



KENYA PLANT HEALTH INSPECTORATE SERVICE

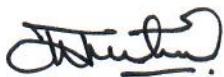
INTELLECTUAL PROPERTY POLICY

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PREFACE

The Kenya Plant Health Inspectorate Service seeks to provide a science-based services that assures plant health, food security, economic growth and sustainable development. The KEPHIS Intellectual Property Policy 2022 has been drafted with intention of facilitating the institutional mandate on research matters that may require protection and obligation to Science, Technology and Innovation. This will help in providing transparency and security for both staff and collaborators. The policy has been developed with a broad range of considerations and is thus intended to represent a commitment to meeting international standards of Best Practices in the tangible and realistic manner in a way that satisfies all interested parties. The policy is considered as a road map to effectively conduct daily affairs. At the internal level the policy will be used to guide several research and partnership activities particularly in negotiation of contracts.

Yours truly,



PROF. THEOPHILUS M. MUTUI, PH.D

MANAGING DIRECTOR

Table of Contents

1.0 Introduction	4
1.1 Applicability	5
1.2 Vision	5
1.3 Mission	5
1.4 Purpose of the IP Policy	5
1.4.1 Policy Statement on IP emanating from organizational activities	5
1.5 Definition of terms.....	6
1.6 IP Policy Objectives	8
2.0 Intellectual Property Protection.....	9
2.1 Ownership of Intellectual property	9
2.2 Indigenous (Traditional) knowledge and resources	10
2.3 Commercialization of IP	11
2.4 Incentives and Distribution of Revenues	11
2.5 Publishing or research material (publication, non-disclosure)	12
2.5.1 Right of publication.....	12
2.5.2 Non-disclosure for IP protection.....	12
2.6 Collaborative and sponsored research activities.....	13
2.7 External researchers	13
2.8 Research Contracts.....	14
2.9 Transfer of biological material and related information.....	14
2.10 Use of Institutional Name	15
2.11 Dispute resolution.....	15
2.12 Conflicts of interest and conflicts of Commitment	15
2.13 Administration and implementation	16
2.13.1 Implementation Committee	16
2.13.2 Functions of Intellectual Property Management Committee (IPMC)	17
2.13.3 The IP Management Office (IPMO).....	17
2.14 Exceptions	18
2.15 Amendment	18
2.16 Acknowledgement	19
Annex 1: KEPHIS Intellectual Property Agreement	19
Annex 2: Material transfer Agreement (MTA).....	22

1.0 Introduction

Kenya Plant Health Inspectorate Service (KEPHIS) is a regulatory body that was established under the State Corporations Act (Cap 446) pursuant to Legal Notice No. 305 of 18th October 1996. KEPHIS operates under the KEPHIS Act No.54 of 2012. KEPHIS is mandated to implement the Agriculture Produce (Export) Act CAP 319, Plant Protection Act CAP 324, and the Seeds and Plant Varieties Act CAP 326. The role of the Corporation is to undertake regulatory function in the agricultural sector in matters relating to plant protection, seeds and plant varieties that assures the quality of agricultural inputs and produce, thereby promoting sustainable agricultural and economic growth. In order to realize its mandate there is need to have a comprehensive and enabling Intellectual property policy.

In its efforts to realize its vision, mission and objectives, KEPHIS continues to put emphasis on enhancing the following amongst others:

- (a) Regulate matters relating to plant protection, seeds and plant varieties;
- (b) Ensure quality of agricultural inputs;
- (c) Administer and enforce Sanitary and Phytosanitary measures;
- (d) Support the administration and enforcement of food safety measures;
- (e) Establish service laboratories to monitor the quality and levels of toxic residues in agro-inputs, irrigation water, plants, soils and produce;
- (f) Implement and enforce national biosafety regulations on the introduction and use of genetically or living modified species of plants, insects and micro-organisms, plant products and other related species;
- (g) Regulate import and export of plants and plant materials.

KEPHIS as a science-based organization relies heavily on technology in its functions for delivery of institutional mandate. Intellectual Property facilitates technology development and transfer of technology within the nation and from external sources as it allows the exploitation of existing resources through licensing and other means. As a public institution KEPHIS has a pivotal role to play in the achievement of national development goals and vision 2030. Cognizant of the role that protection of Intellectual Property Rights (IPRs) have to play in enhancing more innovations, inventions and

research findings KEPHIS has developed this IP policy in order to safeguard Intellectual Property Rights (IPRs).

