

Intellectual Property Policy Template for Universities and Research Institutions in Viet Nam

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FOREWORD

Universities and research institutions have a fundamental role in socio-economic development. Innovation and scientific development are the basis for economic, technological and social mobility as well as for economic growth. Universities and research institutions are a main arena in which scientific development and innovation takes place and the intellectual property (IP) system is the main mechanism that enables universities and society at large to capture the value of innovation.

It is the IP system that assists Universities and research institutions to commercialize their knowledge assets and by doing so potentially obtain additional sources of funding, which may be channeled into, amongst other, further research. At the same time, partnerships with the private sector and other organizations can ensure that academic research outcomes have broader impact, including competitiveness of industry and the regions, establishment of new companies, or addressing a variety of socio-economic challenges such as health, energy, and food security. This is the primary reason for Universities and research institutions in a developing and least developed context for engaging in the commercialization of their research outcomes: to ensure relevance of the research for impact in society.

This approach requires support for the entrepreneurial dimension of knowledge transfer, where strategies that leverage IP assets at the same time place emphasis on how academic research and the resultant IP best provide economic, environmental and social benefits for society at large.

An institutional IP policy is the very foundation of IP management in that an IP policy:

- serves as the starting point for a common understanding about IP, IP rights and incentives for researchers;

- establishes the structure for the way an academic or research institution deals with the ownership and disposition of its IP. As such, it ensures certainty and transparency to reinforce the links between the institutions and industry; and

- is also fundamental in helping institutions address social commitments, and especially, in ensuring the dissemination of knowledge and technology for the public good.

The World Intellectual Property Organization (WIPO) provides support programs to assist Universities and research institutions in the efficient identification, management and commercialization of research outcomes and the resultant IP.

This Intellectual Property Policy Template for Universities and Research Institutions (Template) aims to provide a compendium of key issues that are essential in an IP policy, including ownership, incentives, confidentiality and publication, IP management and commercialization, recording and maintenance of IP, and IP-related conflicts of interest.

The Template provides a coherent set of clauses that comprise an effective IP Policy. The clauses may be used as is. However, there are a variety of policy choices and clauses that may be used instead of those provided in the Template. The Guidelines for Customization of the IP Policy Template provide these alternatives and provide options through different country examples, and an analysis of pros and cons of various approaches.

The primary purpose of this Template and its Guidelines is to provide a range of options, rather than a set of recommendations. The aim is to promote reflection and critical thinking; to stimulate certainty in terms of IP ownership; to encourage responsible IP commercialization of research results; and to provide objective information that will support IP policy drafters as they make judgments, tailored for their institution.

Institutions wishing to use this document as the basis for their policy are permitted to, and should, delete, amend and add relevant information to meet the institution's specific obligations, requirements and practices, as well as to conform to existing institution policies and applicable laws. The Template is not to be treated as a substitute for professional legal advice. Institutions are encouraged to obtain advice from an appropriate professional source.

WIPO IP Toolkit for Universities and Research Institutions

Authorship and Acknowledgements

This IP Policy Template is the product of the collective energy of dozens of people and institutions in many countries. The main authors are Ms. Lien Verbauwhede Koglin, Mr. Richard Cahoon, Mr. Mohammed Aljafari, Ms. Hagit Messer-Yaron, Mr. Barthelemy Nyasse, Ms. Maria del Pilar Noriega Escobar and Ms. Tana Pistorius. We would like to thank Ms. Kerry Faul, Ms. Yumiko Hamano, Ms. Justyna Ożegalska-Trybalska, Mr. Mohamed Shariff and Mr. Mc Lean Sibanda for their constructive inputs, as well as Ms. Natalia Henczel for the coordination.

The IP Policy Template is part of the World Intellectual Property Organization's (WIPO) **Intellectual Property (IP) Toolkit for Universities and Research Institutions – Connecting Academic Research with the Economy and Society**.

This publication is part of the **WIPO IP Toolkit for Universities and Research Institutions**¹, which also includes:

- Guidelines for the Customization of the IP Policy Template: An explanatory guide to adapt the IP Policy Template to the varied legal frameworks, cultural contexts, and local ecosystems in which institutions operate. Authors: Ms. Lien Verbauwhede Koglin, Ms. Kerry Faul and Mr. Richard Cahoon.
- IP Policy Writers' Checklist: Practical guidance and step by step information on the different stages the process of creating or improving an IP Policy usually involves. Author: Ms. Lien Verbauwhede Koglin.
- Academic Intellectual Assets Map: Designed to assist the Toolkit User to understand the broad scope of potential assets that an academic institution owns or may own and the way to strategically use them. Project Leader: Ms. Olga Spasić, authors: Mr. Steven Tan and Dr. John Fraser.

¹ The Toolkit provides a one-stop-shop for academic and research institutions that seek guidance in the course of shaping and implementing their institutional IP policies. A copy can be found on the [WIPO website](#).

➤ Model Agreements: Compilation of model agreements for knowledge and technology transfer between academic institutions and with business partners. Project Leader: Ms. Olga Spasić, author: Mr. D. Patrick O'Reilley.

➤ Case studies: Five Hypothetical Case Studies, as a tool for training technology managers and which correspond and make reference to several of the Model Agreements. Project Leader: Ms. Olga Spasić, authors: Ms. Hagit Messer-Yaron and Dr. Keren Primor.

IP Policy Template for Universities and Research Institutions in Viet Nam

Copyright World Intellectual Property Organization (WIPO).

The book was ordered by WIPO to be written within the framework of the Enabling Intellectual Property Environment (EIE) project. Nguyen Thi Thu Hien, Intellectual Property Office of Viet Nam, Ministry of Science and Technology.

The book is customized by:

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- And associates.

Hopefully, this document will be a useful reference for Universities/Research Institutes while developing their intellectual property policies and regulations.

All comments should be sent to:

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386 Nguyen Trai, Thanh Xuan, Hanoi

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TEMPLATE

IP MANAGEMENT POLICY OF [NAME OF INSTITUTION]
(Issued according to Decision No. [Decision number] date [Issued date] of [Authorized person to issue])

Chapter I
GENERAL PROVISIONS

ARTICLE 1. SCOPE OF THE POLICY

1. This IP Management Policy (hereinafter referred to as the Policy) is promulgated to regulate issues related to IP activities and IP management of the [Institution], in internal operations and in relationships with relevant organizations and individuals in order to ensure effectively the protection of IP rights, the management and commercialization of IP of the [Institution] on the principle of compliance with legal provisions.

ARTICLE 2. SUBJECTS OF APPLICATION

1. Applicability².

This Policy applies to all IP created under [Institution], specifically created by:

- a) Units under [Institution] according to the Operation Charter issued under Decision No. [Decision number];
- b) Staff members as prescribed in Article 2.32 of this Policy;
- c) Learners as prescribed in Article 2.33 of this Policy;
- d) Collaborators as prescribed in Article 2.34 of this Policy;

² Article 3.3 WIPO IP Policy Template

e) Domestic and foreign organizations and individuals in their relationship with the [Institution] related to the field of IP.

2.³ Binding effect of the Policy

This Policy constitutes an understanding that is binding on the Institution, Staff Members, Learners and Collaborators, once adopted by the Board or Senate of the Institution, on the following grounds:

a) Staff Members. The Institution shall ensure that the employment contract or other agreement establishing any type of employment relationship between the Institution and Staff Members includes a provision placing Staff Members under the scope of this Policy.

b) Learners participating in a Research Project. The Institution shall ensure that Learners participating in a Research Project sign an agreement before commencing the project, to the effect that they have read and will comply with the provisions of this Policy, according to Article 5.2.5.

c) Collaborators. The Institution shall ensure that Collaborators sign an Appointment agreement before commencing any activity at the Institution. Such agreement shall place the Collaborator under the scope of this Policy and shall make reference to this Policy, a copy of which will be made available to the Collaborator.

d) Informed consent. This Policy shall be included on the Institution's website, the [Title of faculty handbook] and the [Title of Learner handbooks]. In addition, a reference to this Policy shall be made in [the terms and conditions of enrolment of Learners], academic catalogues or their equivalent. Said reference shall be in sufficient detail to enable the full text of the Policy to be easily accessed.

3.⁴ Background IP

Upon commencing employment, enrolment or an Appointment, Staff Members, Learners and Collaborators 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 Institution.

