



COMPETITION AUTHORITY OF KENYA INTELLECTUAL PROPERTY POLICY

DATE | YEAR

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FOREWORD

PREFACE

ARTICLE 1 – GENERAL PROVISIONS

1.1 Vision, Mission and Core Values

The Vision, Mission, Motto and Core Values of the Competition Authority of Kenya.

Vision

A Kenyan economy with globally efficient markets and enhanced consumer welfare for shared prosperity.

Mission

To enhance competition and consumer welfare in the Kenyan economy by regulating market structure and conduct in order to ensure efficient markets for sustainable growth and development.

Motto

Creating efficient markets for consumers.

Core Values

The guiding principles in the operations of the Authority are:

- (i) Customer focus;
- (ii) Integrity;
- (iii) Professionalism;
- (iv) Impartiality;
- (v) Teamwork;
- (vi) Innovation and Creativity.

Policy Statement on IP emanating from the Authority's activities

The Authority is committed to ensuring that Intellectual Property (IP) emanating from its activities is used to support the objects and functions as set out in the Competition Act No. 12 of 2010, and in accordance with its legal obligations, for the benefit of the Authority, the Creator(s) and, most importantly, society-at-large.

1.2 Purpose of the IP Policy

The purpose of this policy is to provide direction on IP management within the Authority as it conducts its operations to ensure compliance with intellectual property laws and related best practice.

1.3 Goals

The Authority's IP Policy aims to achieve the following goals:

- 1.1.1. Comply with the intellectual property laws.
- 1.1.2. Implement management practices to effect such compliance, and manage the business risks associated with infringement.
- 1.1.3. Promotion of responsible commercialization of IP arising from the Authority's activities that has commercial potential.
- 1.1.4. Support the innovative and creative activity built upon intellectual property (IP) protection.
- 1.1.5. Promotion of the academia industry partnership.
- 1.1.6. Promotion of research and development activities geared towards the national development agenda.
- 1.1.7. Protection of the rights of the Authority, researchers, and the public;
- 1.1.8. Mobilization of resources for IP management.
- 1.1.9. Promotion of transparency and accountability in the management of IP assets.

ARTICLE 2 - DEFINITIONS

Without prejudice to any applicable laws, in this Policy the definitions set out below shall apply:

Author means any person to whom this Policy is applicable, who individually or jointly with others makes a design, a mark or copyrightable work and who meets the criteria for authorship under the IP laws.

Background IP means any pre-existing IP created before the execution of any Research Project, or prior to a Creator becoming subject to this IP Policy, by virtue of employment or engagement with the Authority by virtue of being a staff member, young professional, intern or student.

Commercialization means any form of utilisation of IP intended to generate value, which may be in the form of a marketable product, process or service, commercial returns, or other benefit to society. **Commercialize** is similarly defined.

Conflict of Interest (COI) means any situation in which real or perceived interests of an individual Staff Member, Young Professional, Visitor or Student may run counter to the interests of the Authority or negatively affect their employment or duties.

Creator means any person to whom this Policy is applicable, who creates, conceives, authors, or otherwise makes a substantive intellectual contribution to the creation of IP and who meets the definition of 'inventor' or 'author' as generally implied in the IP laws.

Enabler means any assistants, technicians, and other individuals who have indirectly contributed to the creation of IP by Creators - and as such may not be listed themselves as an

author or inventor in terms of statutory IPRs - mainly through the execution of standard tasks or following through on specific instructions, but without whose practical contribution the Commercialization would not have been possible.

Gross IP Revenue means all revenue received by the Authority on Commercialization of Authority IP before any deductions for IP Expenses.

Authority refers to the Competition Authority of Kenya.

Authority IP means IP owned or co-owned by the Authority.

