

DRAFT

**UNIVERSITY OF PORT HARCOURT
INTELLECTUAL PROPERTY POLICY**

1 PURPOSE

The Intellectual Property Policy of the University of Port Harcourt aims to achieve the following:

- a. Creation of an environment that encourages and expedites the dissemination of discoveries, innovations, inventions, creations and new knowledge generated by researchers for public benefit.
- b. Protection of the rights of scholars to control the products of their scholarly work.
- c. Ensuring that the financial rewards of research outcomes are distributed in a fair and equitable manner that recognizes the contributions of the inventors and the University as well as those of other stakeholders.
- d. Ensuring that both intellectual property and other products of research are made available to the public through an efficient and timely process of technology transfer.
- e. Promotion, preservation, encouragement of and assistance to scientific investigation and research.
- f. Establishment of standards for determining the rights and obligations of the University, the inventors of intellectual property and their sponsors, with respect to inventions, discoveries and works invented at the University.
- g. Encouragement of mutually beneficial rewards for the University and its staff that transfer intellectual property to the public through commercialization and licensing.

- h. Ensuring compliance with applicable laws and regulations of the Federal Republic of Nigeria.
- i. Bringing order into the process of knowledge generation and commercial exploitation.

2 UNDERLYING PRINCIPLES

This policy is based on the following principles relating the University to society, staff and students:

- a. That the mission of the University remains the generation and dissemination of knowledge.
- b. That an interface is needed for technology transfer and the University will provide mechanisms for that function.
- c. That authors are allowed to retain ownership of intellectual property rights of textbooks and works of art.
- d. That the University is the support on which the whole campus community stands, and is thereby entitled to share in financial rewards of commercialized intellectual property.
- e. That there should be incentives for all parties to pursue financial rewards together, consistent with the expressed goals of the policy. The distribution of these rewards should reflect, as far as possible, the inventive contributions of the inventor, and the resources contributed by and risks assumed by both the inventor and the University in developing intellectual property.
- f. That negotiated agreements are to be encouraged wherever possible since it is often difficult to meaningfully assess risks, resources and potential rewards.
- g. That the University be allowed to retain ownership of sponsored research contract to enable it (that is, the University) to control the

commercial exploitation of the intellectual property arising from the research.

- h. That the University will create a standing advisory committee under the chairmanship of the Director of IPTTO to help identify intellectual-property related opportunities and develop practices consistent with the goals of the University.

3 DEFINITION OF TERMS

For the purposes of this Intellectual Property Policy, the following definitions shall apply:

- a. **University** shall mean the University of Port Harcourt.
- b. A **work** shall include any copyrightable material such as printed material/material invented as a component of existing machinery, computer software or database, circuit diagrams, engineering drawings, musical composition, dramatic production, choreographic work and visual arts.
- c. An **invention** shall include any discovery, design, technological development, biological material, strain, culture of any organism, modification, translation or extension of these items and any mark used in connection with these items.
- d. **Intellectual Property** (IP) refers to all inventions, innovations and copyrightable items.
- e. An **inventor** shall mean a personnel of the University who creates a work or an invention.
- f. **University Support** shall include the use of University funds, personnel, facilities, equipment, materials or technological information, and includes such support provided by other public or private organizations when it is arranged, administered or controlled by the University.
- g. **Development expenses** shall mean all monies paid by the University for goods and services to protect, develop, and/or enhance the marketability or any other aspect of a work or invention, including

but not limited to, patent filing fees, protection of patents, marketing expenses, patent maintenance, consulting fees, prosecution expenses, expenses incurred in dealing with equity interests and research costs. Not included as development expenses are salaries and general operating expenses of the University administrative personnel.

h. **Gross income** shall mean total proceeds from the sale, lease, transfer or other conveyance of an invention, running royalties and equity interests paid to the University.

i. **Net income** shall mean gross income less all development expenses for a work or invention and its improvements.

j. **Patent**

A patent is a title of ownership. It 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. It protects an inventor for a limited period as stipulated by the laws of the Federal Government of Nigeria.

k. **Ownership of Inventions, Innovations or Discoveries**

The ownership of inventions, innovations or discoveries shall be vested in the University provided that such discoveries, inventions or innovations are:

- i) Substantially funded (not less than 60%) by the University.
- ii) The inventor used equipment, tools, resources, time, assistance, infrastructure, utilities or apparatus owned by the University.
- iii) The research was conducted with funds gained, negotiated, facilitated or procured or caused to be procured by a staff of the University during the cause of his/her official responsibility.

