- b) where developed in the course of a consulting agreement between the Inventor and a third party;
- c) where made by an Inventor in a domain outside his/her Field of Academic Research, and where only Incidental Use has been made of University facilities and resources. The rights are then owned by the Inventor;
- d) where made by an Inventor who is a member of administrative and support staff of the University, as a result of activities not covered by his/her Contract of Employment, and where only Incidental Use has been made of University facilities and resources. The rights are then owned by the Inventor;
- e) where the University assigned its rights to the Inventor in accordance with this policy. The rights are then owned by the Inventor;
- f) where the Inventor assigned his/her rights to the University in accordance with section of this policy. The rights are then owned by the University.

### **7.3.3. Specific Exceptions Applicable to Software:**

Notwithstanding other provisions of this policy, the following categories of Software are not jointly owned by the University and the Inventor, and may be owned by the Inventor, the University, a third party, or jointly by two or more parties, as the case may be:

- a) where it was developed in the course of research sponsored by a third party pursuant to written agreement with the University, wherein ownership rights are determined by specific terms of the agreement. Unless the terms of the agreement give ownership of the Software to the third party, such Software is owned by the University until all rights, such as a license or an option, granted to the third party under the agreement have been exercised or have become extinguished, at which point the Software becomes jointly owned by the University and the Inventor;
- b) where it was developed in the course of a consulting agreement between the Inventor and a third party;
- c) where it is limited to the electronic form of a work, or where it is ancillary to a work. The rights are then owned by the Inventor;
- d) works of art, including works of art expressed in multimedia format. The rights are then owned by the Inventor;
- e) in the case of Software which does not constitute Learnware, where it is developed by an inventor in a domain outside his/ her field of academic research, and where only incidental use has been made of University facilities and resources. The rights are then owned by the inventor;
- f) where it constitutes Learnware developed by an inventor in a domain outside his/her field of academic research and teaching, where only incidental use has been made of University facilities and resources. The rights are then owned by the Inventor;
- g) where developed by an Inventor who is a member of administrative and support staff of the University, as a result of activities not covered by his or her contract of employment, and where only incidental use has been made of University facilities and resources. The rights are then owned by the Inventor;
- h) where the University has assigned its rights to the Inventor in accordance with this policy. The rights are then owned by the inventor;
- i) where the inventor assigned his or her rights to the University in accordance with this policy. The rights are then owned by the University;
- j) where it constitutes learnware developed as part of a web based course specifically funded by the University, the rights are then owned or apportioned in accordance with a written agreement between the University and the Inventor.

7.4. **Use of Invention or Software:** In cases where the University and the Inventor have divergent ethical concerns in relation to the use of the Invention or Software by third parties, the matter will be resolved in accordance with the mechanisms and procedures outlined in this policy.

#### 7.5. **INTERNET DISTANCE EDUCATION PROJECTS**

Given the increasing presence of digital technologies, and the growing likelihood that distance education projects via the internet may bring about significant changes in the practices and fortunes of the academy, it appears prudent to establish additional provisions particularly applicable to such projects:

- (a) U I may appropriately consider any internet distance education project that offers the promise of securing and advancing U I's place among the leading universities of the world. To that end, U I may participate in the development of such projects with members of its own community; or it may enter into relationships with persons outside the established academic community. In either case, it may enter into such projects on terms and conditions which are fair and reasonable in the circumstances, whether or not they are customary in the academy, so long as they do not adversely affect the fundamental principles of governance, tenure and academic freedom otherwise recognized in conventional settings at U I from time to time.

An individual member of the U I Faculty, who is employed on a permanent full time or equivalent basis, and who intends to enter into any non- U I internet distance education project in which he or she proposes to teach a course regularly or recurrently, shall first disclose the proposed undertaking in advance to his or her Dean or Departmental Head (or their designates), who will examine the proposed undertaking in order to insure that no conflict arises.

## **8. UNIVERSITY NAME AND IDENTITY**

8.1.1. Intellectual property rights arising in University's name, logos and other impedimenta of identity belong to U I. Such rights may be licensed from time to time upon suitable terms and conditions approved by the Senate, taking into full and appropriate account the research, teaching and collegial missions of the University.