ARTICLE 3. DEFINITIONS

Without prejudice to any applicable laws, in this Policy the definitions set out below shall apply:⁵

³ Article 3.4 WIPO IP Policy Template

⁴ Article 3.2 WIPO IP Policy Template

⁵ 1-28: IP Law; 29-52: WIPO IP Policy Template

1. **Intellectual property rights** means rights of organizations and individuals to intellectual assets, including copyright and copyright-related rights, industrial property rights and rights to plant varieties.

2. **Copyright** means rights of organizations and individuals to works they have created or own.

3. **Copyright-related rights** (below referred to as related rights) means rights of organizations and individuals to performances, phonograms, video recordings, broadcasts and encrypted program-carrying satellite signals.

4. **Industrial property rights** means rights of organizations and individuals to inventions, industrial designs, layout-designs of semiconductor integrated circuits, trade secrets, marks, trade names, geographical indications and trade secrets they have created or own, and the right to repression of unfair competition.

5. **Rights to plant varieties** means rights of organizations and individuals to new plant varieties they have selected, created or discovered and developed, or own.

6. **Intellectual property right holder** means an owner of intellectual property rights or an organization or individual that is assigned intellectual property rights by the owner.

7. **Work** means a creation of the mind in the literary, artistic or scientific domain, whatever may be the mode or form of its expression.

8. **Derivative work** means a work which is translated from one language into another, adapted, modified, transformed, compiled, annotated or selected.

9. **Published work, phonogram or video recording** means a work, phonogram or video recording which has been made available in a reasonable quantity of copies to the public with the permission of the copyright holder or related right holder.

10. **Reproduction** means the making of one or many copies of a work or a phonogram or video recording by whatever mode or in whatever form, including the backup of the work in electronic form.

11. **Broadcasting** means the transmission of the sound or image or both of a work, a performance, a phonogram, a video recording or a broadcast to the public by wire or wireless means, including satellite transmission, in such a way that members of the public may access that work from a place and at a time they themselves select.

12. **Invention** means a technical solution in the form of a product or a process which is intended to solve a problem by application of laws of nature.

13. **Industrial design** means a specific appearance of a product embodied by three-dimensional configurations, lines, colors, or a combination of these elements.

14. **Semiconductor integrated circuit** means a product, in its final form or an intermediate form, in which the elements, at least one of which is an active element, and some or all of the interconnections, are integrally formed in or on a piece of semiconductor material and which is

intended to perform an electronic function. Integrated circuit is synonymous to IC, chip and microelectronic circuit.

15. **Layout-design of semiconductor integrated circuit** (below referred to as layout-design) means a three-dimensional disposition of circuit elements and their interconnections in a semiconductor integrated circuit.

16. **Mark** means any sign used to distinguish goods or services of different organizations or individuals.

17. **Collective mark** means a mark used to distinguish goods or services of members from those of non-members of an organization which is the owner of such mark.

18. **Certification mark** means a mark which is authorized by its owner to be used by another organization or individual on the latter's goods or services, for the purpose of certifying the origin, raw materials, materials, mode of manufacture of goods or manner of provision of services, quality, accuracy, safety or other characteristics of goods or services bearing the mark.

19. **Integrated mark** means identical or similar marks registered by the same entity and intended for use on products or services which are of the same type or similar types or interrelated.

20. **Well-known mark** means a mark widely known by consumers throughout the Vietnamese territory.

21. **Trade name** means a designation of an organization or individual in business activities, capable of distinguishing the business entity bearing it from another entity in the same business domain and area.

A business area mentioned in this Clause means a geographical area where a business entity has its partners, customers or earns its reputation.

22. **Geographical indication** means a sign which identifies a product as originating from a specific region, locality, territory or country.

23. **Trade secret** means information obtained from financial or intellectual investment activities, which has not yet been disclosed and can be used in business.

24. **Plant variety** means a plant grouping within a single botanical taxonomy of the lowest known rank, which is morphologically uniform and suitable for being propagated unchanged, and can be defined by the expression of phenotypes resulting from a genotype or a combination of given genotypes, and distinguished from any other plant grouping by the expression of at least one inheritable phenotype.

25. **Protection title** means a document granted by a competent state agency to an organization or individual in order to establish industrial property rights to an invention, industrial design, layout-design, trademark or geographical indication; or rights to a plant variety.

26. **Reproductive material** means a plant or a part thereof capable of growing into a new plant for use in reproduction or cultivation.

27. **Harvested material** means a plant or a part thereof obtained from the cultivation of a reproductive material.

28. **Confidential information of [Institution]** means information that is determined in accordance with relevant laws or information that is determined and established in accordance with the Privacy Policy of the [Institution].

29. **Scholarly Works** means all copyright works which are the outputs of academic Staff Members, Learners or Collaborators, including Research, creative and other outputs in area(s) of his/her expertise. It does not include Course Materials [**Option:** and computer software and databases].

30. **Course Materials** means All materials used in, or in connection with, and for the purpose of, teaching an education course through the provision of lectures, tutorials, seminars, workshops, field or laboratory classes, assessments, practicum and other teaching activities conducted by the Institution; and all IP in such materials.

31. **Open Educational Resources (OER)** means 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.

32. **Staff Members** means Official, employees working at [Institution], any person who is under a contract of employment with the Institution including academic, research, technical, administrative and adjunct staff, whether full-time or part-time or on a temporary basis.

33. **Learners⁶** means Learners, trainees, doctoral Learners studying training systems at [Institution], any Learner registered for an approved course at the Institution.

34. **Collaborators** means visitor, interns, collaborators and other subjects who come to work, survey and/or operate at [Institution], any person who is neither a Staff Member nor a Learner of the Institution who engages in work at the Institution, including visiting professors, adjunct and conjoint professors, teachers, researchers, scholars and volunteers; and who concludes an Appointment agreement with the Institution.

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

36. **Co-Creators** means **Creators** who jointly create part or all of the intellectual property.

37. **Enabler** means any assistants, technicians, commenters or information providers (not confidential information), 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.

⁶ Also see Article 80 Education Law 2019.

38. **Intellectual Property (IP)** means all outputs of creative endeavour in any field at the Institution for which legal rights may be obtained or enforced pursuant to the law.

39. **Institution IP** means IP owned or co-owned by the Institution.

40. **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 Appointment in the case of a Collaborator, employment contract in the case of a Staff Member, or registration in the case of a Learner.

41. **IP Committee** means the body within the Institution, set up in terms of Article 15.1, which is responsible for overseeing the drafting, implementation, monitoring and evolution of the Policy, and for providing strategic oversight of the IPMO.

42.⁷ **IP Management Office (IPMO)** means *Technology Transfer and Intellectual Property Service Center (TISC)* is a unit established by [Institution] as an independent unit or as a functional part of another unit within [Institution], the administrative unit established in terms of Article 15.2, responsible for day-to-day management of all IP-related activities of the Institution.

43. **Science Research**⁸ means Any creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and the use of this stock of knowledge to devise new applications.⁹ It comprises three activities: basic research, applied research and experimental development.

44. **Research Contract** means Any type of agreement between the Institution and an external party or research sponsor, concerning Research, which could result in IP being created at the Institution. This shall include, but is not limited to, all sponsorships, donorships and collaborations with the external party or research sponsor.¹⁰

45. **Research Project** means Any project that forms the basis of Research undertaken by the Institution and includes projects undertaken by a Learner, under the supervision of a Staff Member or a Collaborator, as part of a research degree program.

46. **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.

Commercialization Entity means A company that has access to the IP of the Institution, through any one or more of the available Commercialization modes, to produce new products, processes or services. This can be a spin-off or start-up.

⁷ Redefined to suit the name of Vietnam's TISC organization.

⁸ Definition from the [Frascati Manual](#).

⁹ Article 3.4 Law of Science and Technology.

¹⁰ For details as to the difference between sponsorships, donorships and collaborations, and how the IP ownership clauses may change, see the Guidelines, Article 8.

47. **Gross IP Revenue** means All revenue received by the Institution on Commercialization of Institution IP before any deductions for IP Expenses, as defined in Article 12.

48. **IP Expenses** means All expenses incurred by the Institution in the management and Commercialization of IP for which Gross IP Revenue has been received.