1.1 Applicability

The KEPHIS Intellectual Property Policy applies to all staff, collaborators and associates of KEPHIS. KEPHIS hereby adopts the following policy on all matters relating to the management of inventions, discoveries and their associated intellectual property rights.

1.2 Vision

Excellence in Plant health and quality assurance in agriculture

1.3 Mission

To assure plant health, quality of agricultural inputs and produce towards a food secure nation and safe trade

1.4 Purpose of the IP Policy

The purpose of this policy is to provide direction on Intellectual Property management within the institution

1.4.1 Policy Statement on IP emanating from organizational activities

KEPHIS is committed to ensuring that Intellectual Property (IP) emanating from its activities is used to support the objectives as set out in the KEPHIS Act and in accordance with its legal obligations, for the benefit of the organization, the Creator(s) and, most importantly, society-at-large.

1.5 Definition of terms

For the purpose of this policy:

1. Intellectual property – shall mean any rights that protect an invention from, or limit unauthorized use by others than the right holder (s). All outputs of creative endeavour in any field at the Institution for which legal rights may be obtained or enforced pursuant to the law
2. Intellectual Property Rights (IPRs) - The proprietary rights that may be granted for an invention, mark, design, plant variety, or other type of IP, should the statutory requirements for protection be met to result in a patent, trade mark, registered design or plant breeders' right, respectively.
3. Invention –shall mean novel idea or concept that has been reduced to practice that has been demonstrated to work. It shall also mean not only patentable inventions but also innovations eligible for protection by other forms of IP such as trade secrets.
4. Inventor – shall mean inventor or inventors understood in the following two ways;
 - i. A person or persons who first transforms an innovation, concept or other ideas to practice
 - ii. A person or persons who first conceive an innovation, concept or other idea that is transformed to practice
5. Innovation - is the practical implementation of ideas that result in the introduction of new goods or services or improvement in offering goods or services.
6. Innovator means inventor or creator(s), breeder(s) and is understood to mean the person(s) who actually devices an innovation or creates a work or breeds a plant as defined by Industrial Property Act 2001, Copyright Act 2002 or Seeds and Plants Varieties Act Cap. 326 of the Laws of Kenya.
7. Indigenous Knowledge and resources – shall mean knowledge and resources that can be related to a particular community or locale, or group thereof but that would not be considered to be in public domain at an international level.

8. Associate – shall mean any student, staff or researcher participating in an activity sponsored or hosted by KEPHIS, or making significant use of KEPHIS facilities, funds or other resources.
9. Research means the investigation undertaken in order to discover new facts and examining a problem in order to get additional information.
10. Collaborative Research means research in which KEPHIS undertakes with a third party
11. Conflict of Commitment (COC) - Any situation in which an individual Staff member's or associates primary professional loyalty is not to the Institution because the time devoted to outside activities adversely affects their capacity to meet their responsibilities as set out in their employment contract of appointment, respectively.
12. Conflict of Interest (COI) - Any situation in which real or perceived interests of an individual Staff Member or Associate may run counter to the interests of the Institution or negatively affect their employment or duties.
13. Appointment - A formal agreement for an associate at the Institution, which is a prerequisite to participate in or conduct Research at the Institution
14. Institution - KEPHIS
15. Institution IP - IP owned or co-owned by the Institution.
16. IP Disclosure Form - The form to be completed by Creators and submitted to IPMO to document their creation.
17. IP Expenses - All expenses incurred by the Institution in the management and Commercialization of IP for which Gross IP Revenue has been received.
18. IP Committee - The body within the Institution set up which is responsible for overseeing the drafting, implementation, monitoring and evaluation of the Policy, and for providing strategic oversight of the IPMO.
19. IP Management Office (IPMO) - The administrative unit established and is responsible for day-to-day management of all IP-related activities
20. Relevant Authority - The person at the Institution who has the ultimate decision-making authority on behalf of the institution

