



KMTC is ISO 9001:2015 Certified

Kenya Medical Training College



INTELLECTUAL PROPERTY
POLICY

MAY 2019

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PREFACE

On behalf of the Kenya Medical Training College (KMTc) Board of Directors, I am delighted to approve this Policy for use by Management. The KMTc Board is determined to improve access to and equity of quality medical training and to ensure that the institution plays its role in the realization of Sustainable Development Goals (SDGs), Vision 2030, health sector policies and the government agenda on the “Big Four”. The Board continues to play its role in realizing the set milestones which contribute to improving the quality and quantity of essential health care providers. Inadequate numbers of skilled care providers have had a negative impact on efforts to expand access and improve the quality of health services. This situation is compounded by continued high prevalence of communicable and non-communicable killer diseases in the country.

Towards this end, the KMTc Board of Directors under my leadership is determined to critically address the task of defining long-term strategies for addressing the constraints to training and development of quality health care providers through:

- i. Improved policy and corporate governance for enhancing accountability and decision making.
- ii. Enhanced access, quality, relevance and equality in medical training.
- iii. Superiority in resource and infrastructural management.
- iv. Increased visibility of Kenya Medical Training College nationally and internationally as a premier medical training institution focusing on training, research and consultancy.
- v. Improved resource base, partnership and linkages.

In response to the 2010 Constitutional agenda, the Board will continue to direct efforts at advancing community – oriented programs that respond positively to the country’s social and economic development agenda. This Policy therefore provides an analysis of the internal and external environment, and makes strong statement on the role KMTc will play in helping the Government to realize sustainable growth in the health sector. The Board is dedicated to offer oversight on the operations and management of the College to ensure sustainable delivery of health coverage in the country and beyond. I believe successful implementation of this Policy will be realized through total commitment of the entire staff, students and other key stakeholders.



Prof. Philip Kaloki, MBS,

Chairman, KMTc Board of Directors.

FOREWORD

Kenya Medical Training College is a State Corporation entrusted with the role of training various health disciplines in the health sector. The College was recently re-categorized from PC2 to PC4A thereby expanding its mandate to include research. The College continues to put emphasis on enhancing quality of training, research and consultancy. The College is endowed with well-trained and qualified personnel, specialized laboratory, equipment and field stations, which are essential for the generation of new knowledge.

Kenya Medical Training College has potential to generate income through royalties from licensed Intellectual Property Rights, consultancy, contract research and commercialization of R&D findings. Intellectual Property Policy is, therefore, required to govern those activities and take care of the interests of creator/ inventor, Kenya Medical Training College sponsor and licensee/licensor.

The College Intellectual Property Policy is published to provide information on the guidelines and procedures that guide the acquisition of legal protection of research outputs at Kenya Medical Training College (KMTC).



Prof. Michael Kiptoo,

Chief Executive Officer.

VISION

A model institution in the training and development of competent health professionals

MISSION

To produce competent health professionals through training and research, and provide consultancy services

CORE VALUES

Accountability

Integrity

Responsiveness

Equity

Teamwork

Professionalism

Creativity and innovation

ABBREVIATIONS

CEO	Chief Executive Officer
IP	Intellectual Property/Industrial Property
IPMO	Intellectual Property Management Office
IPRs	Intellectual Property Rights
KMTC	Kenya Medical Training College
KMTC-IPP	Kenya Medical Training College-Intellectual Property Policy
LAB	Laboratory
MTA	Material Transfer Agreement