49. **Net IP Revenue** means Gross IP Revenue less IP Expenses

50. **Substantial Use** means Extensive [unreimbursed] use of the Institution's resources which include but are not limited to facilities, equipment, human resources or funds [**Option:** and Background IP that is not publicly available]. Not included is routine use of libraries and/or office space.

51. **Traditional Knowledge (TK)** means [Definition under the national TK Law]. [**Or:** A living body of knowledge resulting from intellectual activity in a traditional context, which includes know-how, practices, skills, and innovations. TK embodies the traditional lifestyles of indigenous peoples and local communities and is transmitted from generation to generation, often forming part of the cultural and spiritual identity of the community. TK is not limited to any specific technical field, and may include agricultural, environmental and medicinal knowledge. TK also often encompasses knowledge associated with Genetic Resources. ¹¹]

52. **Genetic Resources (GRs)** means "Genetic material of actual or potential value."¹² Genetic material is defined as "any material of plant, animal, microbial or other origin containing functional units of heredity".¹³ Some GRs are linked to traditional knowledge (TK) through their use and conservation by indigenous peoples and local communities, often over generations, and through their widespread use in modern scientific Research. Examples include medicinal plants, agricultural crops and animal breeds.

Chapter II

RIGHTS AND RESPONSIBILITIES FOR INTELLECTUAL PROPERTY

ARTICLE 4. GENERAL PROVISIONS ON INTELLECTUAL PROPERTY

1. Intellectual Property of Institution¹⁴

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

¹¹ There is not yet an accepted definition of "traditional knowledge" at the international level. The proposed definition is provided for the purposes of this Template.

¹² Article 2 of the Convention on Biological Diversity.

¹³ Id.

¹⁴ Reference to Article 2 WIPO IP Policy Template.

- a) literary works, including publications in respect of Research results, and associated materials, including drafts, datasets and laboratory notebooks;
- b) teaching and learning materials;
- c) 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 Institution resources or facilities;
- d) databases, tables or compilations, computer software, preparatory design material for a computer program, firmware, courseware, and related material;
- e) patentable and non-patentable technical information;
- g) designs including layout designs (topographies) of integrated circuits;
- h) plant varieties and related information;
- i) trade secrets;
- j) know-how, information and data associated with the above; and
- k) any other Institution-commissioned works not included above.

2. Bases for the emergence and establishment of intellectual property rights

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a) Copyright shall arise at the moment when a work is created and fixed in a certain material form, irrespective of its content, quality, presentation, means of fixation, language and whether or not it has been published or registered.

b) Related rights shall arise at the moment when a performance, phonogram, video recording, broadcast or encrypted program-carrying satellite signal is fixed or displayed without any prejudice to copyright.

c) Industrial property rights are established as follows:

- Industrial property rights to an invention, industrial design, layout-design, mark or geographical indication shall be established on the basis of a decision of the competent state agency on the grant of a protection title according to the registration procedures stipulated in this Law or the recognition of international registration under treaties to which the Socialist Republic of Vietnam is a contracting party; for a well-known mark, industrial property rights shall be established on the basis of use process, not subject to any registration procedures.

- Industrial property rights to a trade name shall be established on the basis of lawful use thereof;

¹⁵ Article 6 IP Law.

- Industrial property rights to a trade secret shall be established on the basis of lawful acquirement and confidentiality thereof;

- Rights to repression of unfair competition shall be established on the basis of competition in business.

d) Rights to a plant variety shall be established on the basis of a decision of the competent state agency on the grant of plant variety protection title according to the registration procedures specified in this Law.

3. Ownership and co-ownership of research results

a) [Institution] owns all IP created mainly under the National budget managed by the Institution, the Institution budget or other resources under the ownership of the Institution and managed by the Institution;

b) [Institution] is the owner/co-owner of IP created using part of the Institution's resources with the resources of other individuals and/or organizations, unless otherwise agreed. The rate of IP between ownerships will be agreed in writing between the parties involved;

c) [Institution] is the owner/co-owner of IP when the Institution is designated by the competent authorities, decentralized or transferred to [Institution] in the name of the owner, or designated by the rightful owner of the IP which transferred or donated to [Institution];

d) Specific policies on ownership/co-ownership and right to use are stated in Article 5 of this Policy.

4. Right to registration of inventions, industrial designs and layout designs of the State ¹⁶

a) When an invention, an industrial design or a layout design is created on the basis of full financial, material and technical investments by the State, the right to registration of such invention, industrial design or layout design belongs to the State. The organization or state agency assigned by the State to act as the investor shall represent the State in exercising that right to registration.

b) When an invention, an industrial design or a layout design is created on the basis of capital contribution by the State (either in funds or material-technical facilities), part of the right to registration of such invention, industrial design or layout design belongs to the State in proportion to its capital contribution. The organization or state agency acting as the owner of the state investment capital shall represent the State in exercising that part of the right to registration.

c) When an invention, an industrial design or a layout design is created on the basis of research and development cooperation between a state agency or organization and another organization or individual, unless it is otherwise provided for in the research and development cooperation agreement, part of the right to registration of such invention, industrial design or

¹⁶ Article 9 Decree 103/2006/NĐ-CP.

layout design belongs to the State in proportion to such state agency's or organization's contribution to the cooperation. The state agency or organization which takes part in the research and development cooperation shall represent the State in exercising that right to registration.

d) The state agency or organization exercising the right to registration of an invention, an industrial design or a layout design specified in Clauses 1, 2 and 3 of this Article represents the State in being named as the protection title holder, manages industrial property rights to such object, and is entitled to assign the State's part of the right to registration of invention, industrial design or layout design to another organization or individual if the assignee pays to the State a specified sum of money or satisfies reasonable commercial conditions compared with the commercial potential of such invention, industrial design or layout design.

5. Creators and Co-creators

a) An individual is identified as the creator or co-creator of an IP if that individual is directly involved in the process of creating, originating, creative practicing, or who has substantial intellectual contribution in the creation of IP.

b) In the case of IP created by more than one creator, the list of creators and the contribution rate of each creator will be agreed upon in writing by the group of creators but must not be contrary to the provisions of this Policy and national law.

c) Creators/co-creators of IP are entitled to moral rights in accordance with relevant provisions of the law on IP, civil and other relevant laws, unless otherwise agreed.

d) Creators/co-creators of IP are entitled to corresponding property rights as prescribed in these Policies, or in signed contracts, unless otherwise provided for by law.

dd) Enablers are assistants, technicians, commenters or material providers (not confidential information) and any other individuals who have indirectly contributed to the creation of IP of creators is not considered the creator.¹⁷ In the case of written consent of all creators/co-creators, the Enablers may be have shared benefits as prescribed at Article 12.3.b of this Policy.

6. Trading name and trademark of [Institution]

a) The transaction name of [Institution] is: [Name of [Institution] (Vietnamese, English)]. The use of the name and transaction name of the [Institution] must ensure the preservation of the image and reputation of the [Institution].

b) Units of [Institution], units affiliated to [Institution], staff members, Learners, collaborators are entitled to use the name and transaction name of [Institution] to perform assigned functions and tasks. In other cases, the written consent of [Institution] is required.

[Optional, if any] c) The trademark of [Institution] is certificated by the National Office of Intellectual Property No. [Certificate number] according to the [Decision No.] date [Decision Date]. [Institution] is the owner of this trademark.

¹⁷ Also see Article 6.3 Decree 22/2018/NĐ-CP.

d) Units of [Institution], units affiliated to [Institution], staff members, Learners, collaborators may use the trademark [Institution] within the scope of their functions and duties assigned service.

dd) In case an organization or individual affiliated to the [Institution] uses the trademark of the [Institute/Institution] for technology incubation, commercialization of IP and provision of science and technology services, production and business activities and other purposes outside the scope of assigned functions and tasks need to be approved in writing by the Leader of the [Institution]. [Institution] specifies the payment of fees for the use of trademarks in specific cases.

e) Units under [Institution] have the right to develop and propose to [Institution] about the registration of other trademarks with their own characteristics and nature, based on the principle of ensuring image and prestige of [Institution]. [Institution] is the Applicant and the Owner of the trademarks of the units of the [Institution], except for the case when the affiliated units have legal status, have their own seals which are authorized in writing by [Institution] for such units to rightfully be in their name as the registrar and the owner.