Intellectual Property (IP). All outputs of creative endeavour in any field at the Authority for which legal rights may be obtained or enforced pursuant to the law. IP may include:

- a) Literary works, including publications in respect of research results, and associated materials;
- b) other original literary, dramatic, musical or artistic works, sound recordings, films, broadcasts, and typographical arrangements, multimedia works, photographs, drawings, and other works created with the aid of the Authority's resources or facilities;
- c) Databases, tables or compilations, computer software, preparatory design material for a computer program, firmware, courseware, and related material;
- d) patentable and non-patentable technical information;
- e) Designs including layout designs (topographies) of integrated circuits;
- f) trade secrets;
- g) Know-how, information and data associated with the above; and
- h) Any other Authority - commissioned works not included above.

Intellectual Property Rights (IPRs) refers to the proprietary rights that may be granted for an invention, mark, design, copyright or other type of IP, should the statutory requirements for protection be met to result in a patent, trade mark, registered design, copyright respectively.

IP Disclosure Form refers to the form to be completed by Creators and submitted to IP Responsible Officer to document their creation.

IP Expenses refers to All expenses incurred by the Authority in the management and Commercialization of IP for which Gross IP Revenue has been received.

IP Committee refers to the body within the Institution set up in terms of Article 4.1, which is responsible for overseeing the drafting, implementation, monitoring and evolution of the Policy, and for providing strategic oversight over the Authority's IP.

Net IP Revenue refers to Gross IP Revenue less IP Expenses.

Open Educational Resources (OER) refers to the teaching, learning and research materials that reside in the Public Domain and that have been released under an open license that permits their free use or modification by others.

Policy refers to this Competition Authority of Kenya Intellectual Property Policy.

Public Disclosure refers to the communication of information, relating to IP, to external parties. Public Disclosure includes, but is not limited to, disclosure in written or oral form; communication by email; posting on a web blog; disclosure in a news report, press release or interview; publication in a journal, abstract, poster, or report; presentation at a conference; or examination of a thesis.

Public Domain refers to the freely accessible public realm in which works that are not protected by IPRs, either because the rights have been forfeited or because the rights have been expired, are thereby held by the public at large and available for all to use without permission from the Creator or owner.

Director General is the Chief Executive Officer of the Authority and the person at the Authority who has the ultimate decision-making authority on behalf of the Authority.

Research Contract refers to any type of agreement between the Authority and an external party or research sponsor, concerning Research, which could result in IP being created at the Authority. This shall include, but is not limited to, all sponsorships, donorships and collaborations with the external party or research sponsor.¹

Research Project refers to any project that forms the basis of Research undertaken by the Authority and includes projects undertaken by a Student, under the supervision of a Staff Member or a Visitor, as part of a research degree program.

Scholarly Works refers to all copyright works which are the outputs of academic Staff Members, Students or Visitors, including Research, creative and other outputs in area(s) of his/her expertise.

IP Responsible Officer refers to a member of the IP Committee designated as such by Authority.

Staff Member refers to any person who is under a contract of employment with the Authority including academic, research, technical, administrative and adjunct staff, whether full-time or part-time or on a temporary basis.

Student refers to any student registered for an approved course at a learning institution.

Substantial Use refers to Extensive [unreimbursed] use of the Authority's resources which include but are not limited to facilities, equipment, human resources or funds. Not included is routine use of libraries and/or office space.

Trade Secret refers to a confidential information not publicly available that has commercial value because of its confidential nature and which the owner has taken reasonable efforts to keep secret.

Visitor refers to any person who is neither a Staff Member nor a Student of the Authority who engages in work at the Authority, including visiting professors, adjunct and conjoint professors, teachers, researchers, scholars and volunteers; and who concludes an Appointment agreement with the Authority.

