UNIVERSITY INTELLECTUAL PROPERTY RIGHTS POLICY

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PREAMBLE

Egerton University is a fast developing public university, having been established in 1939 as an Agricultural College for servicemen. It has repositioned itself as a modern institution of higher learning, focusing on being a world-class university. Student population has grown from the initial three (3) students admitted in the 1930s to over 23,657 in the year 2010. Coupled with this growth is the increase in the number of departments, faculties and programmes. To achieve its objectives and be responsive to the needs of the society, it has been reviewing its programmes regularly focusing on its core functions of teaching/training, research and extension to produce quality products and services.

In order to meet the needs and demands of our society, the University research and extension programmes have shifted towards supporting especially those activities that lead to improved services, innovations, low costs, and products. In order to achieve this goal, the University has availed funds for research and signed several Memoranda of Understanding with other institutions to enhance collaboration and networking. With this paradigm shift, prudent measures are needed to protect the knowledge and the products, exhibitions and the services thereof. With the proliferations of new products, exhibitions and ideas, there is need to protect these outputs from plagiarism, fraud and other unethical vices through registration as patents, copyrights and trade marks. This policy is of interest and importance to students, researchers, academicians and other persons with or without interest in intellectual property rights. This policy document covers areas such as benefit sharing, and criteria for patenting; among others. The University undertakes to assist during the various stages, leading to patenting.
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PART I: GENERAL PROVISIONS

Article 1: Vision, Mission and Values of Egerton University

1.1 Vision
A world class University for the advancement of humanity.

1.2 Mission
To generate significant knowledge and offer exemplary education to contribute to and innovatively influence national and global development.

1.3 Core values
The activities and decisions of Egerton University are guided by:
   a) Passion for excellence and devotion to duty
   b) Integrity, transparency and accountability
   c) Social fairness
   d) Professionalism

Article 2: University Strategic Plan Commitment
Egerton University in her Strategic Plan has committed herself to creation, protection and utilisation of Intellectual Property Rights through enhanced scholarship, research, academic excellence and innovation among staff and students working alone or jointly with partners.

Article 3: Definitions of Terms
In this Policy, unless the context otherwise requires, the following terms shall have the meanings defined herein.

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

Assignment: A written agreement by the innovator, assigning all or part of the
**Laboratory Notebooks:** A book for keeping permanent records of significant events towards the development process of an Intellectual Property. Innovator's right, title or interest in or to an innovation of the University.

**Breeder:** Person who has bred or discovered and developed a plant and/or genotype variety.

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

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

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

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

**Intellectual Property:** Any useful output of research or creative endeavour in literary, artistic, industrial, scientific and engineering fields, or inventions or innovative uses of existing inventions that may or may not be patentable, copyrightable, trade mark able or protect able under legislation.

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

**Inventors or Creators:** A person that originated the concept idea and how the concept might be actually used to do something new and useful, and content of Inventions, literary, artistic, industrial, scientific and engineering works. Support staff involved in the work shall not be considered inventors or creators, unless they substantially influenced the original or novel aspects of the works.

**Innovation:** A new or original product or process.

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

**New Plant Varieties:** Varieties of plants which have been discovered or bred and which are distinct, uniform and stable.

**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 in industry or commerce or public life.

**Publications:** Books, textbooks, booklets, bulletins, pamphlets, monographs, scientific reports; software; creative works and designs, information releases, exhibits or performances, demonstrations, and other scholarly or popular writings regardless of medium.

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

**Resources of the University:** Funds, supplies, equipment, physical facilities, personnel, and/or other services or property of Egerton University. The resources include all tangible resources made available by University to
inventors, including: office, laboratory and studio space and equipment; computer hardware, software and support; secretarial services; research, teaching and laboratory assistants; supplies and utilities; funding for research and teaching activities, travel and other funding or reimbursements. University resources do not include the employee's time, use of the library, or use of personal office including any office computer or data processor located therein.

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

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

**Trade Secret:** Includes confidential data, information or compilations used in research, business, commerce and industry and confer advantage on one having the right to use it. The information has commercial value because it is secret or confidential. There must be an intention to keep such information confidential.

**University Staff:** An employee of Egerton University on permanent and pensionable or on contractual terms.

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

This Policy shall be cited as the Egerton University Intellectual Property Rights Policy.

Article 4: Application of the Policy

This Policy applies to students, researchers, academicians and any other persons with or without interest in intellectual property rights.

Article 5: Guiding Principles in Intellectual Property Rights Policy

5.1 Egerton University acknowledges the necessity of ensuring that research knowledge, products and technologies and inventions developed by the University staff and students, alone or jointly with staff and students, of its research partners are actively and widely disseminated, adopted and utilized nationally and globally for the advancement of humanity.

5.2 Egerton University recognises that intellectual property protection on its research knowledge, products and technologies and inventions may be necessary to ensure continued availability and the delivery, negotiated access, protect the interests of its staff, students and research partners, and enhance profitable exploitation.