l. **Responsibility to Patent an Invention**

It shall be the responsibility of the University to patent all patentable inventions in accordance with the existing laws of the Federal Government of Nigeria.

m. **Trademarks**

A trademark is a distinctive sign that identifies certain goods or services as those produced or provided by a person or an enterprise.

n. **Ownership of Trademarks**

The University shall have trademarks, logos and designs for its use. And all rights, interests, privileges and immunities therefore shall be vested in the University.

o. **Prohibition of the use of the University Logo, Trademark and Designs.**

It shall not be lawful for any person or group of persons to make commercial exploitation of the University logos, trademarks and designs without the consent of the University.

p. **Copyright**

Copyright is a legal term describing rights given to authors for their creative work. The kinds of work covered by copyright include literary works, computer programmes, database, film, musical compositions, choreography, art works, architectural designs and technical drawings.

q. **Ownership of Copyright**

Without prejudice to the University, the ownership of Dissertations, Theses, Textbooks and Journal articles shall be vested in the authors. Where researches leading to Theses are substantially funded by the University (not less than 60%), the right shall be exercised by the University.

- i) The University shall be the owner of work, including software created by its staff with significant use of University resources.
- ii) If the University foresees a gainful return from copyrights, it may initiate steps to file and protect such copyrights and share the financial benefits with the author(s) on terms and conditions of the University.
- iii) The University shall be the owner of copyright on all teaching material developed by its staff as part of any of the academic programmes at the University. The author(s) shall have the right to use the non-funded technical material in his/her professional capacity. If the technical material is prepared by

the author on behalf of a funding agency, then the copyright will be equally shared between the University and the funding agency.

- iv) Where a staff member is also a student of the University, he or she shall retain ownership of any intellectual property created as a consequence of undertaking a study on the condition that he or she agrees to grant to the University an irrevocable, royalty-free, unrestricted license to use this intellectual property for internal purposes including teaching, research and operational matters.
- v) Any IP created when a creator or originator from the University works elsewhere in Nigeria on paid time off will be jointly owned by the University and the other party

r. Breeder's Right

Research efforts in crop production, livestock and animal health, forestry, fisheries and crop storage have led to a number of specific achievements such as improved animal breeds and crops capable of producing high yield that are more adapted to specific farming systems and resistant or tolerant to many diseases and pests. An intellectual property right can be granted to a breeder known as Breeder's Right.

By granting a breeder's right, the development of new varieties of plants and animals is encouraged in order to contribute to the enhancement of agricultural productivity and therefore, improvement of income and overall development.

s. Student Inventor

The University shall recognize that students, whether undergraduate or postgraduate, may generate, or contribute to the generation of, intellectual property while carrying out research projects at the University. Notwithstanding the fact that the University is not the employer of the students enrolled at the University and, as such, does not normally seek to claim ownership of rights in intellectual property generated by students, the University will take ownership of intellectual property generated by students in the following circumstance:

- (i) Where the terms of the student's financial support requires the University to be the owner of any intellectual property created, such as in the case of a postgraduate studentship sponsored by University Research Grant; or
- (ii) Where the student is the legal owner of intellectual property generated in the course of his or her work but decides, at his/her sole discretion, to assign ownership to the University.

Where the University decides, in its absolute discretion, to exploit commercially any intellectual property assigned to it in accordance with either (i) or (ii) above, the student inventor will be treated in the same way as an employee inventor.

4 OWNERSHIP TYPES

The following ownership types shall be recognized in this policy:

a. Investigator-initiated Research:

All privileges in respect of investigations/research carried out at the University shall devolve in and be the unconditional possessions of the University except in deference of the activities carried out in cooperation with other organizations or agencies or under funding by an agency, whereby the ownership will be decided and agreed upon on mutual terms

b. Other Stakeholder-initiated Research:

Intellectual Property Rights (IPR) of innovations/inventions, which are the outcome of investigations and research projects embarked upon on behalf of sponsoring agencies, shall be taken jointly in the name of the University and the sponsoring agencies when the sponsoring agencies bear the cost of filing and maintaining the IPR equally. If the sponsoring agencies are not interested in moving forward with the work that may lead to patency, then the University at its discretion may file the application with absolute ownership and the University will meet the entire cost of filing and protection of the IPR

c. Mutual/Shared Research:

All intellectual property jointly created, authored, discovered, invented, conceived or reduced to practice during the course of mutual/shared research undertaken jointly by the University with partaking institution(s) shall be jointly owned and the partaking institution(s) will be requested to

share the cost of filing and maintenance of the IPR. In the case the partaking institution(s) is (are) not cooperative to bear the cost of filing and maintenance, if considered expedient by the University; the University will share the cost equally with the partaking institution(s). Where the partaking institution(s) is (are) not cooperative for filing joint IPR application, the University at its discretion may file the application with absolute ownership and the University will meet the entire cost of filing and protection of the IPR.