DEFINITION OF TERMS

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

Academic Materials:	Materials used for pedagogical purposes including, but not limited to, recorded and live digital, video, and audio presentations; photographs, films, graphic illustrations, transparencies, and other visual aids; programme destruction packages; computer programs and data bases; and books, booklets, monographs, articles, scripts, study guides, syllabi, tests, and other items that accompany, or are used to present or demonstrate, the above described materials.
Assignment:	A written agreement by the holder of intellectual property rights assigning all or part of the Innovator's/creator's title or interest in or to an innovation, and/or creative work of the College.
Benefit Sharing Agreement:	This is an agreement that stipulates how co- inventors, innovators and indigenous communities, licensors and licensees, employers and employees and indigenous owners of inventions can share benefits arising from the commercialization of an intellectual property.
Copyright:	The exclusive and assignable legal right, given to the originator for a fixed number of years, to print, publish, perform, film, or record literary, artistic, or musical material.
Commercialization:	Process through which any KMTC Intellectual Property asset may be adapted or used for any purpose resulting in individual and/or corporate benefit;
Genetic Resources:	An inherited Bio property inherent in living forms and endowed with socio-economic value.
Indigenous Knowledge:	Established old - age traditions and practices of certain regional, indigenous, or local communities, encompassing the wisdom, knowledge and teaching of these communities and with value for development.
Industrial Design:	Is the ornamental or aesthetic aspect of an article. It may be the shape, the patterns, lines or colour of an article. Industrial designs are what make an article attractive and appealing: hence they add to the commercial value of a product and increase its marketability.
Innovation:	A multi-stage process whereby organizations and/or individuals transform ideas into new/improved products, services or processes in order to advance compete and differentiate themselves successfully in their marketplace.
Informal Industry:	Micro-industrial processes which not only employ appropriate technologies but also informal strategic and developmental matrices.
Intellectual Property:	Creations of the human mind (intellect). Comprises any new original or useful process, machine, composition of matter, life form, article of manufacture, software, literary,

artistic, musical work, or tangible property including new or improved devices, circuits, chemical compounds, drugs, genetically engineered biological organisms and microbes, new plant varieties, data sets, software, musical processes, or unique or innovative uses of existing inventions that may or may not be patentable, copyrightable or protectable under any other form of intellectual property regime including industrial property, copyright and plant breeder's rights.

Invention Disclosure:

A formal description of an invention that is confidentiality made by the inventor to the College for purpose of protection.

Inventor:

Means a person or persons who actually devise an invention or create a work as defined by the Industrial Property Act 2001, Copyright Act 2002 or Seeds and Plants Varieties Act Cap 326 respectively.

Jua Kali:

This is a Swahili word meaning "hot sun". It originally referred to small scale entrepreneurs working in an open area where skilled and unskilled traders practice enterprising activities such as motor vehicle repair and carpentry and joinery.

Know- how:

Actual technical skills derived from experience in working on a certain technology. It may or may not be part of trade secret.

Licensing Agreement:

A written contract to a third party allowing it to put to use intelligential property developed by another party. Such licensing can be inclusive or exclusive.

Material Transfer Agreement:

A Contract that governs the transfer of one or more materials important for biological, engineering, chemical, physical science applications with defined properties, from owner (or authorized licensee), to a third party who uses the material for research purposes.

Patent Protection:

The invention cannot be commercially made; used; distributed or sold without the patent owner's consent.

Patent:

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 innovative and useful technical solution to a problem.

Project Funding Agreement

A research funding contract that includes provision for intellectual property rights.

Research Collaborative:

A contract that governs a collaboration agreement between two or more persons or institutions in the systematic investigation of a particular subject in an effort to discover new knowledge or to develop new processes or products.

Support Staff:

All non-teaching staff and students who assist the inventor(s) - College, as defined by the Kenya Medical Training College Act,1990 (as amended).

Trade Mark:

A distinct sign, which identifies certain goods or services as those produced or provided by a specific person or enterprise.

Trade Secrets:

Confidential scientific, technical, business, commercial and financial information not publicly known or information used in research, business, commerce or industry.

Utility model:

An invention which does not meet all the requirements of potentiality but has an industrial use.

1.0 INTRODUCTION

Kenya Medical Training College is a premier institution in the training of health professionals in Kenya. Its mandate extends to research and consultancy services in the medical field. The College is endowed with well trained and qualified personnel as well as specialized laboratories, equipment and field stations; it endeavours to utilize these resources to generate new knowledge through Research and Development. Consequently, this Intellectual Property Policy is aimed at unlocking the available College resources potentials and mobilizing its staff towards the creation of knowledge, discoveries, inventions and other creative works.

Thus the College has formulated this Policy to guide its management, staff and students on matters related to development, ownership, management, utilization and commercialization of Intellectual Property.

1.1 Strategic Mission of Kenya Medical Training College

The College's strategic mission is to produce competent health professionals through training and research and provide consultancy services guided by the frameworks herein under.