8.1.2. Members of the U I Community may identify themselves as such from time to time, with such indicia of their status as is usual and customary in the academy; but any use of U I's name, logos or impedimenta of identity shall be reasonably calculated to avoid any confusing, misleading or false impression of particular sponsorship or endorsement by U I, and when necessary shall include specific disclaimers to that end.

## **9. UNIVERSITY INTELLECTUAL PROPERTY BOARD**

- i. The University shall set-up an IP Board to consist of seven members appointed by the Vice Chancellor, no fewer than four of whom shall be members of the teaching staff nominated by the deans;
- ii. Members of the Board shall serve initial terms of one to three years (as designated by the VC); upon the expiration of each such initial term, successor members of the Board shall be appointed thereafter for a term of three years. A member may be re-appointed from time to time upon re-nomination;
- iii. This policy shall be interpreted and administered by the University Intellectual Property Board;

- iv. The Board shall publish such additional interpretations, regulations and requirements, and take such other administrative actions, as are necessary to the suitable discharge of its duties and the adequate functioning of this Policy, including specific provisions for the further appointment of its members; but in every case the Board's interpretations, regulations and requirements, as well as its administrative actions, shall be consistent with the provisions expressed in this Policy.

## 10. DISPUTE RESOLUTION

- 10.1. All disputes relating to IP shall be resolved amicably in the spirit of supporting and furthering the interest of the public;
- 10.2. Dispute resolution with regard to intellectual property shall be handled by a panel formed by the Deputy VC (Academic);
- 10.3. The Deputy VC (Academic) shall chair the committee and other members shall include; a member of the IP Board, the dean/head of department/ institute where the dispute is originating, the author/inventor, and a neutral member who is knowledgeable in IP legal issues appointed by the VC from any department at the University, or outside should the circumstances so compel;
- 10.4. Where the dispute involves a research student, the *ad hoc* committee shall include a representative of the Student's Union to be appointed by the VC;
- 10.5. Where the dispute involves a non-academic member of staff, the *ad hoc* committee shall include non- academic staff member appointed by the VC.
- 10.6. Where a party is not satisfied with the decision of the Committee, she/he may appeal to the Senate of U I and if he/she is still not satisfied she/he has a further right of appeal to the Council whose decision shall be final and binding upon all the parties.

## 11. AMENDMENT

Where in the course of administering the provisions of this Policy, it is discovered that there are errors in the said document, the University Intellectual Property Board shall have powers to amend such errors.

Provided that such amendment shall, if it goes to the root of the Policy, be subject to approval by the Senate.

## 12. REVIEW

1. This policy shall be reviewed every three (3) years in the light of legal, policy and institutional developments in IP at the international and national levels;
2. The evaluation team shall include members from different IP frontiers, including but not limited to, government agencies, academia, and law enforcement organs.

# ANNEXURES

## **ANNEXURE A**

### INTRODUCTORY BACKGROUND TO INTELLECTUAL PROPERTY AND INTELLECTUAL PROPERTY RIGHTS

#### 1.1 Intellectual Property (IP) and Intellectual Property Rights

#### 1.2 Categories of Intellectual Property

##### 1.2.1 Patents

##### 1.2.2 Copyright

##### 1.2.3 Industrial designs

##### 1.2.4 Trademarks

##### 1.2.5 Plant and Animal Breeders Rights

#### 1.3 IP Regulation in Nigeria

##### 1.3.1. National Perspective

##### 1.3.2. International Perspective

### 1.1 INTELLECTUAL PROPERTY (IP) AND IP RIGHTS

Intellectual property refers to certain creations of the mind, namely, inventions, literary and artistic works, symbols, names, images, and designs used in commerce. These are intangibles, consequently, the property subsists in the legal right of control by the owner (s). Intellectual property rights are a bundle of exclusive rights over creations of the mind, both artistic and commercial.

### 1.2. CATEGORIES OF INTELLECTUAL PROPERTY

There are two categories of Intellectual properties.

The first category of Intellectual Property is covered by copyright laws, which protect creative works, such as books, movies, music, paintings, photographs, and software. This gives the copyright holder exclusive right to control reproduction or adaptation of such works for a certain period of time.