5. DISCLOSURE OF INVENTIONS

a. Importance of Intellectual Property and Technology Transfer Office (IPTTO).

The Intellectual Property and Technology Transfer Office (IPTTO) is responsible for sensitizing and creating awareness about opportunities that exist in original research. The Office also facilitates patent right acquisition through linkage with the National Office for Technology Acquisition and Promotion (NOTAP) and licensing of new inventions and discoveries made by students, lecturers or staff. IPTTO is the primary resource and service provider for developers of intellectual property at the University with respect to the protection of research results that may have potential commercial value.

b. Disclosing Intellectual Property

The purpose of disclosure is to determine invention patentability and to place it under assessment for their commercial potential. An invention disclosure is also used to report technology that may not be patented but is protected by other means such as copyright.

- i) In order to ensure that a proper determination of ownership is made, inventor(s) will promptly disclose all existing copyrights relating to the invention under this policy. Part of this disclosure by inventor(s) shall include a disclosure of the circumstances under which the work was invented, a description of any University resources used and any financial or other relationship with a third party that might affect the University's right in the work (for example, any consulting agreements or third party funding agreements pursuant to which a work was invented). Disclosures should be submitted with a written description of the invention (explanatory drawing, data, abstracts and

summaries may be sufficient). It should state what the invention is, what it does and why it appears significant; that is, what are the claims for which the application is being made.

- ii) This disclosure to the University should be made at the time when legal protection for the invention is contemplated, and it must be made before the intellectual property is sold, used for profit, or disclosed to the public if not it will amount to **Premature Disclosure** which may disqualify an invention for patentability. Whenever legal protection for intellectual property is anticipated all persons engaged in such creative activity are encouraged to keep regular notebooks and records. Disclosure forms and related instructions are available at the office of the Director, Intellectual Property and Technology Transfer Office (IPTTO) or at the University website.

c. Disclosure Review

- i) IPTTO will conduct a review of the disclosure and determine its importance and the extent to which the University should be involved in its development, protection and promotion.
- ii) IPTTO shall recommend whether the University should assert or waive its interest in the invention or University supported work, based on a determination of potential technical and market value.
- iii) IPTTO may employ outside evaluators and other consultants to review the disclosure, as well as to assist in the licensing, other commercialization, or protection of the invention or work. IPTTO will determine that the University's interest is consistent with the provisions of the policy. It shall be the obligation of the inventor to be available to provide additional information as needed in all stages of this procedure.
- iv) Only representatives of the IPTTO are authorized to approve and sign CDA's from other organizations on behalf of it to avoid the other organizations imposing serious non-disclosure and non-use obligations on the confidential information, claiming an ownership interest in inventions, copyrightable works or materials that may arise in the course of the research performed with such confidential

information. IPTTO should develop CDA forms to be used by staff when the need arises.

6. MARKETING, COMMERCIALIZATION AND LICENSING OF PATENTS

This section of the policy assures that the new ideas, discoveries and technologies arising from research conducted as a part of the educational process are used in the best interest of the University academic system, its stakeholders, and the public it serves.

The overall goals for marketing, commercialization and licensing of patents at the University shall be:

- i) To promote entrepreneurship as a fundamental value of the University and to incorporate it into its research and educational approaches
- ii) To serve as a leader in the country in creating and facilitating new entrepreneurial opportunities that address the needs of all stakeholders- community, government and government agencies, private organizations, individuals and the University.
- iii) To be transformational in moving the University into new entrepreneurial arenas

a. Marketing:

The main goal in the marketing aspect will be to use commercialization successes as a marketing tool. Successfully commercialized technologies are valuable tools in marketing the University to the world. The proposed technological advances should cross industry lines and communities. The University will have an ongoing process to constantly evaluate the appeal of new technologies to potential sponsors and the communities they intend to serve.

b. Commercialization

Technology commercialization at the University is a relatively new concept and the process will likely face some challenges. However, the following provisions may help create an orderly environment for the

University, the Staff and other Stakeholders in the commercialization process.