ARTICLE 3 – SCOPE OF THE POLICY

- 3.1. **Applicability.** This Policy applies to all IP generated at the Authority by Staff Members, Young Professionals, Students, Visitors and Partners. Rights and obligations under this Policy shall survive any termination of employment, enrolment or Appointment at the Authority.
- 3.2. **Background IP.** Upon commencing employment or engagement with the Authority, Staff Members, Young Professionals, Interns, Students and Visitors must declare any existing IP they wish to exclude from the application of this Policy due to creation prior to their employment, enrolment or Appointment at the Authority.
- 3.3. **Binding effect of the Policy.** This Policy constitutes an understanding that is binding on the Authority, Staff Members, Young Professionals, Interns, Students and Visitors, once adopted by the Authority, on the following grounds:
 - 3.3.1. **Staff Member, Young Professionals & Interns.** The Authority shall ensure that the employment contract or other agreement establishing any type of employment relationship between the Authority and Staff Members, Young Professionals & Interns includes a provision placing Staff Members, Young Professionals & Interns under the scope of this Policy.
 - 3.3.2. **Visitors & Students.** The Authority shall ensure that Visitors & Students sign an Appointment agreement before commencing any activity at the Authority. Such agreement shall place the Visitor & Students under the scope of this Policy and shall make reference to this Policy, a copy of which will be made available to the Visitor & Students.
 - 3.4.4. **This Policy shall be available on the Authority's [manuals].**

ARTICLE 4 – ADMINISTRATION AND IMPLEMENTATION

4.1. IP Committee

- 4.1.1 **Purpose.** The Authority shall establish an IP Committee to oversee the implementation and evolution of this Policy.

- 4.1.2. **Composition.** The IP Committee shall consist of [5-9 members], chaired by the Manager, legal services designated as the IP Responsible Officer responsible for IP related matters in the Authority.
- 4.1.3. **Responsibilities.** The IP Committee is the ultimate decision making body in the determination of an IP management and commercialization strategy for a particular IP. The Committee shall prepare and submit a work plan and an attendant budget for consideration by the Authority. Additionally, the IP Committee responsibilities shall include, but are not limited to:
- a. Outreach/awareness to Creators and other stakeholders;
 - b. Relationship management with Creators and other stakeholders;
 - c. IP management;
 - d. Technology marketing and IP contract negotiation;
 - e. IP contract management; and
 - f. IP costs and revenue distribution.
- 4.1.4. **Meetings.** The IP Committee shall meet atleast quarterly and also be available for *ad hoc* meetings.

ARTICLE 5 - OWNERSHIP OF IP AND RIGHTS OF USE

5.1. IP Created by Staff Members

5.1.1. **Authority ownership.** The Authority owns all IP created by a Staff Member:

- a. In the course and scope of his/her employment; or
- b. Making Substantial Use of the Authority's resources.

5.1.2. **Staff Member ownership.** Staff Members will own/co-own the IP they have created when such IP:

- a. Is outside the course and scope of their employment and without Substantial Use² of the Authority 's resources; or
- b. Vests in Scholarly Works (see Article 5.5); or
- c. Other IPRs, as required by law, or for which the Authority cannot or does not wish to claim ownership and the Authority has communicated such in writing.

5.2. IP Created by Students

5.2.1. **Student ownership.** IP created by a Student in the course of study at the Authority (including theses, dissertations and other Scholarly Works) will be owned by the Student.

² Use will be deemed not Substantial if minimal overhead costs have been incurred by the Authority (such as the use of office space, the library, facilities or traditional desktop computers); only a minimal amount of time has been spent using significant Authority facilities; or the IP has been written or developed in the personal (unpaid) time of the Creator.