Second category is collectively known as "**industrial properties**", as they are typically created and used for industrial or commercial purposes –(a) *patent* may be granted for a new, useful, and non-obvious invention and gives the patent holder a right to prevent others from practicing the invention without a license from the inventor for a certain period of time. (b) *trademark* is a distinctive sign which is used to prevent confusion among products in the marketplace.

Others are:

**Geographical indications** which are signs used on goods that have a specific geographical origin and possess qualities or a reputation that are due to that place of origin, e.g. Champagne, Ofada rice etc.

**Industrial design rights** confer the rights of exclusivity to the visual designs of objects which are generally not popular utilitarian. It safeguards the appearance, style, design of the industrial object such as spare parts, textiles, furniture. Trade secret is an item of non-public information concerning the commercial practices or proprietary knowledge of a business.

**Trade secrets** are items of non-public information concerning the commercial practices or proprietary knowledge of a business.

### 1.2.1. PATENT

A Patent is a grant made by the relevant government authorities within a country to protect new inventions or improvements thereon that are considered to have improved the way(s) the earlier inventions were made or used. "Invention" means a solution to a specific problem in the field of technology. An invention may relate to a product or a process. The protection conferred by the patent is limited in time (generally 20 years) – see **Section 7(1) Patent and Designs Act (P&DA), Cap P2 LFN 2004**.

. An invention must meet several criteria if it is to be eligible for patent protection. These include, most significantly, that the invention must consist of patentable subject matter (see Section 1, P&DA), the invention must be industrially applicable (useful), it must be new (novel), it must exhibit a sufficient "inventive step" (be non-obvious), and the disclosure of the invention in the patent application must meet certain standards.



#### **1.2.1.1. PATENTABLE SUBJECT MATTER – Section 1 P&DA**

In order to be eligible for patent protection, an invention must fall within the scope of patentable subject matter. Patentable subject matter is established by statute, and is usually defined in terms of the exceptions to patentability, the general rule being that patent protection shall be available for inventions in all fields of technology. Subject matter which may be excluded from patentability includes the following:

(a) plant or animal varieties, or essentially biological processes for the production of plants or animals (other than microbiological processes and their products); or

(b) inventions the publication or exploitation of which would be contrary to public order or morality (it being understood for the purposes of this paragraph that the exploitation of an invention is not contrary to public order or morality merely because its exploitation is prohibited by law). – See **Section 1 (4) P&DA**.

#### **1.2.1.2. INDUSTRIAL APPLICABILITY (UTILITY) – Section 1(2)(c) P&DA**

In order for an invention to be patentable, must be of a kind which can be applied for practical purposes and not purely theoretical. If the invention is intended to be a product or part of a product, it should be possible to make that product. And if the invention is intended to be a process or part of a process, it should be possible to carry that process out or “use” it (in general terms) in practice.

#### **1.2.1.3. NOVELTY- Section 1 (1)(a); 2(a).**

Novelty is a fundamental requirement in any examination as to substance and is an undisputed condition of patentability. An invention is new if it is not anticipated by the prior art. “Prior art” is, in general, all the knowledge that existed prior to the relevant filing or priority date of a patent application, whether it existed by way of written or oral disclosure.

#### **1.2.1.4. INVENTIVE STEP (NON-OBVIOUSNESS) – Section 1(1)(a)**

In relation to the requirement of inventive step (also referred to as “non-obviousness”), the question as to whether or not the invention “would have been obvious to a person having ordinary skill in the art” is perhaps the most difficult of the standards to determine in the examination as to substance.

### **1.2.2. COPYRIGHT – COPYRIGHT ACT Cap C28 LFN 2004**

Copyright is a legal term describing rights given to creators for their literary and artistic works. The kinds of work covered by copyright include literary works, such as novels, poems, plays, reference works, newspapers, computer programs, databases, films, musical compositions and choreography, artistic works such as paintings, drawings, photographs and sculpture, architectural works, advertisements, maps and technical drawings. The creators of original works protected by copyright, and their heirs, have certain basic rights. They have the exclusive right to use or authorize others to use the work on agreed terms. They can prohibit or authorize:

- its reproduction in various forms, including printed publication or sound recording;
- its public performance, as in the case of a play or musical work;
- its recording, for example on compact disc, cassette, or videotape; its broadcasting, whether by radio, cable or satellite;
- its translation into other languages, or
- its adaptation, such as that of a novel into a screenplay.