- i) Because the potential for commercial success of ideas is difficult to forecast or control, it is important that the University and its commercial partners forge a flexible relationship concerning ownership rights to intellectual property.
- ii) The University shall work with relevant stakeholders in order to determine the preferred commercialization pathway and framework for mutual benefit.
- iii) The University shall be responsible for recording details of all agreements that involve licensing fees, royalties and also for ensuring the distribution of any commercialization benefits in accordance with this policy.

c. Patenting

- i) Due to the significant costs involved in applying for patent rights for Intellectual Property, IPTTO should determine if an idea, design, or process is worthy of patent application. Patent application costs shall be paid by the University and their industry partners. This approach guarantees that adequate funding will be available to pursue patents on worthy IP and less financial pressure on the individual investigators before the generation of any royalties.
- ii) In determining the merit of an idea, process or potential product, the advice of IPTTO should be sought early in the process. Disclosure of the IP at the earliest possible date is important in establishing and protecting the rights of the inventor and the University.

7. INCOME SHARING

- a. For the purpose of the sharing of income or benefits accruing from intellectual property (IP), the policy shall aim at promoting harmony among stakeholders in the invention, development, protection and commercialization of IP through a fair and mutually rewarding arrangement. Thus, while the policy shall ensure that inventors continue to be motivated to work with the University to generate benefits from inventions through the sharing arrangement, it shall

also encourage the University to continue to finance new inventions and / or the development of new ones. Accordingly, stakeholders in respect of this policy shall include the inventor(s), the faculty and the department of the inventor(s) and the University.

- b. For avoidance of conflicts, gross income and net income shall be separated for the purpose of revenue sharing. Thus, while gross income refers to the total income accruing from commercial exploitation of IP, net income is the balance after all identifiable and tangible expenses incurred by the University have been deducted. The following sharing arrangement shall apply:

The Inventors(s): 45%

The Faculty: 5%

The Department: 10%

The University: 40%

- c. Following from the above, inventor(s)/author(s) submitting an IP to the University for patenting shall sign a Memorandum of understanding (MoU) (see the Appendix).

8. RIGHTS AND OBLIGATIONS OF THE UNIVERSITY AND AN INVENTOR

a. Obligations of an Inventor

- a. The following shall be the obligations of an inventor(s) with regards to an intellectual property created by him or her.
- i) Disclose promptly all inventions, discoveries and innovations belonging to the University.
 - ii) As may be required, assist in protecting the intellectual property.
 - iii) Conduct himself or herself in a manner that ensures that the rights and interests of the University in the intellectual property are preserved and protected.

- iv) Abide by all agreements made by the University in regards to the intellectual property.
- v) Disclose to the University any potential conflicts of interest.
- vi) Assess the commercial potentials of his or her invention and disclose same to the University.
- vii) An inventor and his/her collaborators shall agree on a documented sharing formula before approaching the University for partnership.

b. Obligations of the University

The following shall be the obligations of the University with regards to an intellectual property disclosure made by a member of staff:

- i) Evaluation of its commercial potential.
- ii) Seeking to partner with relevant industrial establishments to develop such inventions and innovations.
- iii) Procuring legal support for the protection of the intellectual property.
- iv) Relinquishing ownership of such invention or innovation to its inventor(s) where the University is unable to take steps to patent an invention or innovation,.
- v. Establishment of a mechanism for the resolution of intellectual property disputes.
- vi. Giving due publicity to the invention or innovation.
- vii. Negotiation and management of intellectual property agreements that are favourable to both the inventor(s) and the University.

**UNIVERSITY OF PORT HARCOURT
INTELLECTUAL PROPERTY AND TECHNOLOGY TRANSFER OFFICE
(IPTTO)
MEMORANDUM OF UNDERSTANDING**

A MoU between Inventor(s)/Author(s) and the University of Port Harcourt for the Submission of Intellectual Property to the University for Acquisition of Patent Right

I/We-----

the inventor(s)/ author(s) of the invention/work entitled-----

hereby agree that the sharing of income accruing from the invention/ work shall be in accordance with the formula specified in the Intellectual Property Policy of the University.

Name(s) & Signature(s)	-----
of inventors(s)/ Author(s)	Name & signature
1-----	of the University
2-----	Representative
3-----	