- 5.2.2. **Theses or dissertations.** The Student must submit his/her final thesis or dissertation to the Authority repository.
- 5.2.3 **Institution ownership.** IP emanating from a Student’s Research Project shall be owned by the Institution in the following circumstances:
- a. If the IP is created by making Substantial Use of the Authority’s resources (excluding supervision) and there is no re-imbursement agreement concluded between the Authority and the Student; or
 - b. If the Research carried out by the Student forms part of the Authority’s Research Projects.
- 5.2.4. **IP emanating from Research Contracts.**³ The terms of the Research Contract shall regulate the ownership of IP created by a Student in the course of such Research Contract, as set out in Article 8.
- 5.2.5. **Authority ownership responsibilities.**⁴ If the Authority is the owner of IP created by a Student, in terms of Article 5.2.3 or Article 5.2.4, and hence created in terms of a Research Project or Research Contract, respectively, the Authority shall:
- a. Provide the Student with an explanation of the reasons for the assignment of IP rights to the Authority;
 - b. Advise the Student to seek independent advice regarding the assignment;
 - c. obtain a deed of assignment from the Student for all IPRs emanating from the Student’s Research Contract or Research Project, where relevant, in return for revenue sharing as provided for in Article 10; and
 - d. Withdraw the Student from the Research Project or Research Contract if a Student elects not to assign the relevant IPRs to the Authority.

5.3. IP Created by Visitors

- 5.3.1. **Authority ownership.** Unless otherwise agreed to in writing by the Authority and the Visitor’s home Authority prior to the tenure at the Authority, Visitors are required to assign to the Authority any IP:
- a. Created in the course and scope of their Appointment at the Authority; or
 - b. Created by making Substantial Use of the Authority’s resources.
- 5.3.2. **Authority IP.** On departure from the Authority, a Visitor must sign and submit to IP Responsible Officer an IP Disclosure form disclosing any IP created, as per Article 5.3.1, whilst at the Authority.

5.5. Special Rules for Scholarly Works

³ That is, if the Student is participating in a Research Project under a Research Contract between the Authority and an external entity or research sponsor.

⁴ See also Article 3.4.2 of this Policy.

5.5.1. **Publication.** The Authority recognises and endorses the rights of Staff Members, Young Professionals, Interns, Students and Visitors to publish their Scholarly Works, provided that any Scholarly Work which may disclose any possible Authority IP shall first be cleared by IP Committee after having an opportunity to protect such Authority IP according to Article 8.

5.5.2. **Authority repository.** Staff Members, Young Professionals, Interns, Students and Visitors should endeavour to obtain the publishers' permission to include published Scholarly Works in the Authority's repository [whether as a published edition or in pre-publication form].

5.5.3. **Licensed to the Authority.** Staff Members, Young Professionals, Interns, Students and Visitors shall grant to the Authority a non-exclusive, royalty free license to use their Scholarly Works for the Authority's administrative, promotional, research and market survey purposes.

5.6. Moral Rights

5.6.1. **Recognition.** The Authority undertakes to respect and protect the moral rights which copyright law confers on Authors of copyright works.

5.6.2. **Rights granted.** The Authority acknowledges that moral rights vest in Authors of copyright works irrespective of the copyright ownership thereof and include the:

- Right of attribution of authorship in respect of the copyright works;
- Right not to have authorship of the copyright works falsely attributed; and
- Right of integrity of authorship in respect of the copyright works.

5.6.3. **No waiver.** The Authority will not require Staff Members, Young Professionals, Interns, Students or Visitors to waive their moral rights as a condition of employment, enrolment or appointment.

5.7. Public Domain

5.7.1. **Public Domain.** Authority IP forms part of the Public Domain if Staff Members, Young Professionals, Interns, Students or Visitors made use of OERs or resources licensed through Open Source or Creative Commons Licences⁵ and the licensing conditions require release of derivatives into the Public Domain.

5.7.2. **Release into the public domain.** The Authority will release IP into the Public Domain in the following circumstances:

- Where it is deemed to be in the public interest;
- If the IP has low commercial or other development potential; or
- If deemed necessary by the Authority.

⁵ Creative Commons is a non-profit corporation dedicated to making it easier for people to share and build upon the work of others within the framework of national copyright laws. The Creative Commons suite of free copyright licenses provides a simple, standardized way to give users permission to share and use creative and scholarly work. Such licenses allow Creators to stipulate which rights they reserve, and which rights they waive for the benefit of others.