Copyright protection also includes moral rights, which include the right to claim authorship of a work, and the right to oppose changes to it that could harm the creator's reputation. The creator – or the owner of the copyright in a work - can enforce rights administratively and in the courts, by inspection of premises for evidence of production or possession of illegally made “pirated” goods related to protect works. The owner may obtain court orders to stop such activities, as well as seek damages for loss of financial rewards and recognition.

### **1.2.3. Industrial Designs – Patent and Designs Act (PDA), Cap P2 LFN 2004:**

Industrial designs protect the aesthetic aspects (shape, texture, pattern, colour) of an object, rather than the technical features. Registration of an industrial design shall be effective in the first instance for five years from the date of the application for registration and on payment of the prescribed fee may be renewed for two further consecutive periods of five years – See Section 20(1) PDA, 2004.

#### **1.2.4. Trademarks – Trademarks Act (TA), Cap T13 LFN 2004:**

Trademarks provide exclusive rights to use distinctive signs, such as symbols, colours, letters, shapes or names to identify the producer of a product, and protect its associated reputation. In order to be eligible for protection a mark must be distinctive of the proprietor so as to identify the proprietor's goods or services. The main purpose of a trademark is to prevent customers from being misled or deceived. The period of protection is seven years, but a trademark can be renewed for another period of 14 years – see Section 23 TA, 2004. In addition many countries provide protection against unfair competition, sometimes by way of preventing misrepresentations as to trade origin regardless of registration of the trademark.

#### **1.2.5. Plant and Animal Breeders Rights - National Crop Varieties and Livestock Breeds (Registration, Etc) Act, Cap N27 LFN 2004.**

Plant and animal breeders' rights are granted to breeders of new, distinct, uniform and stable plant varieties.

### **1.3. IP REGULATION IN NIGERIA**

#### **1.3.1. National Perspective on Intellectual Property**

Nigeria, following the ratification of international IP conventions has enacted the following legislative instruments; the Copyright Act, Cap C28 Laws of the Federation of Nigeria (LFN), 2004; Patents and Designs Act, Cap P2 LFN 2004; Trademarks Act, Cap T13 LFN 2004; National Crop Varieties and Livestock Breeds (Registration, Etc) Act, Cap N27 LFN 2004.

#### **1.3.2. International Perspective on Intellectual Policy**

Intellectual property is governed at the international level by two organizations, namely; the World Intellectual Property Organisation (WIPO) and the World Trade Organisation (WTO). Nigeria is a signatory to some of the international instruments governing IP. These include Berne Convention for the Protection of Literary and Artistic Works (1886), Paris Convention for the Protection of Industrial Property (1883), Patent Co-operation Treaty, Patent Law Treaty, Rome Convention, WIPO Copyright Treaty, WIPO Performances and Phonograms Treaty and the Universal Declaration of Human Rights. However Nigeria is not yet a

member of the African Regional Intellectual Property Organisation (ARIPO) and has not ratified the International Convention for the Protection of New Varieties of Plants (UPOV Convention) and the Madrid System for the International Registration of Marks. These conventions protect the right known as the “Plant Breeder’s Right”.

# ANNEXURE B

## DEFINITIONS

For the purposes of this policy, the following definitions apply:

### 1.1. GENERAL DEFINITIONS

**“Assignment”** is a total transfer of rights in IP assets(s).

**“Author”** means an employee of the University, whether academic or administrative and support staff, or another physical person associated with the University, who has written or created a Work.

**“Commissioned work”** is a work prepared by an employee within the scope of his/her employment or a work specially ordered or commissioned in certain specified circumstances.

**“Contract of Employment”** means a contract by which a person undertakes to do work for remuneration, according to the instructions and under the direction or control of the University.

**“Confidentiality Agreement”** may be a separate agreement between disclosing and recipient parties, or may be a term in a Research Contract or License Agreement. When it applies to information disclosed by a company to an employee of the university, the recipient employee may agree to be personally bound not to release the company’s confidential information unless expressly permitted by the company. When it applies to information disclosed by the employee of the university or the company, it is usually meant to prevent the company from using the information without permission and to protect the patentability of any invention, or the trade value of other technology, disclosed by the member of the university to the company.