[Option] 7. Traditional knowledge and genetic resources ¹⁸

a) When Research is conducted at the Institution using TK and/or GRs, provisions of national legislation must be observed,¹⁹ which provisions may include prior informed consent, and access and benefit-sharing, and the need to obtain any relevant permits.

b) The Institution shall formulate procedures and mechanisms for access to GRs/TK in order to comply with national legislation.

c) The Institution shall make provision in all Research Contracts concluded for the protection of any IP which may arise from the use of TK and/or GRs.

ARTICLE 5. OWNERSHIP OF IP AND RIGHTS OF USE ²⁰

1. IP Created by Staff Members

a) **Institution ownership.** The Institution owns all IP created by a Staff Member:

- in the course and scope of his/her employment; or
- making Substantial Use of the Institution's resources.

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

¹⁸ Article 12 WIPO IP Policy Template.

¹⁹ For instance, when a member of the Institution needs to access and use GRs for the purpose of the research or when it is envisaged to share samples of GRs with partners from other countries, the Institution shall abide by the national laws in place.

²⁰ Article 5 WIPO IP Policy Template.

- is outside the course and scope of their employment and without Substantial Use²¹ of the Institution's resources;

- vests in Scholarly Works (see Article 5.5);

c) **IP emanating from Research Contracts.** In the absence of provisions to the contrary in any national law [**Or:** where there is no Substantial Use of the Institution's resources], the terms of the Research Contract will regulate ownership of IP created by Staff Members in the course of a Research Project that forms part of a Research Contract, as set out in Article 7.

d) **Appointment of Staff Members at another Institution.**²² It is the responsibility of each Staff Member that holds an honorary or other academic or research appointment at another institution (Host Institution) to bring to the attention of the Host Institution, including its IPMO, his/her obligations in terms of this Policy, prior to the tenure at the Host Institution. To the extent that the Host Institution's IP Policy makes a claim on IP created by the Staff Member pursuant to such appointment, the Staff Member shall ensure that the Host Institution negotiates a suitable IP arrangement with the Institution.

2. IP Created by Learners

a) **Learner ownership.** IP created by a Learner in the course of study at the Institution (including theses, dissertations and other Scholarly Works) will be owned by the Learner. This is in contrast to IP created by a Learner in a Research Project, as per Article 5.2.c below.

b) **Theses or dissertations**²³.

The Learner must submit his/her final thesis or dissertation to the Institutional repository.

The Learner must grant a royalty-free licence to the Institution to reproduce his/her thesis or dissertation and to distribute copies thereof to the public.²⁴

c) **Institution ownership.** IP emanating from a Learner's Research Project shall be owned by the Institution in the following circumstances:

- if the IP is created by making Substantial Use of the Institution's resources (excluding supervision) and there is no reimbursement agreement concluded between the Institution and the Learner; or

²¹ Use will be deemed not Substantial if minimal overhead costs have been incurred by the Institution (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 Institution facilities; or the IP has been written or developed in the personal (unpaid) time of the Creator.

²² This means that such Staff Members are a Collaborator at another institution.

²³ Use all 2 options.

²⁴ The Rules of the Institution generally require, as a condition of enrolment, that the Institution reserves the right to retain the original or copy of any theses, and a license as described in Article 5.2.2. Reference should be made to the applicable Rules. Such retention does not affect any copyright or other IP right that may exist in such theses.

- if the Research carried out by the Learner forms part of the Institution's Research Projects.

d) **IP emanating from Research Contracts.**²⁵ The terms of the Research Contract shall regulate the ownership of IP created by a Learner in the course of such Research Contract, as set out in Article 8.

dd) **Institution ownership responsibilities.**²⁶ If the Institution is the owner of IP created by a Learner, in terms of Article 5.2.c or Article 5.2.d, and hence created in terms of a Research Project or Research Contract, respectively, the Institution shall:

- provide the Learner with an explanation of the reasons for the assignment of IP rights to the Institution;

- advise the Learner to seek independent advice regarding the assignment;

- obtain a deed of assignment from the Learner for all IPRs emanating from the Learner's Research Contract or Research Project, where relevant, in return for revenue sharing as provided for in Article 10; and

- withdraw the Learner from the Research Project or Research Contract if a Learner elects not to assign the relevant IPRs to the Institution.

e) **Bursaries/scholarships.** An external party that grants a bursary or scholarship to a Learner may elect to own the IP created by that Learner in the course of his/her study at the Institution provided the Learner and the Institution have consented to the assignment of IP ownership in writing and such consent is not contrary to any applicable local or national law.

g) **Learner Owned IP.** IPMO may, upon agreement, provide Commercialization services to Learners for their IP.

[**Option 1:** In this event, Learners may be required to assign their IP to the Institution and will be afforded the same rights and obligations as Staff Members under this Policy].

[**Option 2:** In the absence of an assignment of the IP to the Institution, the Learners and IPMO may agree on the specific Commercialization services required], [**Option 2a:** at no cost to the Learner;] [**Option 2b:** in exchange for an agreed fee being paid to the Institution] [**Option 2c:** or sharing of Commercialization revenues accruing to the Learners].

3. IP Created by Collaborators

a) **Institution ownership.** Unless otherwise agreed to in writing by the Institution and the Collaborator's home institution prior to the tenure at the Institution, Collaborators are required to assign to the Institution any IP:

- created in the course and scope of their Appointment at the Institution; or

²⁵ That is, if the Learner is participating in a Research Project under a Research Contract between the Institution and an external entity or research sponsor.

²⁶ See also Article 2.2.b of this Policy.

- created by making Substantial Use of the Institution's resources.

b) **Institution IP.** On departure from the Institution, a Collaborator must sign and submit to IPMO an IP Disclosure form disclosing any IP created, as per Article 5.3.a, whilst at the Institution.

4. Special Rules for Course Materials

a) **Institution ownership.** The Institution will own the IP in Course Materials created by a Staff Member or a Collaborator, with the exclusion of Course Material that is created from or for Open Educational Resources, in accordance with Article 5.7.a.

b) **Licensed by the Institution.** The Institution grants the Creators of Course Materials a royalty-free, non-exclusive licence to use the Course Materials created by them for teaching and Research purposes at the Institution. [**Option:** With the express prior written permission of the Institution, such licence may be utilised for commercial purposes outside the Institution].

5. Special Rules for Scholarly Works

a) **Publication.** The Institution recognises and endorses the rights of Staff Members, Learners and Collaborators to publish their Scholarly Works, provided that any Scholarly Work which may disclose any possible Institutional IP shall first be cleared by IPMO after having an opportunity to protect such Institutional IP according to Article 8.

b) **Institutional repository.** Staff Members, Learners and Collaborators should endeavour to obtain publishers' permission to include published Scholarly Works in the Institutional repository [whether as a published edition or in pre-publication form].

c) **Licensed to the Institution.** Staff Members, Learners²⁷ and Collaborators shall grant to the Institution a non-exclusive, royalty free license to use their Scholarly Works for the Institution's [administrative, promotional,] Research and teaching purposes.

6. Moral Rights

a) **Recognition.** The Institution undertakes to respect and protect the moral rights which copyright law confers on Authors of copyright works.²⁸

b) **Rights granted.** The Institution acknowledges that moral rights vest in Authors of copyright works irrespective of the copyright ownership thereof and include:²⁹

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

²⁷ This obligation can be enforced against Learners through a provision in the Learner registration form in terms of which the licence is granted to the Institution.

²⁸ This article must be adapted in accordance with national law.

²⁹ The list of rights granted needs to be adapted to the moral rights recognized in national laws.

- the right of integrity of authorship in respect of the copyright works.

c) **No waiver.** The Institution will not require Staff Members, Learners or Collaborators to waive their moral rights as a condition of employment, enrolment, Appointment or funding.

7. Public Domain

a) **Public Domain.** Institution IP forms part of the Public Domain in the following circumstances:

- if a Research Contract provides that the Research results be placed into the Public Domain; or

- if Staff Members or Collaborators made use of OERs or resources licensed through Open Source or Creative Commons Licences ³⁰ and the licensing conditions require release of derivatives into the Public Domain.

b) **Release into the public domain.** The Institution 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 and low prospects of fostering the development of new products or services; or

- if deemed necessary by the Institution.