5.3 The Intellectual Property Rights Policy (IPRs Policy) of Egerton University is formulated to create an enabling environment that recognizes and values creativity and innovations while simultaneously assisting in translating them into profitably exploitable products, processes and services for the benefit of humanity, the University and its staff and students and those of her research partners.

5.4 Egerton University shall undertake protection of Intellectual Property only when first created, conceived and/or generated by its staff, students and research partners in either single or joint undertakings.

5.5 Decisions of Egerton University to undertake protection of Intellectual Property shall primarily be determined on the criterion of likelihood of success and, secondarily, on the ability to satisfy the requirements for protection.

5.6 All inventions and innovations emanating from research must be reported to the Division of Research and Extension.

5.7 The Division of Research and Extension shall assist in the process of patenting provided that it was informed initially of the possibility of a patentable object.
Article 6: Objectives of the Intellectual Property Rights Policy

6.1 Intellectual Property Rights Policy shall be a management reference for the University administration, staff, students and research partners in the development, ownership, protection and marketing and sharing accrued benefits of Intellectual Property.

6.2 The objectives of this policy are:
   a) To promote creativity and innovation and rewards for inventiveness,
   b) To protect the interests and rights of Egerton University and its staff, students and research partners contributing substantially to the creation of intellectual property,
   c) To generate some income from intellectual property rights for Egerton University and its staff, students and research partners,
   d) To create an optimal environment for research, development, and commercialization opportunities with public and private research partners,
   e) To provide certainty in research pursuits and technology-based relationships with third parties,
   f) To encourage timely and efficient protection and management of intellectual property,
   g) To ensure equitable sharing of commercial benefits that accrues from intellectual property rights, and
   h) To define obligations of all stakeholders involved in creation and commercial use of the intellectual property.

Article 7: Moral Rights

Egerton University acknowledges the moral rights of its staff, students and research partners, namely the right of attribution, the right not to have authorship falsely attributed and the right of integrity, applying in respect of certain copyright subject matter.

Article 8: Governing Law

This Policy shall be interpreted in accordance with all applicable National laws including the Egerton University Act and the Statutes, Regulations and Policies made thereunder.
Article 9: Notification and Compliance

9.1 Staff, students and research partners' compliance with the provisions of this Policy shall be determined by the Intellectual Property Management Committee (IPMC).

9.2 All staff, students and research partners required to comply with the provisions of this Policy shall sign the Egerton University Intellectual Property Policy Acceptance Agreement Form.

9.3 Research partners already subject to terms of other intellectual property policy may negotiate appropriate waivers with the IPMO, which shall be made in a signed agreement form.

Article 10: Intellectual Property Management Committee

10.1 Intellectual Property Management Committee shall be established under the Deputy Vice Chancellor, Division of Research and Extension, comprising of:

a) Registrar, Research & Extension (Chair)
b) One representative from each faculty
c) Director of Postgraduate Studies
d) Director, Quality Assurance
e) Director, Institute of Women, Gender and Development Studies
f) University Legal Officer
g) Deputy Registrar, Research (Secretary)

10.2 Functions of Intellectual Property Management Committee shall be to:

a) Sensitize and advice on Intellectual Property issues and conflicts.
b) Keep Inventory of Intellectual Property and Intellectual Assets.
c) Evaluate the commercial potential of Intellectual Property and undertake commercialization for the purposes of generating financial gains.
d) Obtain appropriate Intellectual Property protection and licensing.
f) Draft and review contracts and agreements that may affect the ownership and access to intellectual property developed in Egerton University and those owned by a third party.

g) Disseminate information with regard to Intellectual Property.

h) Ensure confidentiality with respect to inventor during disclosure.

i) Review regularly the Intellectual Property Policy to be in line with the University's vision and mission and other emerging laws.

j) Implement of Intellectual Property Policy in a manner consistent with other Policies and Regulations in force at Egerton University from the date so decided by the University Management.

k) Perform any other functions as deemed relevant by the University Intellectual Property Management Committee.

Article 11: Ownership of Intellectual Property

11.1 Egerton University shall assert co-ownership of Intellectual Property Rights with the author, innovator or inventor who include staff, students or research partners where:

   a) The Inventor substantially used resources and facilities of Egerton University.

   b) The Inventor was/is specifically hired or commissioned by Egerton University to produce such property.

   c) The Intellectual Property of concern is a direct product of Egerton University collaborative project unless otherwise stated in the contract.

11.2 The author, innovator or inventor shall decide the ownership of Intellectual Property Rights where:

   a) Egerton University is not interested in pursuing the protection of the Property.

   b) Egerton University is not interested in commercial exploitation of the Property.
11.3 Egerton University may reassign ownership to the author, innovator, inventor or entrepreneurs if the author, innovator, inventor or entrepreneurs have a demonstrated comparative advantage of maximising profitable exploitation of the intellectual property.