**“Copyright”** – is a legal term describing rights given to creators for their literary and artistic works. The kinds of work covered by copyright include literary works, such as novels, poems, plays, reference works, newspapers, computer programs, databases,

films, musical compositions and choreography, artistic works such as paintings, drawings, photographs and sculpture, architectural works, advertisements, maps and technical drawings. The creators of original works protected by copyright, and their heirs, have certain basic rights. They have the exclusive right to use or authorize others to use the work on agreed terms. For Literary, musical or artistic works other than photographs copyright subsists for Seventy years after the end of the year in which the author dies; in the case of a government or a body corporate, seventy years after the end of the year in which the work was first published; Cinematograph films and photographs, fifty years after the end of the year in which the work was first published; Sound recordings, fifty years after the end of the year in which the recording was first published; Broadcasts , fifty years after the end of the year in which the broadcast first took place. (See First Schedule to the Copyright Act, Cap C28 LFN 2004).

For employers, the copyright on a “work for hire” extends for 70 years from the date of publication. (See First Schedule to the Copyright Act, Cap C28 LFN 2004).

“**Course materials**” means all materials produced in the course of or for use in teaching in any form (including digital, print, video and visual) and all Intellectual Property in such materials and will include lectures, lecture notes and materials, syllabi, study guides, assessment materials, images, multi-media presentations, web content and course software;

“**Creation**” shall mean any Invention, Computer Software, copyright or Unpatented Material as to which *Net Royalties* are to be distributed in accordance with this policy.

“**Crop variety and livestock breed**” means a kind of crop or livestock which because it possesses noticeable and stable characteristics becomes distinguishable from other kinds of the same crop or livestock. (See Section 10 National Crop Varieties and Livestock Breeds (Registration, Etc) Act, Cap N27 LFN 2004)

“**Days**” means calendar days, unless used in conjunction with a qualifying word indicating a different meaning.

“**Derivative work**” is work based on another copyrighted work and is portrayed in a different style/format/media, such that it has acquired the minimum threshold required for copyright protection;

“**Electronic Research Material**” or “**ERM**” means the electronic representation, in whole or in part, of an Invention or Software, and includes but is not limited to, digitized blue prints, programming source codes and executable programs.

“**Field of Academic Research**” means the particular areas of research in relation to which an Inventor has published works, or has received funding, or has made inventions or has developed Software, in the course of his or her academic duties at any time during the **six years** preceding the date of disclosure of an Invention or Software.

“**Field of Academic Research and Teaching**” means the fields in relation to which an Inventor has been teaching, and the particular areas of research in relation to which he or she has published Works, or has received funding or has made Inventions, or has developed Software or Learnware, in the course of his or her academic duties at any time during the six years preceding the date of creation of Learnware.

“**Founder**” means an Inventor who accepts a significant role in the initial development phase of a spin-off company based wholly or in part on his or her Invention or Software.

“**Incidental Use**” means a use that plays a minor role in, and is not essential to, the development of an Invention or Software.

“**Industrial design**” is the ornamental or aesthetic appearance of an article. The design may consist of three-dimensional features of the article, such as its shape or surface, or of two-dimensional features such as patterns, lines or color. Industrial designs are embodied in a wide variety of products of industry and handicraft, from technical and medical instruments to watches, jewelry and other luxury items, from household ware and electrical appliances to vehicles and architectural structures and from textile designs to leisure goods.