8. Principles of management and use of assets formed from performing scientific and technological tasks using state capital ³¹

a) Assets formed through the implementation of budgetary tasks are public assets. The management and use comply with the provisions of the Law on Management and Use of Public Property, as stipulated in Decree 70/2018/ND-CP and relevant laws.

b) Assets formed through the implementation of tasks supported by the budget are co-owned assets; the management and use of the property shall comply with the agreement in the contract between the competent state agency and the other parties and the explanation of the approved scientific and technological tasks in accordance with the law on science and technology, as prescribed in Decree 70/2018/ND-CP and relevant laws.

c) The management, use and exploitation of assets as a result of the implementation of tasks must ensure strictness, efficiency, transparency..

d) Assets formed from performing tasks with funding and support from the budget are special properties at units of the people's armed forces that are managed and used in accordance

³⁰ 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.

³¹ Article 4 Decree 70/2018/ND-CP.

with the Law on management and use of public property under prescribed in Decree 70/2018/ND-CP and relevant laws.

dd) Upon completion of a science and technology task using state capital, property formed through the performance of a qualified science and technology task is a fixed asset that will be handled in accordance with Decree No. Decree 70/2018/ND-CP and relevant laws.

ARTICLE 6 - PUBLICATION, NON-DISCLOSURE AND TRADE SECRETS ³²

1. Right of publication

The Institution encourages and supports the right of Creators to decide if and when to publish their Research results, in accordance with Article 5.5 above.

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 rights ³³. 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 IPMO before making any Public Disclosure of potential Institution IP

3. Trade Secrets

The Institution may designate certain confidential information as a Trade Secret, owned by the Institution. 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 IPMO.

ARTICLE 7 - RESEARCH CONTRACTS ³⁴

1. Authority

Staff Members, Learners and Collaborators shall not have the right to enter into a Research Contract with external parties on behalf of the Institution unless they are authorized to do so by an official representative of the Institution.

2. Research Contract Policy

All Research Contracts must be executed and performed in compliance with the Institution's Research Contract Policy (where available) [named XX].³⁵

³² Article 6 WIPO IP Policy Template

³³ 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.

³⁴ Article 7 WIPO IP Policy Template.

³⁵ In general, Research Contracts must be managed in terms of a specific research contract policy. Article 8 of the Template only deals with the IP ownership clauses and the possible options for contract, sponsorship or donor funding.

3. Due diligence

Persons acting for and on behalf of the Institution shall exercise all due diligence and consult IPMO when negotiating and signing contracts that may affect the Institution's IPRs.

4. 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 [Option: in accordance with the guidelines in [Annex XX]].

5. Government rules

Research Contracts shall comply with any applicable law and/or Government regulations and/or rules, which may be applicable to Research undertaken by the Institution, in particular, as far as it relates to the ownership of IP resulting from such Research. [Option: The appropriate legal representative of the Institution will be consulted in this respect before signature of any Research Contract unless this responsibility has been delegated to IPMO by the Institution.]

6. Approval

[Option 1: Proposed Research Contract and other legal statements concerning the Institution's IPRs shall comply with the provisions of this Policy. Any variance from this Policy must be approved by the Senior Responsible Officer.]

[Option 2: Before signing, the full copy of the proposed Research Contract and other legal statements concerning the Institution's IPRs shall be submitted to IPMO for advice and approval by the Senior Responsible Officer, unless this responsibility has been delegated in writing to IPMO by the Institution].

7. Basic Principles

The IP clauses in all Research Contracts shall be governed by the following basic principles:

a) Concluded from the outset

A Research Contract must be executed in writing and signed by the Institution 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 and use of IP arising from the Research Project as well as any Background IP.

b) Background IP

All Institution Background IP must be properly recorded and declared prior to the commencement of a Research Contract and belongs to the Institution. Similarly, Background IP of the external party/sponsor, belongs to such party or sponsor. Use of such Background IP requires express written permission.

c) Foreground IP (IP arising from the Research Contract)

IP generated pursuant to a Research Contract by Staff Members, Learners or Collaborators 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 Institution.

d) Co-owned Foreground IP

- **Terms for co-ownership.** Co-ownership of IP generated pursuant to a Research Contract shall be in accordance with national legislative provisions, failing which, **[Option 1]** as per the percentage of IP created by the Institution and the external party(ies)/sponsor(s), **[option 2]** in an equal undivided manner or **[option 3]** as mutually agreed contractually.

- **Costs for protecting and maintaining co-owned IP.** The costs for protecting and maintaining any IPRs shall be shared between the Institution and the external party(ies)/sponsor(s) **[Option 1]** in accordance with the percentage of IP ownership; **[Option 2]** in an equal manner; **[Option 3]** as mutually agreed contractually.

dd) Serendipitous IP³⁶

Any IP created during the course of the Research Contract which falls outside of scope of the Research Contract shall be owned by the Institution or the external party(ies)/sponsor(s) which developed such IP, unless agreed contractually otherwise in the Research Contract.

e) 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.

g) Publication delay

It is the strict policy of the Institution to allow Creators freedom to publish their work. However, the Institution acknowledges that delays in publication for the purpose of initiating statutory protection of the IP is often necessary. In this regard, the Institution will agree, on a case-by-case basis, to a contractual delay in publication by Creators. Such delay will not exceed [typically 90 calendar days] from the date IPMO is notified of the intent to publish, unless authorized by the Senior Responsible Officer.

[Option: IPMO may, if so required, will facilitate the signing of a non-disclosure agreement by the journal appointed peer reviewers, such that review of the article for publication can proceed while the necessary procedures are being followed for IP protection.]

h) Use of the IP for Research and teaching

In instances, where the Institution 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 teaching purposes.

³⁶ Results are serendipitous when research that was originally funded for one purpose turns out to be useful for another purpose.

8. Exceptions to the Policy

In certain cases, it may be necessary and/or beneficial to the Institution to enter into a Research Contract that contains exceptions to the provisions of this Policy. Any such exceptions require prior, written approval from the Senior Responsible Officer.

Chapter III PROTECTION AND COMMERCIALIZATION OF IP

ARTICLE 8. DISCLOSE AND PROTECTION IP³⁷

1. Responsibility to Disclose IP

a) Recording

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

b) IP Disclosure

Where a Creator identifies potential IP resulting from his/her Research [or that of his/her team], he/she shall disclose such potential IP to IPMO promptly by means of an IP Disclosure Form.

c) Complete disclosure

Creators must provide to IPMO such full, complete and accurate information as IPMO may reasonably require to enable it to sufficiently assess the technical and related features and functions, ownership, commercial potential and IP protection that might be applicable to such IP. Upon complete disclosure, the IP Disclosure will be registered and assigned a reference number and IPMO will share this reference number with the Creators to signify that the IP Disclosure has been formally received by the Institution.

d) [Optional Clause - Disclosure Clause for IP related to GRs and/or TK]. When potential IP has been developed using GRs and/or TK, the IPMO [shall/could] require its Creators to disclose relevant information, in accordance with national legislation.

2. Creatorship and Ownership

a) Creatorship

Creators shall, upon request, sign the appropriate legal documents provided by IPMO that attest to creatorship. Where there is more than one Creator, and there is a dispute as to the contribution to creatorship, IPMO shall in consultation with the Creators, assist in the

³⁷ Article 8 WIPO IP Policy Template.

determination of the percentage IP creatorship, failing which it shall be assumed that there was an equal undivided contribution.

b) Ownership

Once creatorship has been determined, the Creators shall be required to formally assign any right, title or interest they may have in that IP to the Institution in the form of a contract that specifies the rights that will accrue to the Creator(s) and the Institution and the obligations they will have to assist the Institution with the Commercialization of that IP. Article 9.3 will apply.