21. Research Contract - 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 (see KEPHIS research policy)

1.6 IP Policy Objectives

To comply with STI road map and to govern the disposition of the Intellectual Property generated at KEPHIS, the following are the policy key objectives:

- i. To facilitate and enhance the transfer of the KEPHIS innovations and inventions derived from research and the dissemination of knowledge.
- ii. To promote the progress of Research, Science, Technology and Innovations generated by the staff and associates so as to benefit the public.
- iii. To motivate further research and development in order to enhance national development.
- iv. To create a framework for KEPHIS activities by providing transparent and secure environment for staff and associates to innovate and create.
- v. To create an enabling environment that encourages and expedites the dissemination of new knowledge generated by KEPHIS staff
- vi. To ensure that any commercial results, financial, or otherwise, are distributed in a fair and equitable manner that recognizes both the contributions of the innovators/inventors and KEPHIS.
- vii. To encourage and reward staff who innovate, invent and create intellectual property.
- viii. To ensure compliance with applicable National Laws and Regulations, relating to intellectual property.
- ix. To discourage the infringement of Intellectual Property Rights (IPRs), improper exploitation and abuse of KEPHIS technologies and creative works.

- x. To do all such other things that may be deemed incidental or conducive to advance and to the attainment of the above objectives or any other functions and objectives of KEPHIS.

2.0 Intellectual Property Protection

The Managing Director may on the advice of the Intellectual Property Management Committee seek patent or other IP protection for an invention in which KEPHIS has ownership.

2.1 Ownership of Intellectual property

KEPHIS remains cognizant of the fact that innovations can be through an individual while others may be through teamwork involving colleagues at work (KEPHIS) or outside work. To clarify this on right to ownership;

1. Innovations made within KEPHIS - KEPHIS shall own all intellectual property developed by staff as a result of participating in KEPHIS activities, or utilizing its time and facilities regardless of whether subject to protection under patent, trademark, copyright or any other laws subject to the following
 - i. KEPHIS shall be fully responsible for all expenses resulting from the application for granting or maintenance of intellectual property rights.
 - ii. Where an innovation/invention is due for commercialization, KEPHIS shall share a portion of the royalties to the innovator, or indigenous or local community.
 - iii. Where an IPR held by KEPHIS is not being worked or licensed, the inventor may apply to MD to succeed to the IPR or for a license to work such IPR on terms to be mutually agreed between the inventor and the MD.
2. In case an innovation is done outside KEPHIS normal service e.g. after office hours or unpaid leave and is not subject to any agreement expressly stating otherwise, the innovator shall notify KEPHIS in writing of the innovation and the

intention to apply for registration of ownership so as to own the rights exclusively.

2.2 Indigenous (Traditional) knowledge and resources

KEPHIS shall provide for and endeavor to maintain in perpetuity the right to recognition to the suppliers of any and all indigenous knowledge or genetic resource in any intellectual property rights that it holds, transfers or licenses.

1. Where a research is based on incidental use of Knowledge/ resources that can be related directly to a particular community or location, KEPHIS shall undertake best effort to ensure that prior informed consent (PIC) is obtained and mutually agreed terms on benefit sharing.
2. Where an invention is developed that makes more than incidental use of Knowledge/ resources that can be related directly to a particular community or location, KEPHIS shall undertake best effort to ensure the applicability and availability of such inventions to the relevant beneficiary understood to include the following;
 - i. Ensure that any transfer or licensing of IPR by KEPHIS includes an allowance for the relevant community or locale
 - ii. Establish systems for any necessary training and distribution mechanism that may be required for the relevant community or locale to make full use of the invention.
3. Where an invention is developed that makes more than incidental use of Knowledge/ resources that can be related directly to a particular community or location is developed to such a point that it has a market application, KEPHIS will undertake efforts to ensure that;
 - i. Mutually agreed terms are reached as to future activities regarding the invention
 - ii. Involvement in any production and or marketing of product related to the invention.

4. Where knowledge and resources that are from a clearly defined geographic area or community and it is not practically feasible to share benefits, the benefits shall be dedicated to projects that benefit the community as a whole.
5. Where knowledge and resources are to be found in wide range of communities, KEPHIS shall consider the origin of the knowledge or resource.