“**Industrial property**” is a subset of intellectual property referring to those types of IP that have an industrial application. Specifically it refers to the following types of intellectual property, patent, trademarks, industrial designs, trade secret;

**“Infringement”** means an unauthorized exercise of any of the exclusive rights solely granted to the owner of a respective intellectual property;

**“Integrated circuit”** refers to a small electronic device made out of a semiconductor material for uses among others microprocessors, audio and video equipment and automobiles;

**“Intellectual property”** means all patents, copyright, database rights, topography rights, rights in designs, trademarks, rights to prevent passing off, plant breeders rights, knowhow and all other intellectual or industrial property rights, in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world;

**“Intellectual property assets”** are those parts of the intangible assets that relate specifically to knowledge, such as patents, trademark, copyrights, trade secrets, know-how, best practices;

**“IPTTO”** means Intellectual Property/Technology Transfer Office

**“Invention disclosure”** is an act of providing information by inventor(s), on the invention, circumstances leading to the invention and facts concerning subsequent activities;

**“Inventor”** means any employee of the University, whether academic or administrative and support staff, who is defined as such under patent legislation. In this policy, the term “Inventor” shall also be used in reference to development of Software. The word “Inventor” shall also mean a physical person, such as a visiting professor or a post-doc, temporarily working or doing research at the University.

**“Invention”** in the context of this Policy, means an idea of an inventor, which permits in practice the solution to a specific problem in the field of technology;

**“Know-How”** means a skill or ingenuity that is available or known only to a limited number of persons, that is related to a licensed Invention of Software, and that is made known or available under license to the licensee of that Invention or Software.



“**Lead Inventor**” means that member of a group of co-Inventors designated by the group to act as its contact person with the University.

“**Learnware**” means Software designed for teaching purposes that provides for interaction with the user, or makes use of a Multimedia Product, or both. It includes technology-enabled learning products in electronic format.

“**License**” is a permission to use an IP right within a defined time, context, market line or territory. It may be exclusive or non-exclusive;

“**Material Transfer Agreement**”

The transfer of proprietary tangible property, often-biological material, is covered by a contract called a material transfer agreement. Such contracts may cover materials coming to the university from industrial and other sources, or the reverse.

“**Moral Rights**” means non-commercial rights related to the right of an Inventor to claim authorship and to protect the integrity of his or her work.

“**Multimedia Product**” means a product where software allows for interaction between the user and various media technologies such as the reproduction of sound and image.

“**Net Income**” means all consideration, including, without limiting the generality of the foregoing, royalties, cash, equity, and options, but excluding any and all consideration granted to a Founder, received by the Inventor(s) and the University from the sale, licensing, or other disposition of an Invention or Software, less the costs specifically related to the protection, licensing, distribution, or commercial development of the Invention or Software. Considerations include equity and options taken in lieu of royalties.

“**Net Total Income**” means the sum of Net Income and of any and all consideration granted to Founder.

“**Net Royalties**” means all royalties, including, without limiting the generality of the foregoing, any one time payment, milestone payment or pass-through royalty, received by the Inventor(s) and the University from the sale, licensing, or other disposition of an Invention or Software, less the costs specifically related to the protection, licensing, distribution, or commercial development of the Invention or Software.

“**Patent**” A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. The patent is a title of ownership.

“**Public domain**” means an Intellectual Property asset that is no longer under protection whose use does not require permission of the holder;

“**Royalties**” are payments made for the use of Intellectual Property assets;

“**Scholarly Materials**” includes any materials created by University employees in the course of their employment such as:

- hard copy textbooks (unless such textbooks were developed using University administered-funds paid specifically to support textbook development)
- academic journal articles
- conference papers and related presentations
- notes created only for the employee’s own personal use
- theses and dissertations
- popular non-fiction, novels and poems
- works of fine art

but excluding any such materials or part of them which forms part of Teaching Materials or University Materials.

“**Software**” means any set of instructions that is expressed, fixed, embodied or stored in any manner and that can be used directly or indirectly in a computer in order to bring about a specific result.

“**Spin out company**” means a company established or (if it is to all intents and purposes) made active with a view to commercializing IP originating at the University of Ibadan (whether on its own or with other IP). These companies are sometimes called **startup companies**.

“**Supported Invention**” means an invention conceived or reduced to practice by a person covered by this Policy (whether or together with others) if conceived or reduced to practice in whole or in part: (i) under or subject to an agreement between UI and an third party; or (ii) with the use of direct or indirect financial support from UI, including support or funding from any outside source awarded to or administered

by UI; or (iii) with the use (other than incidental use) of space, facilities, materials or other sources provided by or through the UI.

**“Tangible Research Materials”** include biological materials, engineering drawings, computer software, integrated circuit chips, computer databases, prototype devices, circuit diagrams, equipment and associated research data.