1.1.1 Guiding Principles

- i This Policy is guided generally by the Constitution of Kenya, 2010, the KMTC Act, the IP Policy Act, 2001, relevant rules and regulations guiding IP in Kenya.
- ii The specific principles shall be as follows: -
 - a. Promotion and defence of intellectual and academic freedom, scholarship and relentless search for truth.
 - b. Fostering teamwork and collaboration.
 - c. Embracing creativity and innovation.
 - d. Practicing professionalism and meritocracy.
 - e. Continuous improvement of services in order to remain competitive.

1.2 Objectives

This Policy is an integral part of the overall Kenya Medical Training College Research Policy and will be implemented in that context. The overall goal is to unlock the College resource potential and to mobilize staff towards the creation of knowledge, discoveries, inventions and other creative works.

The specific objectives of this Policy are:

- i To promote creativity and innovation among the College fraternity.
- ii To protect the rights of the College, its innovators, researchers and inventors.
- iii To create an enabling environment for the dissemination of new knowledge generated by the College researchers for maximum benefit to the College and the public.
- iv To protect the traditional rights of scholars to benefit from the products of their scholarly work.
- v To ensure that the commercial benefits, (financial or otherwise) are shared in a fair and equitable manner that recognizes both the contributions of the inventor(s), the College and any other stakeholders.
- vi To establish standards for determining the rights and obligations of Kenya Medical Training College, inventor(s) and other stakeholders with respect to inventions, discoveries and works created at the College.
- vii To promote linkages with industry and stimulate research for commercialization.

1.3 Policy Scope

The areas covered by this Policy include:

- i Patent
- ii Utility Models
- iii Industrial Designs
- iv Copyrights and related rights
- v Trade and Service Marks
- vi Tangible Research Property
- vii Trade Secrets and know-how
- viii Technovations
- ix Genetic Resources
- x Plant Varieties Protection
- xi Contract Research
- xii Research Collaboration
- xiii Indigenous Knowledge

2.0 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS (IPR)

The Policy outlines when and under which conditions the IPRs shall be owned by the College, staff, sponsor or any other person or entity.

2.1 Ownership by the College

- i Kenya Medical Training College shall own all Intellectual Property that is made, conceptualized, discovered or created by a member of staff, students, visiting researchers etc, in the course of their employment and responsibilities or as a result of participation in the College programs where there is significant use of the College facilities, resources or funds.
- ii Kenya Medical Training College shall own any Intellectual Property that is made, discovered or created by anybody who is specifically hired commissioned by the College for that purpose, unless otherwise provided by written agreement between such individual and the College.

2.2 Ownership by a Financial Sponsor

- i Kenya Medical Training College shall own all intellectual property Right made, discovered, or created in the course of research funded by a sponsor, unless otherwise provided by written agreement between Kenya Medical Training College and the sponsor.
- ii When a sponsor specifies a technical problem to be solved by the research at the College and a researcher stumbles on a totally different and unrelated invention in addition to solving the sponsor's problem then the "accidental" invention shall belong to the College.

2.3 Ownership by Individual Staff

- i Inventions for which individuals can prove that they did not use College resources and time shall belong to the inventor. However, if an inventor makes, creates, or discovers Intellectual Property and claim that he/she did not make “significant use” of College’s resources, but the intellectual property closely resembles a specific research project that the inventor has conducted at Kenya Medical Training College, it shall be argued that the intellectual property was developed with the use of College resources and therefore belongs to it. Under such condition, the inventor shall be required to provide documentary evidence supporting the claim that he/she did not use any of the College resources.
- ii If within a period of one year, a former member of the College comes up with an invention, such invention shall be deemed to belong to the College unless there is clear proof that the invention was fully carried out without utilization of College resources and time while the person was a member, the burden of proof shall be on the person.
- iii If Kenya Medical Training College does not exploit an invention within five years after the grant of intellectual property Right, the College may reassign or licence the property to the inventor upon request after execution of Benefit Sharing Agreement safeguarding the interests of the institution.
- iv Should Kenya Medical Training College fail to express interest to protect an invention within one year (due to low commercial potential, ethics and morality issue etc.) the College may, in writing licence to the inventors the use of the invention after signing of relevant agreements to safeguard the proprietary rights of the College in such inventions.

2.4 Ownership of IPRs as a Result of Collaboration

Where Kenya Medical Training College is involved in collaborative research with other institution(s) or business entity, the intellectual property right shall be co-owned and the distribution of royalties will be governed by a contractual agreement between the parties. Both institutions shall contribute equally towards expenses related to acquiring IP Right and licensing.