3. Determination as to IP Protection and Commercialization

a) Evaluation and recommendation

IPMO will analyse the information disclosed in the IP Disclosure within [usually 60-90 days] of formal receipt. The analysis will include: whether or not the subject matter is protectable as IP; an assessment of economic viability or marketability; and determination of any rights of external parties, such as a funder or collaborator. After evaluation, IPMO will prepare a preliminary report with findings that enable the Institution to decide if it will proceed with IP protection and Commercialization. IPMO shall share the preliminary report with the Creator(s), and seek their input. TISC phải phân tích thông tin bộc lộ trong Bản Bộc lộ tài sản trí tuệ trong vòng [thường là 60-90 ngày] kể từ khi nhận được biên nhận chính thức.

b) Decision to protect/Commercialize

The Institution will decide, as soon as reasonably practicable, whether or not it wishes to protect and/or Commercialize the IP. IPMO will use all reasonable efforts to notify the Creator(s) of the Institution's decision within [usually 60-90 days] of formal receipt of the IP Disclosure. IPMO will also make a determination in relation to the validity of any claim made by a Staff Member, a Collaborator or a Learner that they are the true Creator(s) of that IP and in relation to their rights under this Policy.

c) Institution's obligation to notify Creators of its decision

Within no more than [usually 60-90 days] IPMO will notify the Creator(s) of the decision of whether the Institution will or will not pursue IP protection and Commercialization of their IP Disclosure.

4. Institution Elects not to Protect /Commercialize the IP

a) IP abandoned or not Commercialized

The Institution reserves the right not to protect or Commercialize IP that it owns if after consultation with the Creators:

- there is no reasonable prospect of commercial success;
- it is not deemed to be in the best interest of the Institution; or
- it is not deemed to be in the public interest.

b) Transfer of Ownership

In the event the Institution 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).

c) Written notification

If the Institution is unable to or decides not to protect or Commercialize the Institution IP, it should notify the relevant Creator(s) of its decision in writing and in a timely³⁸ manner.

d) 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.

dd) Assignment

If the Creator elects to take assignment of the IP, the Institution shall ensure that a deed of assignment is executed without delay.

e) Terms and conditions

If the Institution assigns IPRs to the Creator in terms of this Article 8.4.d, the assignment may be subject to one or more of the following terms and conditions:

- that upon Commercialization, the Institution be compensated for any expenditure it may have incurred in connection with the protection and/or Commercialization of such IP; and/or
- that the Institution be granted a non-exclusive, royalty-free licence to use the IP for Research and teaching purposes.

5. Intellectual property expenses and intellectual property operating expenses

a) In the first stage, expenses for the protection/commercialization of intellectual property owned by [Institution] shall be paid by [Institution] from [specify source].

When there is enough Net Revenue from intellectual property, the above intellectual property expenses will be taken from the Revenue generated by intellectual property.

b) In case of performing science and technology tasks, if there is funding in the task for intellectual property right registration, the funding will be spent from the task. Once the intellectual property is protected and the Task has been completed, the intellectual property owner is responsible for the subsequent costs associated with the intellectual property.

c) Every year, [Institution] spends an amount of money on intellectual property activities, including:

- Propagating, disseminating and raising awareness about intellectual property and intellectual property management;

³⁸ "Timely" means sufficient to not cause the loss of IP rights by failure to act.

- Building science and technology databases and intellectual property databases;
- Invest in facilities and equipment to serve the management of intellectual property;
- Outsourcing legal services, intellectual property services and intellectual property commercialization services;
- Other activities according to functions and duties.

ARTICLE 9. COMMERCIALIZATION OF IP ³⁹

1. Determination of the Commercialization Strategy

Within [usually 3-6 months] of the decision to protect or Commercialise the IP under Article 8.3.2, the Institution will determine, with input from the Creators, the most appropriate Commercialization strategy.

2. Assistance to IPMO

Creators of IP which has been selected for IP protection and Commercialization by the Institution must provide IPMO 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.

3. Sovereignty and Cooperation

The Institution shall have the sole discretion regarding the Commercialization of IP owned by it. Notwithstanding, the Institution 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. The Commercialization of Institution IP will be planned, executed, and monitored by IPMO.

4. Commercialization Pathways

Modes of IP Commercialization may include:

- license, either exclusive or non-exclusive, and variations thereof [**Option:** Preference for licensing to small and medium sized companies or businesses];
- assignment (sale) [**Option:**, in extraordinary circumstances];
- formation of a Commercialization Entity to which the IP is licensed or assigned in terms of this Policy;
- non-profit use or donation;
- joint ventures;

³⁹ Article 9 WIPO IP Policy Template.

- royalty free access on humanitarian or other grounds; or
- various combinations of the above.

5. Guidelines

Regardless of the mode of IP Commercialization, the transaction will be executed in a contract which:

- protects the interests of the Institution, its Staff Members, Learners and Collaborators;
- retains rights for the Institution to use the IP for educational and research purposes;
- assures that the IP will be utilized in a manner which will serve the public good;
- assures that the IP will be developed and brought to the marketplace as useful goods and services; and
- prohibits the “shelving” or “mothballing”⁴⁰ of the IP or its use in any illegal or unethical manner.

6. [Option]

The Institution will endeavour to Commercialize IP in a manner that enhances local, regional, and national economic development.

7. [Option]

The Institution will endeavour to Commercialize IP in a manner that encourages and fosters entrepreneurship by Staff Members and others and which supports Commercialization Entities.

ARTICLE 10. IP PORTFOLIO MAINTENANCE⁴¹

1. Recording and monitoring

IPMO [or an external entity designated by the IPMO] shall maintain records of the Institution’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.

2. Accounting

IPMO shall maintain income/expense accounting records on each IP so that revenue sharing allocations can be calculated.

⁴⁰ Shelving or mothballing of academic IP refers to IP and invention disclosure bundles that remain unexplored, unlicensed or unused.

⁴¹ Article 11 WIPO IP Policy Template.

Chapter IV INCENTIVES AND DISTRIBUTION OF REVENUES

ARTICLE 11. THE INSTITUTION'S INCENTIVE STRUCTURE ⁴²

Purpose and scope

The Institution, in the interest of promoting knowledge transfer, will give due consideration to incentives to researchers to foster Research that has socio-economic impact; such incentives may be financial or non-financial. A Creator/Enabler may receive incentives from each IP they created/enabled which is Commercialized.

ARTICLE 12. SHARING OF REVENUES ⁴³

1. General

The Institution, in line with the minimum requirements set out in relevant national legislation [namely Law on Intellectual Property, Law on Science and Technology, Law on Technology Transfer and Law on Management and Use of Public Property,], will award Creators/Enablers in the sharing of monetary benefits that may accrue to the Institution from the Commercialization of Institution IP.

2. Calculation of revenues for distribution

Calculation of Gross IP Revenue, IP Expenses, and Net IP Revenue shall be in accordance with the following rules:

a) Calculation of Gross IP Revenue

"Gross IP Revenue" is defined in Article 2 as "*all revenue received by the Institution for Commercialization of Institutional IP before any cost recovery or deductions for IP Expenses*" and includes, but is not limited to, outright sale of IP, option payments received, licence fees received, evaluation fees received, upfront and milestone payments received, royalty payments received, share of profits received, dividends received, commissions, income through disposal of equity, and direct sale of products or services.

b) IP Expenses

"IP Expenses" is defined in Article 2 as "*all expenses incurred by the Institution in the management of IP for which Gross IP Revenue has been received*" and includes, but is not limited to, those expenses that relate to (i) the Institution's expenses incurred by payment to external entities for securing, maintaining and enforcing IP protection, such as patenting and litigation expenses; (ii) costs incurred by the Institution in the licensing/assignment of IP, including marketing costs, contract negotiation and drafting costs; and **[Optional]** (iii) costs in making

⁴² Article 10.1 WIPO IP Policy Template.

⁴³ Article 10.2 - 10.4 WIPO IP Policy Template

shipping or otherwise distributing products, processes or services that embody the particular IP, **[Recommended]** but not including stafftime or general administrative costs.

c) Calculation of Net IP Revenue

IPMO shall maintain accurate and transparent documentation of IP Expenses incurred for a particular IP and shall be entitled to cover all IP Expenses it has incurred, as set out in 12.2.b above. The “Net IP Revenue” is calculated as the Gross IP Revenue less IP Expenses.

d) Co-owned IP

Where the IP is co-owned by the Institution and an outside organization, the Gross IP Revenue received by the Institution will be shared in accordance with a pre-determined formula as per a contractual arrangement. Thereafter, the Gross IP Revenue received by the Institution and the Net IP Revenue will be determined, and revenues will be shared in accordance with section 12.3.a and 12.3.b below.