2.3 Commercialization of IP

1. No inventor will have sole monopoly over an innovation developed and commercialized by KEPHIS.
2. An IP may be licensed to external entities for further development and commercialization.

2.4 Incentives and Distribution of Revenues

Where financial benefits are obtained by KEPHIS from the transfer or licensing of IPR, KEPHIS shall first recover direct costs incurred and any other charges resulting from the application for granting or maintenance of the IPR. Additional expenses may be charged before royalty distribution for proof -of -concept funding, IP marketing, market research and business plan development.

Where intellectual property infringement action is brought against KEPHIS, all royalties received during the period of action will be used to cover any legal cost. If KEPHIS prevails and receives a financial settlement, innovators and KEPHIS shall be reimbursed for their shares of royalties used as legal costs. Any funds received in excess of the royalties used should be the property of the KEPHIS and will be used and /or distributed as the Institution so determines.

The remaining net benefits shall be made yearly and in accordance with the scheme stated herein below.

1. Where there is no third party involved in innovation/ invention, the sharing ratio will be as follows: -

- i. Inventor/Innovator - 35%
 - ii. KEPHIS - 65%
- 2. Where there are third parties involved in the innovation/invention the sharing ratios will be as follows: -
 - i. Innovator/inventor – 30%
 - ii. KEPHIS – 60%
 - iii. Others 10%
- 3. Where there is more than incidental use of indigenous knowledge and resources, any net benefits accruing to KEPHIS, subject to any agreements made to the contrary shall be distributed as follows;
 - i. Innovator/inventor – 30%
 - ii. Community or locale – 35%
 - iii. KEPHIS – 35%

2.5 Publishing or research material (publication, non-disclosure)

No individual is authorized to publish, in any forum or platform information relating to research for which an invention disclosure has been submitted without the express written consent of the managing director.

2.5.1 Right of publication

The Institution encourages and supports the right of Creators to decide if and when to publish their Research results.

2.5.2 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. Therefore, they are strongly encouraged to make all reasonable efforts to identify any protectable IP as early as possible and shall consult IPMO before making any Public Disclosure of potential Institution IP.

2.6 Collaborative and sponsored research activities

All collaborative and sponsored research agreements entered by KEPHIS shall include the following elements:

- i. The principles and modalities for the ownership of any intellectual property rights that may result from the project
- ii. All parties sharing ownership of intellectual property rights resulting from the project shall equally contribute towards any and all expenses, fees and any other charges resulting from the application for granting or maintenance of such rights.
- iii. KEPHIS shall apply the terms of this policy to any intellectual property rights of which it receives ownership
- iv. Where invention disclosure is required, such disclosures shall be provided to a collaborative partner. This disclosure shall be considered confidential and all receiving parties shall be responsible for its maintenance.
- v. Where issues arise which are not covered by the terms of the agreement, this policy shall be applicable.

2.7 External researchers

1. External researchers that are attached to KEPHIS, or those that make incidental use of KEPHIS time and resources shall be considered associates of KEPHIS and thus subject to the terms and requirements of this policy
2. Where an external researcher is already subject to the terms of the intellectual property policy of his or her parent institution, he or she shall notify KEPHIS of such an obligation in a timely manner.

2.8 Research Contracts

- i. Authority - Staff Members and associates 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.
- ii. Research Contract Policy - All Research Contracts must be executed and performed in compliance with the Institution's Research Policy.
- iii. 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
- iv. Ownership and rights to use - Subject to any provisions in law to the contrary, ownership and rights to use shall be agreed upon with the external entity, in accordance with the Research Contract.
- v. Government rules - Research Contracts shall comply with any applicable law and Regulations, which may be applicable to Research undertaken by the Institution. 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.

2.9 Transfer of biological material and related information

Any and all transfers of biological material and related information to the individual, institutions or other legal persons not subject to the jurisdiction of KEPHIS and the terms and conditions of this policy shall be accompanied by a Material Transfer Agreement (MTA) (Annex 2) approved by the managing Director.

When materials are being transferred, the following will apply:-

- i. The IPRs of the receiving and the providing organization are addressed.
- ii. The recipient of materials under the Material Transfer Agreement (MTA) agrees not to claim ownership over the material received, nor to seek intellectual property rights over the material, its components or related information.