ARTICLE 6 – PUBLICATION, NON-DISCLOSURE AND TRADE SECRETS

- 6.1. **Right of publication.** The Authority encourages and supports the right of Creators to decide if and when to publish their Research results, in accordance with Article 5.5 above.
- 6.2. **Non-disclosure for IP protection.** In conjunction with the right of publication, Creators should be aware that premature Public Disclosure may result in loss of IP protection rights⁶. Therefore, they are strongly encouraged to make all reasonable efforts to identify any protectable IP as early as possible, according to Article 8, and shall consult IP Responsible Officer before making any Public Disclosure of potential Authority IP.
- 6.3. **Trade Secrets.** The Authority may designate certain confidential information as a Trade Secret, owned by the Authority. In that event, all Creators will be obligated to maintain secrecy of the Trade Secret and to follow the direction for management of the Trade Secret by IP Responsible Officer.

ARTICLE 7 – RESEARCH CONTRACTS

- 7.1. **Authority.** Staff Members, Young Professionals, Interns, Students and Visitors shall not have the right to enter into a Research Contract with external parties on behalf of the Authority unless they are authorized to do so by an official representative of the Authority.
- 7.2. **Due diligence.** Persons acting for and on behalf of the Authority shall exercise all due diligence and consult the IP Responsible Officer when negotiating and signing contracts that may affect the Authority’s IPRs.
- 7.3. **Ownership and rights to use.** Subject to any provisions in law to the contrary, ownership and rights to use shall be agreed upon with the external entity, in accordance with the Research Contract.
- 7.4. **Government rules.** Research Contracts shall comply with any applicable law and regulations, which may be applicable to research undertaken by the Authority.
- 7.5. **Approval.:** Proposed Research Contract and other legal statements concerning the Authority’s IPRs shall comply with the provisions of this Policy. Any variance from this Policy must be approved by the Director General.
- 7.6. **Basic Principles.** The IP clauses in all Research Contracts shall be governed by the following basic principles:

⁶ Patents provide protection for technical inventions but there are strict procedures and rules which must be followed. A patent cannot be granted if the invention has already been disclosed and so care must be taken to avoid premature disclosure before the patent application has been filed.

- 7.6.1. **Concluded from the outset.** A Research Contract must be executed in writing and signed by the Authority and the external party (ies)/sponsor(s) prior to the commencement of any Research Project and, as appropriate and without limitation, must contain terms relating to ownership, management, cost-sharing and use of IP arising from the Research Project as well as any Background IP.
- 7.6.2. **Background IP.** All Authority Background IP must be properly recorded and declared prior to the commencement of a Research Contract and belongs to the Authority. Similarly, Background IP of the external party (ies)/sponsor(s) belongs to such party or sponsor. Use of such Background IP requires express written permission.
- 7.6.3. **Foreground IP (IP arising from the Research Contract).** IP generated pursuant to a Research Contract by Staff Members, Young Professionals, Interns, Students or Visitors shall be governed in terms of the above provisions relating to IP generated by these parties. The general rule is that such IP shall be owned by the Authority.
- 7.6.4. **Co-owned Foreground IP.**
- a. **Terms for co-ownership.** Co-ownership of IP generated pursuant to a Research Contract shall be in accordance with the percentage of IP created by the Authority and the external party(ies)/sponsor(s).
 - b. **Costs for protecting and maintaining co-owned IP.** The costs for protecting and maintaining any IPRs shall be shared between the Authority and the external party(ies)/sponsor(s) in accordance with the percentage of IP ownership.
- 7.6.5. **Right of first refusal to the IP.** The Research Contract may include provisions giving the external party (ies)/sponsors, a right of first refusal to commercialize the IP emanating from the Research Contract, through a license or joint venture arrangement or assignment.
- 7.6.6. **Publication delay.** It is the strict policy of the Authority to allow Creators freedom to publish their work. However, the Authority acknowledges that delays in publication for the purpose of initiating statutory protection of the IP are often necessary. In this regard, the Authority will agree, on a case-by-case basis, to a contractual delay in publication by Creators. Such delay will not exceed 90 calendar days from the date IP Responsible Officer is notified of the intent to publish, unless authorized by the Director General.
- 7.6.7. **Use of the IP for Research and training.** In instances, where the Authority IP is licensed exclusively or assigned as part of the Research Contract, all efforts should be made to secure a royalty-free license for use of the IP for on-going research and training purposes.
- 7.7. **Exceptions to the Policy.** In certain cases, it may be necessary and/or beneficial to the Authority to enter into a Research Contract that contains exceptions to the