3. Sharing of revenues – Creators/Enablers

a) Standard Creator’s share

[Option 2] [30]%⁴⁴ of the Net IP Revenue will be allocated to the Creator. Where there is more than one Creator, the Creators are entitled to an equal or *pro rata* share, based on contribution, of above number of the Net IP Revenue, except where there is a prior written agreement between all the Creators to the contrary..

b) Standard Enabler’s share

[Option 1] Creator(s) may at their joint sole discretion choose to provide for Enablers to receive a share of the Creator(s)’ portion of the Gross or Net IP Revenue. This arrangement must be agreed to in writing by all Creators, if more than one.

c) Disputes

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

d) Payment

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

e) Taxes

⁴⁴ Also see Article 135 IP Law.

Payments made as per 10.2.3.4 are subject to personal tax⁴⁵. The Institution may, if so obliged by national tax laws, make any applicable tax deductions before making payments to the Creators/ Enablers.

g) Entitlement

Creators/Enablers and their heirs will be entitled to IP revenue sharing for as long as the Institution receives Gross IP Revenues from Commercialization of the Institution IP. [**Option:** The entitlement to a Creator’s/Enabler’s share of Gross or Net IP Revenue shall survive any resignation/termination of employment].

h) Banking details

The onus is upon each Creator/Enabler to ensure that the Institution has their current banking details for the purpose of revenue sharing. The Institution will keep the relevant IP revenue amounts in reserve for a maximum period of 3 (three) years after which all rights of Creators/Enablers to receive such payments will be forfeited. If the Institution pays an amount into an incorrect account as a result of information supplied to it being outdated or incorrect, the Institution will not have any further obligation or liability in respect of such payment, which will be deemed to have been duly and properly made.

i) Contact details⁴⁶

The onus is upon each Creator/Enabler to ensure that the Institution is in receipt of their current address details for the purpose of revenue sharing. Unless contrary to law, should the Institution be unable to locate the Creators/Enablers through reasonable efforts, in order to effect payment of the revenue share amount, and a period of [five] years has passed since an initial attempt, then the portion owed to that Creator/Enabler or his/her heirs will be paid to the Institution’s central fund to be used to support Research and innovation activities.

4. Sharing of revenues – Institution

The Institution’s share of Net IP Revenue is distributed internally as follows:

| |
|--|
| <p>[10-50]% for further Research;</p> <p>[10-50]% to IPMO;</p> <p>[10-50]% for further IP prosecution and maintenance costs; and</p> <p>[10-50]% to institutional overheads.</p> |
|--|

⁴⁵ National law tax provisions should be consulted.

⁴⁶ Article 10.4.1 WIPO IP Policy Template.

ARTICLE 13. OTHER INCENTIVES⁴⁷

1. General

As a default position, the Institution 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 12.3.a and 12.3.b, as appropriate. The Institution 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 13.2. – 13.4.

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

a) recognition of IP generation and Commercialization performance in appraisal procedures; and

b) opportunities for enterprise development or capacity development through, for example, specific training opportunities, sabbaticals, and local and international exchanges in their relevant Research field or in the field of IP management and knowledge transfer.

3. Research funds

The Institution will actively, through its IPMO, promote, source and/or facilitate collaborative arrangements with industry partners to secure funding for further Research for the Creators/Enablers.

4. Creator/Enabler receiving shares in a Commercialization Entity or other licensee

a) In the case where a Creator/Enabler is granted equity in a Commercialization Entity that licenses the Institution IP which the Creator/Enabler has created,⁴⁸ such Creator's/Enabler's portion in the standard revenue sharing formula of Article 12.3.a or 102.3.b will be

[Option 1]: unaffected.

[Option 2]: adjusted accordingly, taking into account the shares held in the company by the Creator/ Enabler. All other Creators/Enablers will be rewarded in accordance with the formula in Article 12.3.a or 102.3.b.

⁴⁷ Article 10.3 WIPO IP Policy Template.

⁴⁸ The institutional policy regulating Conflict of Interests must be consulted to assess additional measures that should be put in place especially when the researcher outsources research to the spin-off or start-up company, in which the researcher has a material interest.

b) Where the Institution receives shares in a licensee company, which company may be a Commercialization Entity, as consideration for an IP license, the Institution will

[Option 1, recommended]: hold all the shares until liquidation, at which time the income will be considered Gross IP Revenue and the Creators/Enablers will receive their share according to the revenue sharing formula in Article 10.2.3.1 or 10.2.3.2.

[Option 2]: take steps such that the Creators/Enablers will be issued their licensee company shares in the revenue sharing proportions, at the time the shares are issued to the Institution by the licensee.

c) Notwithstanding the benefit sharing in respect of shares in terms of this Article 13.4, the Creators/Enablers will still be entitled to their share of any other revenues under the IP license.

ARTICLE 14. DISTRIBUTION OF PROFITS FROM COMMERCIALIZATION OF SCIENTIFIC AND TECHNOLOGICAL RESULTS USING STATE CAPITAL ⁴⁹

1. The distribution of profits from the commercialization of scientific and technological results to the State shall be effected, when the organization or individual maintains the receipt of the right to use the property as a result of the task, or commercialize the results of the task and earn after-tax profits according to the principles at Point dd, Clause 1, and Point d, Clause 2, Article 22 of Decree No. 70/2018/ND-CP.

2. The distribution of after-tax profits obtained from commercialization of assets which is the result of scientific and technological tasks for the State shall be performed as follows:

a) Remuneration paid to the creator:

- The results of scientific research and technology development are protected by IP rights, the amount of remuneration for the creator is (i) in accordance with the provisions of the law on IP; or (ii) in accordance with Article 12.3.a and 12.3.b of this Policy if not contrary to the law.

- The results of scientific research and technological development have not yet been protected for IP rights, and the remuneration paid to the creator shall be as agreed upon in the contract signed between a competent state agency and an organization or an individual in charge, the contract signed between the co-owners with a minimum remuneration of 30% of the after-tax profits obtained from commercialization of assets resulting from scientific and technological tasks;

b) The division to intermediary organizations, the brokers (if any), as agreed between the parties is not more than 10% of the after-tax profits earned from commercialization of assets resulting from scientific and technological tasks, in the case where there is no agreement on brokerage, the rate of 10% shall be applied;

c) After distribution to the creators and brokers (if any), the remaining profits shall be distributed proportionally to the representative of the state owner to the proportion of state

⁴⁹ Article 10 Circular 02/2020/TT-BKHCHN.

capital contributed to the task as prescribed in Clause 1 of this Article. 3 Article 28 of Decree No. 70/2018/ND-CP;

d) After distribution to related parties as prescribed at Points a, b and c of this Clause, the organization or individual in charge of the task would use the remaining profits as follows:

- Spending up to 50% of the remaining profits after being divided to invest in science and technology activities, set up or supplement the fund for science and technology development;

- The remaining profits after spending up to 50% for investing in science and technology activities, setting up or supplementing the fund for science and technology development, is used in accordance with the financial management policies of the host organization.

Chapter V

COORDINATION MECHANISMS

ARTICLE 15. DUTIES AND POWERS OF UNITS AND INDIVIDUALS UNDER [INSTITUTION]

1. IP Committee ⁵⁰

a) **Purpose.** The Institution shall establish an IP Committee to oversee the implementation and evolution of this Policy and provide strategic guidance to the IPMO (according to Article 4.2 below).

b) **Composition.** The IP Committee shall consist of [Composition], chaired by the Senior Responsible Officer or their designated other.

c) **Responsibilities.** The IP Committee is the ultimate decision making body in the determination of an IP management and Commercialization strategy for a particular IP.

d) **Meetings.** The IP Committee shall establish regular meetings and also be available for *ad hoc* meetings.

2. The IP Management Office (IPMO) ⁵¹

a) **Purpose.** The Institution shall establish an IP Management Office (IPMO) or designate a function within the Institution or another organisation to act as such, to assist the Institution in managing and Commercializing its IP in a form that will most effectively promote its development and use for economic and social benefit.

b) **Responsibilities.** The responsibilities of the IPMO shall include, but are not limited to:

- Outreach/awareness to Creators;;

⁵⁰ Article 4.1 WIPO IP Policy Template.

⁵¹ Article 4.2 WIPO IP Policy Template.

- Relationship management with Creators;
- IP management;
- Protection of intellectual property rights;
- Technology marketing and IP contract negotiation;
- Providing intellectual property and technology transfer services;
- IP contract management; and
- IP costs and revenue distribution.