**“Teaching Materials”** means any materials created by University employees in the course of their employment that are primarily intended (whether by the University or by some third party) to be used or accessed by students at any level, for the purposes of any course of study which those students are following, including:

- course guides, handouts, on-line materials (including annotated scores and manuscripts);
- presentation materials (including lecture notes, slides, animations, graphics, interactive software and other audio-visual materials);
- virtual learning environments;
- instruction manuals;
- artifacts (including models and apparatus for practical demonstration and experimental work); and
- Assessment and examination questions.

Materials can be in any format including hard copy and electronic;

**“Trade mark”** refers a distinctive sign that identifies certain goods or services as those produced or provided by a specific person or enterprise;

**“Trade secret”** consists of confidential data, information or compilations used in research, business, commerce or industry;

**“Traditional knowledge”** refers to knowledge systems encompassing a wide variety of areas held by traditional groups or communities or to knowledge acquired in a non-systematic way which have significance and relevance not only to its holders but also to the rest of the humanities;

**“UI”** means the University of Ibadan;

**“University resources”** means resources provided by the University to creators which, for the avoidance of doubt, includes facilities, funds, services, equipment, paid leave,

office computers hardware, software, secretarial services, funding for research, staff time and support staff in excess of those normally used or available to staff for producing course materials. They do not include salary, insurance or pension schemes contribution paid for the creator.

**“Unpatented Materials (including biological materials)”** means cell lines, organisms, protein, plasmids, DNA, RNA, chemical compounds, transgenic animals and other materials useful for research or for commercial purposes for which patent applications are not filed or, do not issue, where such materials are developed by persons covered by this policy.

**“Works”** means literary, scientific, technical, dramatic, musical, artistic, architectural work material and any original production within the purview of the Copyright Act, with the exception of Software.

## 1.2. Definitions of Relevant Agreements

**“Participation Agreement”** confirms acceptance of the policy by employees, students and guest researchers and assigns to the university all rights in any intellectual property of which the university may assert ownership. The university confirms that a valid participation agreement is on file before any of its resources are made available to individuals.

**“Service Agreement”**: This is a contract between the university and a company in which the former agrees to perform certain tasks, such as evaluation, field testing or clinical trials, using protocols either directly specified by the company or developed by the university, to meet very specific criteria and data requirements set by the company.

**“Material Transfer Agreement”**: The transfer of proprietary tangible property, often-biological material, is covered by a contract called a material transfer agreement. Such contracts may cover materials coming to the university from industrial and other sources, or the reverse. Negotiated terms of such agreements may cover the use of the original materials, progeny materials produced by self-replication of the original sample, and modifications of the original materials. Points of contention in negotiations include publication rights, ownership, apportionment of liability arising from hazardous materials and ownership of new inventions arising from the use of the materials.

**“Confidentiality Agreement”**: May be a separate agreement between disclosing and recipient parties, or may be a term in a Research Contract or License Agreement. When it applies to information disclosed by a company to an employee of the university, the recipient employee may agree to be personally bound not to release the company’s confidential information unless expressly permitted by the company. When it applies to information disclosed by an employee of UI to a company, it is usually meant to prevent the company from using the information without permission and to protect the patentability of any invention, or the trade value of other technology, disclosed by the member of the university to the company.

Every department or research division should be responsible for ensuring that the participation agreement, service agreement, material transfer agreement and confidentiality agreement (where and whichever applicable) are signed. In all cases, UI should put in place machinery to ensure that the above is done.

**“Tangible Property”**: This is anything having a physical embodiment (e.g. cell lines, software, devices, etc.) irrespective of whether it is patentable or copyrightable.

**“Contract”**: A legally binding mutual agreement between two or more parties in which an exchange of value (consideration) occurs, and which ties each party to certain duties covering that exchange. Those signing such an agreement must be authorized to bind the entity that they represent.

## **ANNEXURE C**

### **ACTS REFERRED TO IN THIS POLICY**

Copyright Act, Cap C28 LFN 2004

National Crop Varieties and Livestock Breeds (Registration, Etc) Act, Cap N27  
LFN 2004.

Patents and Designs Act, Cap P2 LFN 2004

Trademarks Act, Cap T13, LFN 2004