11.4 Egerton University shall assert ownership of Academic and Research Products created or developed with substantial contribution or use of University resources for educational and research purposes subject at all times to reserving to itself a non-exclusive, royalty free, perpetual, irrevocable world-wide license (including the right to sub-license) to use, reproduce, adapt, exploit, distribute, and broadcast.

11.5 Egerton University shall allow ownership of copyrightable works to the individual staff, students and research partners to decide when, how, and in what form new knowledge should be disseminated in accordance with the contractual requirements of this policy.

**Article 12: Intellectual Property Donations**

Egerton University through the Intellectual Property Management Committee (IPMC) may accept ownership or control of the Intellectual Property donated to her provided that:

12.1 There is no infringement upon any existing intellectual property.

12.2 Upon the transfer of title in the intellectual property to Egerton University, the intellectual property will be managed in accordance with this Policy.

12.3 It is a charitable donation.

**Article 13: Disclosure**

13.1 Disclosure of all innovations and creative works shall be made to the IPMC in the prescribed manner.

13.2 An innovation or invention disclosure must be prepared and submitted for each innovation or invention conceived or first actually reduced to practice under Egerton University contract.
**Article 14: Commercialization of intellectual property**

14.1 The IPMC shall manage commercialization process in collaboration with the authors, creators and inventors in accordance with principles of this policies and relevant legislations.

14.2 Egerton University shall have reserved rights of decision whether to proceed with, continue, or exit from commercialization process.

14.3 The innovators or inventors staff, student or research partners of Egerton University may request a license to commercially develop co-owned innovations or inventions where such licensing would enhance the transfer of technology, is consistent with the obligations of Egerton University to third parties, and does not involve a conflict of interest.

**Article 15: Benefit Sharing**

15.1 The Division of Research and Extension shall assist in the process of patenting any intellectual property provided that it was informed of a possibility of its patentability.

15.2 Benefits sharing shall provide equitable returns to the originators of intellectual property, both as an incentive and reward, as well as to the University.

15.3 Egerton University shall recover the costs incurred in full from accruing revenues before distributing net revenues in the ratio of:

a) Inventor(s) 50%

b) Research & Extension (Administrative costs) 15%

c) Inventors Department 15%

d) University Research Reserve Fund 20%

15.4 The partner research institutions not in agreement with the stated distribution ratios in 16.3 may negotiate their shares with the University Intellectual Property Rights Committee.

**Article 16: Traditional Knowledge, Genetic Resources and Folklore**

Egerton University shall comply with the Environment Management and Coordination Act (1999) in using and sharing benefits of traditional knowledge, genetic resources and folklore in the development of innovations and creative works.
Article 17: Publication and Confidentiality

17.1 Information relating to research for which an innovation or invention disclosure has been submitted shall not be published unless the author, innovator or inventor opts for defensive publication if deemed necessary to preserve the property as a public good, on advice from Intellectual Property Management Committee (IPMC).

17.2 Egerton University shall not assert her interest in the copyrights of scholarly or educational materials, artworks, musical compositions, and literary works related to the author's academic or professional field unless agreed as such.

17.3 Students shall publish and own the texts of their theses and dissertations, and works derived from such works, subject to a royalty-free license to the University to retain a copy, reproduce and publish the work for its own use.

17.4 Students publishing papers from their theses and dissertations shall have their supervisors as co-authors and shall declare their affiliation to Egerton University in such publications.

Article 18: Use of the Trade Mark, Name and Logo of the University

The use of name, trademark, service mark or logo of Egerton University or any combination thereof for any application or process whatsoever shall be restricted to the provisions of the Egerton University Act and this Policy.

Article 19: Conflict of Interest

19.1 Any of the following factors may signify a conflict of interest in the implementation of this policy:

a) An adverse impact on Egerton University mandate and core functions,

b) Undue influence on the employment commitment of the innovator, inventor or author Egerton University in terms of time or direction of effort,

c) Potential conflict of interest as defined in the National Laws, Egerton University Code of Conduct and Ethics, regulations, Policies and procedures.
19.2 Egerton University may demand that a staff, student or research partner disqualifies himself/herself from participating in any licensing negotiations or other matters of technology transfer where the University is likely to be disadvantaged by such a decision in the following circumstances:

a) Where staff, student or research partner has an external relationship with a company that itself has a financial interest in a University project; or

b) Where the University official serves on a board of a company that has financial transactions with the University; or

c) Where staff, student or research partner has equity holding or royalty expectations that could influence the decision; or

d) Where staff, student or research partner of the University is an interested party and by virtue of position held is likely to influence the decision.

Article 20: Dispute Resolution

20.1 Any arising disputes concerning Intellectual Property shall be referred to the Intellectual Property Management Committee (IPMC) for resolution and in the event of any party being dissatisfied with the decision, a right of appeal to the University Council shall be observed.

20.2 Disputes not resolved by the University Council within a reasonable timeframe shall be subject to arbitration rules of the Laws of Kenya on Intellectual Property Rights.

APPROVED BY UNIVERSITY COUNCIL ON
14TH APRIL 2010
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