2.5 Ownership of Publications, Thesis and Dissertations

Student’s thesis and dissertations are considered “exempted scholarly work” thus, the student will own copyright subject to a royalty-free license to Kenya Medical Training College to reproduce and publish for the purpose of training and research at Kenya Medical Training College.

2.6 Ownership of Equipment

- i Equipment purchased on externally funded research contract shall remain property of Kenya Medical Training College upon completion of the contract. The equipment will be under the custody of the department of the College involved in the research. Where a dispute arises, the office of the Deputy Director for the time being in charge of Research, shall determine the distribution of the equipment.
- ii Students shall normally not be allowed to publish their theses and dissertations until the office of Deputy Director (Academics) for the time being confirms that there are no intellectual property right issues to be compromised by such publications.

2.7 Commercial Exploitation of an IPR by Inventor

Where Kenya Medical Training College allows the inventor(s) to commercially exploit his/her invention, the College will retain ownership of the invention, but shall give license to the inventors(s) who will then pay royalties to the College. Such offer shall be subjected to competitive bidding.

2.8 Waiver of College Rights

- i The College will waive Intellectual Property Rights to the innovator, inventor or creator if it determines not to protect, license or commercialize that Intellectual Property.
- ii The College will also waive Intellectual Property Rights to the innovator, inventor, creator or breeder if it determines to abandon all efforts to protect or commercialize such intellectual property.
- iii Any request for waiver of Intellectual Rights shall only be approved by the Board of Directors.

3.0 FRAMEWORK FOR IP AND TECHNOLOGY TRANSFER

- i The College shall establish the Intellectual Property Management Office to handle Intellectual Property and Technology Transfer to maximize the value of intellectual property and technology to the staff, students and the College.
- ii The functions of intellectual Property Management Office through the Deputy Director Research, Innovation and Consultancy are to:
 - a. Promote technology transfer in a manner consistent with College mission, vision, objectives and academic environment;
 - b. Review, negotiate and approve all agreements that convey or affect the KMTC's right to Intellectual Property;
 - c. Advise on the decision to, and the feasibility of obtaining Intellectual Property protection for an innovation, creation, invention or new plant varieties;
 - d. The legal services manager shall advise the CEO on matters pertaining the transfer and licensing or commercialization of any Intellectual Property held by the KMTC;
 - e. Receive for evaluation by the appropriate committee as provided under this Policy, all innovation, creation, or invention disclosures and process the same in a timely manner;
 - f. Advise on any applications for the transfer, or licensing, of the College rights;
 - g. Advise the CEO as to the amendment of this Policy and all matters pertaining to intellectual property administration, management and dissemination;
 - h. Receive disputes arising from the terms or implementation of this Policy for determination by the Intellectual Property Committee and the CEO;
 - i. Prepare guidelines, procedures and processes for the handling of all information and materials that are subject to Intellectual Property.

4.0 PUBLICATION AND CONFIDENTIALITY

- i The College shall encourage dissemination of research results, while ensuring adequate and timely protection of the rights to such property.
- ii No individual shall publish, in any form, information relating to research to which an innovation or invention disclosure has been submitted without the express written consent of the IPMO provided that the consent shall not be unreasonably denied or delayed and the decision shall be communicated within a period of one month.
- iii Inventors, innovators, creators, and breeders shall take steps to maintain confidentiality of the disclosed intellectual property until protection has been obtained.

5.0 DISCLOSURE

- i A disclosure of an invention shall be understood as a formal description of an invention that is confidentially made by the inventor to Kenya Medical Training College through the IPMO for the purpose of protection.
- ii Disclosure of all innovations, creations and inventions shall be made to the IPMO in the prescribed manner.
- iii The key information required on the disclosure shall include:
 - a. Invention or innovation title
 - b. Names of all inventors and the degree of their contribution to the invention. All the inventors through their signature must confirm this statement.
 - c. Descriptions of the invention.
 - d. Sponsorship, (if any).
 - e. Dates of conception and realization of invention.
 - f. Material Transfer Agreement (if any).
 - g. Any other information that will be relevant.
 - h. Any other agreement entered into, that is relevant to the invention.
- iv In all cases, an Intellectual Property that a member of staff discloses for possible commercialization, KMTC shall be obliged to determine its commercial potential.
- v Intellectual Property Disclosures shall be considered confidential by the IPMO and its members shall be liable to being sued for breach of confidentiality.