- iii. The recipient will ensure that any subsequent person(s) or institution(s) to whom the recipient pass the material is bound by the provision of this MTA regulations and that KEPHIS is informed immediately.
- iv. Any transportation needs are handled.
- v. KEPHIS shall have a record of the types of materials that are entering and leaving the institution.

2.10 Use of Institutional Name

All written and broadcast material containing KEPHIS name or logo for advertising, marketing, or other promotional purposes pertaining to Intellectual property shall be submitted for approval to the managing director prior to the use of such materials. KEPHIS name shall not be used as an endorsement or promotional material. A statement on the use of KEPHIS name shall be included in all appropriate agreements between the parties and KEPHIS. In case of any violation, all applicable regulation shall be enforced.

2.11 Dispute resolution

In the event of 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.

In the event an innovator feels dissatisfied with the IP committee handling or interpretation of this policy the innovator shall seek audience with Managing Director.

Where the party does not feel satisfied with the outcome of the review the applicant has a right to appeal to the board of management through its chairman.

2.12 Conflicts of interest and conflicts of Commitment

Commitment - Staff Members' and associates' primary commitment of time and intellectual contributions should be to the research and work programs of the Institution.

Agreements with External Parties - It is the responsibility of all Staff Members and associates 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

Disclosure of External Activities and Financial Interests - Staff Members and associates 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.

2.13 Administration and implementation

2.13.1 Implementation Committee

Purpose - The Institution shall establish an IP Committee to oversee the implementation and evolution of this Policy and provide strategic guidance to the Intellectual Property Management Office (IPMO)

Composition - The Managing Director shall establish an Intellectual Property Management Committee (IPMC). The nominated committee shall be chaired by a senior member of staff

- a) Director, Phytosanitary and Biosecurity- Chair
- b) Corporation Secretary & Legal Services - Vice chair
- c) Deputy Director, Regulatory Research & Compliance- Secretary
- d) Deputy Director, Plant Health & Molecular laboratories
- e) Deputy Director, ACL & Food safety
- f) Deputy Director, Seed Testing Laboratories
- g) Deputy Director, Pest Forecasting & Surveillance
- h) Deputy Director, Planning
- i) Co-opted members
 - The innovator/inventor
 - Representative of any collaborating institution

Responsibilities - The IP Committee is the ultimate decision making body in the determination of an IP management and Commercialization strategy for a particular IP. The Committee shall prepare and submit a work plan and an attendant budget for consideration by the institution.

Meetings - The IP Committee shall meet at least quarterly and also be available for *ad hoc* meetings.

1. In cases where the IPMC is meeting to discuss matters pertaining a particular invention or any other Intellectual property element, the committee shall incorporate;
 - i. The inventor (s)
 - ii. Representatives of any collaborating institutions
 - iii. Representatives of a community where applicable
2. The IPMC may co-opt other members for specific meetings

2.13.2 Functions of Intellectual Property Management Committee (IPMC)

1. Advise the managing director on desire of obtaining an intellectual property Protection for an invention
2. Advise the managing director on necessity of bridging work to facilitate availability of an invention
3. Advise the managing director on the transfer and licensing of any intellectual property held by KEPHIS.
4. Advise the managing director on any application for transfer and licensing of KEPHIS rights to an inventor.
5. Receive and evaluate all inventions and disclosures in a timely manner
6. Grant permission, request and advice inventors concerning the publishing of materials related to their inventions
7. Advise the managing director on the amendment of this policy
8. Act as a panel for resolution of any disputes arising from the terms or implementation of this policy and where such action is impossible advice the managing director accordingly
9. Provide advice and support to all staff and associates of KEPHIS regarding this policy

2.13.3 The IP Management Office (IPMO)

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.

Responsibilities

The responsibilities of the IPMO shall include, but are not limited to:

- a. Outreach/awareness to Creators and other stakeholders;
- b. Relationship management with Creators and other stakeholders;
- c. IP management;
- d. Technology marketing and IP contract negotiation;
- e. IP contract management; and
- f. IP costs and revenue distribution

2.14 Exceptions

1. Exceptions made under this policy will only be agreed on the basis that they do not in any way prejudice the institutional Vision, Mission and Mandate.
2. The managing director with the advice of the intellectual property management committee may make variations to this policy by express written consent on a case by case basis.