provisions of this Policy. Any such exceptions require prior, written approval from the Director General.

ARTICLE 8 – DETERMINATIONS BY THE IP RESPONSIBLE OFFICER

8.1. Responsibility to Disclose IP

8.1.1. **Recording.** Creators shall keep appropriate records of their Research in accordance with the Authority's applicable policy procedures and make reasonable efforts to ensure that only those individuals within the Authority who have a need to have access to such records for the performance of their duties are granted such access.

8.1.2. **IP Disclosure.** Where a Creator identifies potential IP resulting from their research or that of their team, they shall disclose such potential IP to IP Responsible Officer promptly by means of an IP Disclosure Form.

8.1.3. **Complete disclosure.** Creators must provide the IP Responsible Officer with complete and accurate information regarding the IP generated. The IP Responsible Officer shall acknowledge the submission of the IP Disclosure Form and indicate the reference number and date of receipt.

8.2. Creatorship and Ownership

8.2.1. **Creatorship.** Creators shall, upon request, sign the appropriate legal documents provided by the IP Responsible Officer that attest to creatorship. Where there is more than one Creator, and there is a dispute as to the contribution to creatorship, the IP Responsible Officer shall in consultation with the Creators, assist in the determination of the percentage IP creatorship, failing which it shall be assumed that there was an equal undivided contribution.

8.3. Determination as to IP Protection and Commercialization

8.3.1. **Evaluation and recommendation.** The IP Responsible Officer will analyse the information disclosed in the IP Disclosure Form and make appropriate recommendations.

8.3.2. **Decision to protect/Commercialize.** The IP Committee will decide within 30 days, whether or not it wishes to protect and/or Commercialize the IP

8.3.3. **Authority's obligation to notify Creators of its decision.** Within no more than 30 days of IP disclosure, the IP Responsible Officer will notify the Creator(s) of the decision of whether the Authority will or will not pursue IP protection and Commercialization of their IP Disclosure.

8.4. Authority Elects not to Protect /Commercialize the IP

- 8.4.1. **IP abandoned or not commercialized.** The Authority reserves the right not to protect or Commercialize IP that it owns if after consultation with the Creator(s):
- a. there is no reasonable prospect of commercial success;
 - b. it is not deemed to be in the best interest of the Authority; or
 - c. it is not deemed to be in the public interest.
- 8.4.2. **Transfer of ownership.** In the event the Authority decides not to pursue IP protection and/or commercialization, it will take steps to return said IPRs to the Creator(s), contingent on any other superseding contract rights of external party(ies)/sponsor(s).
- 8.4.3. **Written notification.** If the Authority is unable to or decides not to protect or commercialize the Authority IP, it should notify the relevant Creator(s) of its decision in writing and in a timely⁷ manner.
- 8.4.4. **No prejudice to IP protection.** The Creator(s) should receive the written notification in a timely manner that enables the relevant Creator(s) to take any formal steps to ensure the protection of IP, should they so desire.
- 8.4.5. **Assignment.** If the Creator elects to take assignment of the IP, the Authority shall ensure that a deed of assignment is executed without delay.
- 8.4.6. **Terms and conditions.** If the Authority assigns IPRs to the Creator in terms of Article 8.4.5, the assignment may be subject to one or more of the following terms and conditions that:
- a. Upon commercialization, the Authority be compensated for any expenditure it may have incurred in connection with the protection and/or commercialization of such IP; and/or
 - b. The Authority be granted a non-exclusive, royalty-free licence to use the IP for research and training purposes.