6.0 DISTRIBUTION OF TANGIBLE RESEARCH PROPERTY

- i All the tangible research property leaving the College shall be governed by a Material Transfer Agreement (MTA).
- ii Any proprietary information accompanying tangible research property shall be governed by a Confidentiality Agreement.

7.0 RELEVANT AGREEMENTS

Kenya Medical Training College will formulate appropriate agreements and other related contracts for the management of Intellectual Property Rights, such as;

- i Collaborative Research Agreements
- ii Participation Agreements
- iii Material Transfer Agreements

- iv Confidentiality (Non – Disclosure) Agreements
- v Licensing Agreements
- vi Project funding Agreement
- vii Access to Innovation and Benefit Sharing Agreements

8.0 COMMERCIALIZATION, MARKETING AND LICENSING

- i All commercialization of Intellectual Property developed in the College shall take place in accordance with the terms of this Policy and with the principle of “benefit to Kenya” i.e. incremental Kenyan economic activity and improved quality of the life therein.
- ii KMTC shall encourage the development by industry of its inventions and technology and seek to facilitate the transfer of such technology for the use benefit of the College and the public.
- iii The College may license the right to commercialize its Intellectual Property and will strive to get the best deal for both the College and the inventor.

9.0 REVENUE DISTRIBUTION

- i The revenue generated through commercialization of Intellectual Property from KMTC should benefit the College, inventor, the inventor’s research and research group, College’s Intellectual Property Fund and College infrastructure. The proportion distributed to each will be in tandem with the College’s Income Generation Unit Policy.
- ii Gross income shall be understood as funds obtained from commercialization of an Intellectual Property. Net income shall be understood as gross income less expenses incurred by College for Intellectual Property right processing, protection, maintenance and licensing.
- iii In the absence of a written agreement to the contrary, multiple inventors shall receive equal portions of the inventor’s share of net revenue. When multiple investors are located on different department, schools and campuses, the same shall also apply to the units.
- iv It is understood that the inventor shall continue to receive his/her share even after leaving employment of the College. In the event of death of the inventor the legal next of kin shall receive the benefits.
- v Collaboration institution shall be free to use their own policies and practices as regards distribution of their respective shares of royalties

10.0 EQUITY SHARE

- i KMTC may opt to negotiate for partnership or joint venture, with any entity that has obtained a license to the College’s technology in exchange for royalty.
- ii KMTC may also opt to negotiate for equity interest in lieu of or in addition to monetary consideration as a part of an agreement between it and an external entity relating to applicable intellectual property.
- iii Where the College has taken the equity option, inventor(s) shall be allowed to make decision whether to take the equity or royalty options. Where the College owns equity interests, the monetary proceeds generated by sale of such equity interests, shall be distributed according to contracts for revenue distribution.

11.0 REPORT TO THE BOARD OF DIRECTORS

There shall be quarterly reports to the Finance, Planning and Development Committee of the Board on the College’s Intellectual Properties and implementation status of Board resolutions.

12.0 POLICY IMPLEMENTATION

12.1 Implementation Date

This Policy takes effect on the date it is approved by the KMTC Board of Directors.

12.2 Monitoring and Evaluation

- i. The College IPMO shall conduct monitoring and evaluation of the effectiveness of this Policy in line with the Monitoring, Evaluation and Reporting framework.
- ii. The College IPMO shall:
 - a. Develop and maintain strategies and mechanisms for monitoring and evaluation of this Policy.
 - b. Undertake regular check on implementation of the Policy.
 - c. Carry out annual evaluation on the implementation of the Policy.
 - d. Use the information for planning and management.
 - e. Propose potential areas for review.

12.3 Review

The Policy will be reviewed after every three (3) years or earlier as need arises with an aim to enhance efficient delivery of effective outcomes.

APPROVAL

Title : Intellectual Property Policy

Contact : Corporation Secretary

Approval Authority : The Board of Directors

Commencement Date : May 2019

SIGNED



15th May 2019
Date

Prof. Philip Kaloki, MBS,
Chairman, KMTC Board of Directors.



KMTC is ISO 9001:2015 Certified.

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