The managing director with the advice of the intellectual property management committee shall recommend amendments to this policy with a subsequent approval by the Board of Management

2.15 Amendment

This Policy may be amended from time to time upon recommendation of the IP Committee. In this case:

- a. all IP disclosed on or *after* the effective date of such amendment shall be governed by the Policy as amended; and
- b. all IP disclosed *prior* to the effective date of the amendment shall be governed by the Policy prior to such amendment, provided that the provisions of the Policy (as amended) shall apply to all IP licensed or otherwise Commercialized on or after the effective date of any such amendment regardless of when the IP is disclosed.

2.16 Acknowledgement

KEPHIS shall provide for, and endeavor to maintain the right to recognition of the institution, individual inventors, and suppliers of indigenous knowledge or resources in any intellectual property rights that it holds, transfers or licenses.

Annex 1: KEPHIS Intellectual Property Agreement

I understand that KEPHIS is governed in the handling of intellectual property by its official policy titled "The KEPHIS Intellectual property Policy 2022" which I have read and understood and I agree to abide by the terms of the policy.

Pursuant to that policy and in consideration of my employment by KEPHIS, the receipt of remuneration from KEPHIS, participation in projects administered by KEPHIS, access to or use of facilities provided by KEPHIS, access to information by KEPHIS and or other valuable consideration, I hereby agree to the following;

1. That, subject to any agreement expressly stating otherwise, KEPHIS shall have ownership of all rights and obligations relating to any patentable inventions and innovations eligible for protection by other forms of intellectual property such as utility models or petty patents, trade secrets and other rights in information relating to useful articles of commerce that are produced in the course of official duties, or making more than incidental use of the KEPHIS time and resources.
2. That I shall execute and deliver all documents and records and do any and all things necessary and proper on my part to effect the terms of paragraph 1 of this agreement, provided that all such activities shall be undertaken at the expense of KEPHIS.
3. That I shall immediately notify the Intellectual Property Office, by the means set out in the KEPHIS IP Policy, when it first becomes apparent that an innovation/invention discovery or technical development has been made in the course of official duties, or making more than incidental use of the KEPHIS's time and resources.
4. That I shall maintain full confidentiality regarding all information that has been the subject of an Innovation Disclosure. This requirement may be terminated by the express written consent of the Head of Intellectual Property Office or at such time that the information is clearly considered to be in the public domain, whichever may be the earlier.
5. That I shall make and maintain adequate and current records of all information

relating to any research undertaken in the course of official duties, or making more than incidental use of KEPHIS's time and resources, which records shall be and remain the property of and available to the KEPHIS at all times and which shall be surrendered to the KEPHIS in the event of the cessation of our relationship.

6. That I shall undertake to preserve samples of all isolates, fractions, compounds or modifications of these that may be undertaken, all of which shall also be and remain the property of and available to KEPHIS at all times and which shall be surrendered to the KEPHIS in the event of the cessation of our relationship.
7. That I am now under no consultation or other obligation to any third party, organization or corporation in respect to any patentable inventions and innovations eligible for protection by other forms of IP such as utility models or petty patents, trade secrets and other rights in information relating to useful articles of commerce, or intellectual property rights thereof which are, or could be reasonably construed to be, in conflict with this Agreement or the terms of the KEPHIS's IP Policy.
8. That I will not enter into any agreement that might create rights to any patentable inventions and innovations eligible for protection by other forms of intellectual property such as utility models or petty patents, trade secrets and other rights in information relating to useful articles of commerce, or intellectual property rights thereof which conflict with this Agreement or the terms of K E P H I S IP Policy.
9. To deliver promptly when I leave KEPHIS for whatever reason, and at any other time as KEPHIS may request, copies of all written records which are the IP of KEPHIS as well all related memoranda, notes, records, schedules, plans or other documents made by, compiled by, delivered to, or manufactured, used, developed or investigated by KEPHIS, which will at all times be the property of KEPHIS.
10. Not to disclose or use in my work any such information referred to in Paragraph 9 above to my new employer or any other entity or person for a period of ten (10) years after I leave KEPHIS (unless otherwise agreed in writing with KEPHIS).
11. Not to disclose to the KEPHIS or use in my work at KEPHIS (unless otherwise agreed in writing with KEPHIS the following;
 - (i) Any proprietary information of any of my prior employers or any third party, such information to include, without limitation, any trade secrets or confidential information with respect to the business, work or investigations or such prior employer or other third party.
 - (ii) Any ideas, writings, or intellectual property or my own which are not included within the scope of this agreement.
12. This agreement replaces all previous agreements in relation to whole or in part to the same or similar matters which I may have entered into with KEPHIS. It may not be modified or terminated in whole or in part except in writing and signed by an authorised representative of the KEPHIS. Discharge of my undertaking to this