ARTICLE 9 - COMMERCIALIZATION OF IP

- 9.1. **Determination of the Commercialization Strategy.** Within 3 months of the decision to protect or Commercialise the IP under Article 8.3.2, the Authority will determine, with input from the Creator(s), the most appropriate commercialization strategy. Modes of IP Commercialization may include:
- a. License, either exclusive or non-exclusive, and variations thereof;
 - b. Assignment (sale);
 - c. Joint ventures; or
 - d. Various combinations of the above.

⁷ "Timely" means sufficient to not cause the loss of IP rights by failure to act.

- 9.2. **Assistance to IP Responsible Officer.** Creator(s) of IP which has been selected for IP protection and commercialization by the Authority must provide the IP Responsible Officer with all reasonable support in the assessment, protection (including preventing premature disclosure and execution of any documents including deeds of assignment and deeds attesting to creatorship), and commercialization of the IP.
- 9.3. **Sovereignty and Cooperation.** The Authority shall have the sole discretion regarding the commercialization of IP owned by it. Notwithstanding, the Authority will ensure that reasonable efforts are made to keep the Creators informed and, where appropriate, involved in the commercialization of the IP to which they contributed.
- 9.4. **Guiding Principles.** Regardless of the mode of IP Commercialization (Article 9.1), the transaction will be executed in a contract which:
- a. Protects the interests of the Authority, its Staff Members, Young Professionals, Interns, Students and Visitors;
 - b. Retains rights for the Authority to use the IP for educational and research purposes;
 - c. Assures that the IP will be utilized in a manner which will serve the public good;
 - d. Assures that the IP will be developed and brought to the marketplace; and
 - e. Prohibits the “shelving” or “mothballing”⁸ of the IP or its use in any illegal or unethical manner.
- 9.6. The Authority will endeavour to commercialize IP in a manner that enhances local, regional, and national economic development.
- 9.7. The Authority will endeavour to commercialize IP in a manner that encourages and fosters entrepreneurship by Staff Members, Young Professionals, Interns, Students and Visitors and others and which supports commercialization entities.

ARTICLE 10 - INCENTIVES AND DISTRIBUTION OF REVENUES

10.1 The Authority's Incentive Structure

- 10.1.1. **Purpose and scope.** The Authority, in the interest of promoting knowledge transfer, will give due consideration to incentives to creators; such incentives may be financial or non-financial.

10.2 Sharing of Revenues

⁸ Shelving or mothballing of academic IP refers to IP and invention disclosure bundles that remain unexplored, unlicensed or unused.

10.2.1. **General.** The Authority, will award Creators/Enablers in the sharing of monetary benefits that may accrue to the Authority from the commercialization of Authority IP.

10.2.2. **Sharing of revenues – Creators/Enablers**

10.2.2.1. **Standard Creator’s share.**

[Number]% of the Net IP Revenue will be allocated to the Creator(s). The Creators are entitled to an equal or *pro rata* share, based on contribution, of [number]% of the Net IP Revenue, except where there is a prior written agreement between all the Creators to the contrary.

10.2.2.2. **Standard Enabler’s share.**

The Authority may elect to set aside [number]% of the Net IP Revenue for an Enabler(s). The Enablers are entitled to an equal or *pro rata* share, based on practical contribution, of [number]% of the Net IP Revenue, except where there is a prior written agreement between all the Enablers to the contrary.

10.2.2.3. **Disputes.** In the event of a dispute or uncertainty regarding the Creators’/Enablers’ share of the Net IP Revenue from a specific IP, the issue shall be brought for resolution to the IP Committee.