3. Units of [Institution]

Units under [Institution] are responsible for:

- a) Disseminate and thoroughly understand the provisions of this Policy and other relevant policies to all staff members, Learners and collaborators under their management
- b) Request staff members, Learners and collaborators within their management to conduct reporting activities on IP according to the provisions of this Policy.
- c) Coordinate with TISC to register for protection of IP rights and commercialize IP according to the provisions of this Policy.
- d) Protect the IPs of the [Institution] in accordance with the law and this Policy.

4. Staff members, Learners, Collaborators

Staff members, Learners and Collaborators are responsible for:

- a) Report promptly and fully on newly arising IPs in accordance with the provisions of this Policy.
- b) Be responsible for keeping information confidential or delaying disclosure until the IP Administration Department notifies in writing of possible disclosure or publication. Early publication of scientific research results related to potential IP of [Institution] must be approved in writing by the institution.
- c) Cooperate with TISC in preparing necessary information and data to carry out the procedures for establishing IP rights and commercializing IP as prescribed in this Policy.
- d) To transfer the rights to IP owned by the Institution or other organizations and individuals according to the provisions of this Policy.
- dd) Protect the IP of the [Institution] in accordance with the law and this Policy.
- e) Comply with the law and this Policy when using IP rights of other organizations and individuals. In case of infringing upon the IP rights of other organizations or individuals, staff members, learners and collaborators must take responsibility before the law.

ARTICLE 16. RESOLUTION OF CONFLICTS⁵²

1. Staff Members' and Collaborators' Commitment to the Institution

a) Staff Members' and Collaborators' primary commitment of time and intellectual contributions should be to the education, research and academic programs of the Institution.

b) Staff Members and Collaborators have a primary professional obligation to act in the best interests of the Institution; they should avoid situations where external interests could significantly and negatively affect their work ethic and research integrity.

2. Agreements with External Parties

It is the responsibility of all Staff Members and Collaborators 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. Each individual should make his/her duties and responsibilities clear to those with whom such agreements may be made and should ensure that they are provided with a copy of this Policy.

3. Disclosure of External Activities and Financial Interests

Staff Members and Collaborators shall promptly report all potential and existing Conflict of Interest (COI) or Conflict of Commitment (COC) to the appropriate Institutional authority, in compliance with applicable COI/COC policies. The authority will be responsible for resolving the conflict or reaching a solution satisfactory to all parties concerned. [**Option:** The decision must be approved by a high level academic functionary (e.g., Dean or Rector)].

[Option] 4. Policy

The Institution will develop a separate and comprehensive policy on COI, in order to increase the awareness of Staff Members and Collaborators about COI and COC; outline requirements for disclosure of COI and COC; and establish procedures to identify them, avoid or properly manage such conflicts.

ARTICLE 17. DISPUTE⁵³

1. Violation

Breach of the provisions of this Policy shall be dealt with under the normal procedures of the Institution, and in accordance with the relevant provisions of laws and regulations in force. Việc vi phạm các quy định của Quy chế này sẽ bị xử lý theo các thủ tục thông thường của Institution và phù hợp với các quy định liên quan của pháp luật hiện hành.

⁵² See Article 13 WIPO IP Policy Template

⁵³ Article 14.1 WIPO IP Policy Template.

2. Dispute Resolution

a) Any internal disputes or questions of interpretation arising under this Policy must in the first instance be referred to IPMO for consideration and mediation by the IP Committee.

b) If the matter cannot be resolved by the IP Committee within [two months], then the dispute or question of interpretation must be referred to the Senior Responsible Officer for mediation.

c) The Senior Responsible Officer may at their sole discretion refer the matter to Institution's Executive Committee and/or an independent committee for arbitration as final arbiter of any disputed issues or for final determination.

3. Appeal

Individuals covered by this Policy shall have the right to appeal the application of any aspect of this Policy to the IP Committee.

ARTICLE 18 - REWARD, DISCIPLINE

1. Reward

a) According to the Competition and reward regulation of the [Institution], the Board of Directors of IP will submit to the Leader of the [Institution] for periodic and/or irregular rewards to the collectives and individuals who have achievements in IP and technology transfer activities.

b) The IP's Board of Directors is responsible for proposing and updating regulations related to the form of reward and bonus level (if any) for achievements in IP activities and technology transfer activities into the Competition and reward regulation of the [Institution].

2. Discipline

a) In case the affiliated units of [Institution], staff members, Learners and collaborators commit acts of violating this Policy and the law on IP, depending on the nature and seriousness of their violations; the violators will be disciplined according to the Internal policies/Working regulations of the [Institution]. The decision on disciplinary action is issued by the Leader of the [Institution] based on the proposal of the IP Board and relevant functional units.

b) The IP's Board of Directors is responsible for proposing and updating regulations related to disciplinary action for violations in the field of IP and technology transfer activities into the Internal policies/Working regulations of [Institution].

c) In case the act of infringing upon the IP rights of a subject specified in this Policy gives rise to civil, administrative and criminal liabilities, this subject will have to take full responsibility for their violations according to the provisions of relevant laws.

Chapter VI
IMPLEMENTATION PROVISIONS

ARTICLE 19. IMPLEMENTATION EFFECT

1. This Policy takes effect from the [effective date] and replaces the relevant documents previously issued by the Institution.

2. ⁵⁴ All IP disclosed *prior* to the effective date of this IP Policy be governed by the previously Policy, provided that the provisions of this Policy 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.

ARTICLE 20 - IMPLEMENTATION RESPONSIBILITIES

1. In the course of implementation, if any problems arise, organizations and individuals are requested to report in writing to the [Institution] for guidance or research, to amend and supplement accordingly.

2. Heads of units under [Institution] and related organizations and individuals are responsible for the implementation of this Policy./.

[HEAD OF INSTITUTION]

(Signed, sealed)

⁵⁴ Reference to Article 15.1.b WIPO IP Policy Template.

REFERENCES

Vietnamese

1. Law on Intellectual Property 2005, amended and supplemented in 2009 and 2019.
2. Law on Science and Technology 2013, amended and supplemented in 2019.
3. Law on Technology Transfer 2017.
4. Law on Management and Use of Public Property 2017.
5. Education Law 2019.
6. Decree No. 103/2006/ND-CP dated September 22, 2006 of the Government detailing and guiding the implementation of a number of articles of the Intellectual Property Law on industrial property, as amended and supplemented according to Decree No. Decree No. 122/2010/ND-CP dated December 31, 2010 of the Government.
7. Decree No. 88/2010/ND-CP dated August 16, 2010 of the Government detailing and guiding the implementation of a number of articles of the Intellectual Property Law and the Law amending and supplementing a number of articles of the Law on Intellectual Property related to plant varieties.
8. Decree No. 22/2018/ND-CP dated February 23, 2018 of the Government detailing a number of articles and measures to implement the 2005 Intellectual Property Law and the law amending and supplementing a number of articles of the Law on Intellectual Property 2009 on copyright and related rights.
9. Circular No. 01/2007/TT-BKHHCN dated February 14, 2007 of the Ministry of Science and Technology guiding the implementation of Decree No. 103/2006/ND-CP dated September 22, 2006 of the Government detailing and guiding the implementation of a number of articles of the Intellectual Property Law on industrial property, as amended and supplemented according to Circular No. 13/2010/TT-BKHHCN dated July 30, 2010, Circular No. 18/2011/ TT-BKHHCN dated July 22, 2011, Circular No. 05/2013/TT-BKHHCN dated February 20, 2013 and Circular No. 16/2016/TT-BKHHCN dated June 30, 2016 of the Ministry of Science and Technology.
10. Circular No. 02/2020/TT-BKHHCN dated August 10, 2020 of the Ministry of Science and Technology guiding the implementation of Clause 1, Article 41 of Decree No. 70/2018/ND-CP dated May 15, 2018 of the Government regulations on management and use of assets formed through the implementation of scientific and technological tasks using state capital.
11. Regulations on management of intellectual property activities of a number of Vietnamese universities.

English

1. IP Policy Template for Academic and Research Institutions, WIPO, Version January 29, 2019.
2. Guidelines for Customization of the IP Policy Template, WIPO, Version January 29, 2019.
3. IP Policy Writer's Checklist, WIPO, Version January 29, 2019.