agreement will be an obligation of my executives, administrators or other legal representatives or assignees.

13. That in the event of the cessation of my relationship with the KEPHIS, I and my estate, heirs and assigns, shall continue to be bound by the terms of this Agreement and the terms of the University Intellectual Property Policy.

..... Sign:

Inventor

..... Sign:

For and on behalf of KEPHIS

Annex 2: Material transfer Agreement (MTA)

This Material Transfer Agreement (hereafter "MTA") is effective on the date of the latter of the two authorized signatures of parties. The parties of this agreement are:

PROVIDER: Kenya Plant Health Inspectorate Service

P.O. Box 49592- 00100,

Nairobi, Kenya.

RECIPIENT: Institution receiving the Original MATERIAL: *(Enter name and address here)*

Recipient's Scientist: *(Enter name and address here)*

Under this MTA, the provider agrees to transfer material to the recipient, collectively referred to as the "Parties" and individually referred to as a "Party", under the following terms and conditions:

1. The Material - The material being transferred to Recipient is defined as: *(provide a description)*. (Together with all analogs, formulations, mixtures or compositions thereof, the "Material").
2. The Research Program - The Material is provided to Recipient for the following use(s) only: *(Specify what the material will be used for)* and described in detail in the Protocol that is attached to and made part of this Agreement (the "Research Program").
3. Use of the Material - The Material is not for use in humans, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the Provider. The Material is not to be given or made available to any third party or person, except Recipient's employees, consultants, contract research organizations or collaborators that are bound by terms and conditions similar to the terms and conditions that are contained herein, and shall not be used for any purpose other than for the Research Program. All requests for the Material from a third party other than Recipient's employees, consultants, contract research organizations or collaborators will be referred to the Provider. Recipient agrees to use the Material in a safe manner and in compliance with all applicable Federal, State, and local laws and regulations, including relevant National Institutes guidelines.
4. Ownership - The ownership of the Material shall remain with Provider, including intellectual property rights of Provider embodied in the Material. Except as

specifically provided in this Agreement, no express or implied licenses or other rights are provided to Recipient under any intellectual property rights of the Provider in respect of said Material.

5. Reports - Recipient shall keep Provider reasonably informed about the progress of the Research Program and shall provide reports to Provider on the results of the Research Program as outlined in the research plan. Provider may use and allow others to use the research results for any and all lawful purposes.
6. Inventions - Recipient will promptly and fully disclose in writing to Provider any and all developments, inventions and know-how (whether or not protectable under state, federal, or foreign intellectual property laws) related to the Material or its use, or developed using the Material, which are conceived and/or reduced to practice by Recipient, alone or jointly with others, in the performance of the Research Program (the "Inventions"). Inventions will be owned in accordance with inventorship as determined under KEPHIS IP policy.
7. Patent Filings - Any patent applications necessary to protect the interests of the Parties in any Inventions made solely by Recipient will be prepared, filed and prosecuted by Recipient, solely in Recipient's name, with the expenses paid by Recipient. Any patent applications necessary to protect the interests of the Parties in any Inventions made jointly by Recipient and Provider will be prepared, filed and prosecuted by Provider, jointly in its and Recipient's names, with expenses paid by Provider. If Provider exercises its Right of First Negotiation and executes an exclusive royalty-bearing commercialization license to an Invention, the Provider will reimburse Recipient for its reasonable patent expenses related to such Invention.
8. Term/Expiration - The term of this Agreement shall be for a period of one (1) year from the Effective Date (the "Term"). At the end of the Term, any remaining Material shall be returned to Provider or destroyed, as instructed by Provider. The Term of the Agreement may be extended for an additional specified period upon the written agreement of authorized representatives of the Parties.
9. Confidentiality - During the Term and for a period of five (5) years from expiration of the Term, Receiving Party agrees not to disclose any of Disclosing Party's Confidential Information nor use such information other than in connection with the Research Program. This obligation of confidentiality shall not extend to Disclosing Party's Confidential Information which (a) at the time of disclosure is in the public domain; (b) after disclosure becomes part of the public domain, except by breach of this Agreement by Receiving Party; (c) was in the possession of Receiving Party at the time of disclosure and was not acquired, directly or indirectly, from Disclosing Party under an obligation of confidentiality, as established by competent written evidence; (d) Receiving Party received or may