10.2.2.4. **Payment.** Payment to the Creators/Enablers will be made by the Authority on a periodic basis as agreed in writing, but no later than [twelve months] after receipt of the Gross IP Revenue by the Authority.

10.2.2.5. **Taxes.** Payments made as per 10.2.2.4 are subject to personal tax and the Authority shall make any further applicable tax deductions before making payments to the Creators/ Enablers.

10.2.2.6. **Entitlement.** Creators/Enablers and their heirs will be entitled to IP revenue sharing for as long as the Authority receives Gross IP Revenues from commercialization of the Authority IP. The entitlement to a Creator’s/Enabler’s share of the Net IP Revenue shall survive any resignation/termination of employment.

10.3 Other Incentives

10.3.1. **General.** As a default position, the Authority will refrain from accepting non-monetary benefits for the Commercialization of its IP or from offering incentives other than revenue sharing, unless they are in addition to the revenue sharing as per 10.2.2.1 and 10.2.2.2, as appropriate. The Authority will thus give consideration, on a case-by-case basis, to the provision of other incentives, where monetary benefits (revenues) are not available or where the Creator/Enabler elects to choose other

benefits *in lieu of* revenue sharing, which may only be realized in due course. Other incentives will include, but are not limited to, the incentives described in Article 10.3.2. – 10.3.4.

10.3.2. **Growth, development and acknowledgement.** A framework for growth and development of the Creator/Enabler in their professional and personal capacity shall be developed including (i) recognition of IP generation and commercialization performance in appraisal procedures; and (ii) opportunities for enterprise development or capacity development.

10.3.3. **Research funds.** The Authority will actively, through its IP Responsible Officer, promote, source and/or facilitate collaborative arrangements with industry partners to secure funding for further Research for the Creators/Enablers.

ARTICLE 11 - IP PORTFOLIO MAINTENANCE

11.1. **Recording and monitoring.** The IP Responsible Officer shall maintain records of the Authority's IP in an appropriate form and in sufficient detail. It shall monitor the deadlines for the payment obligations related to the maintenance or annuity fees of protected IP, and shall, within a reasonable time, inform the person or department designated to make such payments.

11.2. **Accounting.** The Authority shall maintain income/expense accounting records on each IP so that revenue sharing allocations can be calculated.

ARTICLE 13 - CONFLICTS OF INTEREST

13.1. **Best Interests of the Authority.** Staff Members Young Professionals, Interns, Students and Visitors have a primary professional obligation to act in the best interests of the Authority.

13.3. **Agreements with External Parties.** It is the responsibility of all Staff Members and Young Professionals, Interns, Students Visitors to ensure that their agreements with external parties do not conflict with their duties and responsibilities in terms of this Policy. This provision shall apply in particular to private consultancy and other research service agreements concluded with external parties.

13.4. **Disclosure of External Activities and Financial Interests.** Staff Members Young Professionals, Interns, Students and Visitors shall promptly report all potential and existing Conflict of Interest (COI) to the IP Responsible Officer.

ARTICLE 14 - DISPUTE

- 14.1. **Violation.** Breach of the provisions of this Policy shall be dealt with under the relevant procedures of the Authority, and in accordance with the applicable legislation.
- 14.2. **Dispute Resolution.**
- 14.2.1. Any internal disputes or questions of interpretation arising under this Policy will be referred to the IP Responsible Officer for consideration and mediation by the IP Committee.

ARTICLE 15 - AMENDMENT

- 15.1. **Revision.** This Policy may be amended from time to time upon recommendation of the IP Committee. In this case:
- a. All IP disclosed on or *after* the effective date of such amendment shall be governed by the Policy as amended; and
 - b. All IP disclosed *prior* to the effective date of the amendment shall be governed by the Policy prior to such amendment, provided that the provisions of the Policy (as amended) shall apply to all IP licensed or otherwise Commercialized on or after the effective date of any such amendment regardless of when the IP is disclosed.