receive from a third party who is not, directly or indirectly, under an obligation of confidentiality to Disclosing Party with respect to such information; or (e) is approved for public release by written authorization of Disclosing Party. Receiving Party may disclose Disclosing Party's Confidential Information if required by court order or otherwise by operation of law, provided that Receiving Party provides prior written notice of such disclosure to Disclosing Party and takes reasonable and lawful actions to avoid and/or minimize the extent of such disclosure.

- 10. Publication** - The Parties contemplate that the results of research performed with the Material may be published. Publication includes dissemination in a presentation or in any other way, provided the information has not previously been released to the public. Acknowledgement shall be made for the contributions of each Party, including the origin of the Material.

Notwithstanding the above, Recipient shall provide a copy of any proposed publication resulting from the Research Program to Provider at least thirty (30) days in advance of the submission of such publication to a journal or editor. Provider shall have thirty (30) days after receipt of said copy (the "Review Period") to review the submitted documents. Provider may require that Recipient delete from its documents any reference to Provider's Confidential Information. If, during the Review Period, Provider notifies Recipient that it desires to file a patent application on any Invention disclosed in the documents, Recipient will defer publication/presentation for up to sixty (60) additional days from the date of such notification to permit Provider to prepare and file a patent application. Failure of Provider to respond within the Review Period shall constitute *de facto* agreement of Provider that no revisions or delay in publication is necessary.
- 11. No warranty** - Provider makes no representations and extends no warranties of any kind, either expressed or implied.
- 12. Except to the extent prohibited by law, RECIPIENT assumes all liability for damages** which may arise from its use, storage or disposal of the MATERIAL. PROVIDER will not be liable to RECIPIENT for any loss, claim or demand made by RECIPIENT, or made against RECIPIENT by any other party, due to or arising from the use of the MATERIAL by RECIPIENT, except to the extent caused by the gross negligence or willful misconduct of PROVIDER.
- 13. Modifications/Severability** - This Agreement may only be modified by written amendment signed by an authorized representative of each Party. If any provision of the Agreement is found to be unenforceable, such provision will be limited or deleted to the minimum extent necessary so that the remaining terms remain in full force and effect.
- 14. Assignment** - No obligations or rights under this Agreement may be assigned or delegated by Recipient without the prior written consent of Provider (which consent

shall not be unreasonably withheld). This Agreement shall be binding upon and inure to the benefit of and be enforceable by the Parties hereto and their respective heirs, legal and personal representatives, successors and permitted assigns.

15. Remedies - The provisions of this Agreement are necessary for the protection of the business and goodwill of the Provider and are considered by the Parties to be reasonable for such purpose. Recipient agrees that any breach of this Agreement may cause Provider substantial and irreparable harm and, therefore, in the event of any such breach, in addition to other remedies that may be available to Provider, Provider shall have the right to seek specific performance and other injunctive and equitable relief without the necessity of posting a bond.
16. RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations.
17. The MATERIAL is provided at no cost, or with an optional fee to reimburse the PROVIDER for its preparation and transportation costs.
18. This MTA constitutes the entire agreement between the PROVIDER and RECIPIENT concerning the MATERIALS and supersedes any prior understanding or written or oral agreement.

Each party shall sign three (2) identical copies of this MTA, one of which shall be kept by PROVIDER and one by RECIPIENT

Acknowledged and agreed to by:

For Provider:

Signature:

Name and Title (please print)

Date:

For Recipient:

Signature

Name and Title (please print)

Date