

**BABCOCK UNIVERSITY  
INTELLECTUAL PROPERTY  
POLICY**

**2020**

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## FOREWORD

The relentless efforts globally to encourage the tempo of research activities with a view of enhancing development of new ideas and solving daily challenges of life make the protection of property rights inevitable. Universities as the incubators of new ideas cannot but create the needed platform and conducive environment for the protection of this goal. This invaluable goal was first put into right perspective in the Paris Convention of industrial property and the Berne Convention for the protection of Literary and Artistic Works in 1886. It is cheering to note that these treaties were administered by the World Intellectual Property Organization (WIPO).

With this global development, no institution of higher learning can stay aloof. This informed the development of the policy towards the management of intellectual property in Babcock University as manifested in the 130<sup>th</sup> University Senate resolution of September 15, 2016. It is our firm belief that a sincere commitment to the ideals of this goal and the judicious implementation of this policy handbook will in no small way enhance the visibility of our researches and other research output. In addition, the noble goal will assist in overcoming the challenges associated with failure to protect innovations and research output.

As a positive step in this direction, Babcock University, through the publication of Intellectual Property Document will provide the needed awareness for the university community. The contents of this document should be studied by all so that everyone can benefit immensely from it. Furthermore, the university will support the commercialization of our research outputs for the benefit of the larger society and the enhancement of socio-economic development in Nigeria in particular.

Professor Ademola S. Tayo  
*President/Vice-Chancellor,*  
*Babcock University*

## **PREFACE**

Intellectual Property is an important document in the University setting. Babcock University with her focus on excellence in research to transform lives and impact society positively is committed to providing an enabling environment for faculty and staff to engage in productive research.

This IP policy document is part of the attempt of Babcock University to foster research for development. Some of our faculty and students have demonstrated their innovation potential by developing products that can be commercialized. The lack of an IP policy has delayed some of the steps to drive commercialization. This document has therefore been drafted to serve as an incentive and a road map to guide inventions and discoveries through patenting and commercialization.

The IP policy addresses issues on ownership, rights, protection, commercialization, and income sharing. It also addresses the policy implementation and review as well as the obligations of the University. The policy is in line with relevant national laws such as the Patent Act, Cap.P2 Laws of the Federation of Nigeria, 2004 and Nigerian copyright law (Cap 28, Laws of the Federation of Nigeria) that specify assets to be protected. The effort of all contributors to this document as highlighted on the last page is hereby acknowledged.

Professor Oluwatoyin G. Tayo

**Director of Research, Innovation and International Cooperation.**

## **ABBREVIATIONS**

<b>BU-</b>	Babcock University
<b>BUHREC-</b>	Babcock University Health Research Ethics Committee
<b>HOD-</b>	Head of Department
<b>IP-</b>	Intellectual Property
<b>MTA-</b>	Material Transfer Agreement
<b>NCND-</b>	Non-Circumvention, Non-Disclosure
<b>RIIC-</b>	Research, Innovation and International Cooperation

## DEFINITION OF TERMS

**Intellectual Property** - Intellectual property (IP) refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. The innovations and creative expressions of indigenous and local communities are also IP. Access to, and equitable benefit-sharing in, genetic resources also raise IP questions

**Policy** - is a proposed or adopted course or principle of action

**Commercialisation** - is the process undertaken to take intellectual property rights, be it product, process or services to the market to generate revenue.

**Collaborators** – or collaborating organisations or agencies include NGOs, Government agencies, Research Institutes, Universities, other institutions locally and internationally.

**Copyright** - Copyright is a legal term describing rights given to creators for their literary and artistic works. It covers literary works such as novels, poems, plays, reference works, newspapers and computer programs; databases; films, musical compositions, and choreography; artistic works such as paintings, drawings, photographs and sculpture; architecture; and advertisements, maps and technical drawings.

**Patent** - A patent is an exclusive right granted for an invention, which is a product or a process that provides a new way of doing something, or offers a new technical solution to a problem. A patent is granted only after a formal application is approved by the Patent Registry.

**Trade mark**- A trade mark or brand-name is a distinctive sign which identifies in goods or services as those produced or provided by a specific person or enterprise. They distinguish the goods and services from those of others.

**Industrial Design**- An industrial design - or simply a design - is the ornamental or aesthetic aspect of an article produced by industry or handicraft; registration and renewals provide protection for, in most cases, up to 15 years.

**Investors**- Persons and organisations who invest in research conducted at BU by BU staff or faculty.

**Related Rights-** Related rights are granted to performing artists, producers of sound recordings and broadcasting organizations in their radio and television programmes.

**Geographical Indication-** A geographical indication is a sign used on goods that have a specific geographical origin and often possess qualities or a reputation that are due to that place of origin.

**Trade Secrets/Undisclosed Information-** is protected information which is not generally known among, or readily accessible to, persons that normally deal with the kind of information in question, has commercial value because it is secret, and has been subject to reasonable steps to keep it secret by the person lawfully in control of the information.

**Seed capital-** Seed money, sometimes known as seed funding, is the initial *capital* used to start a business.

**Sponsors-** Persons or organisations who fund or commission research conducted by BU staff/faculty/students and those who fund or commission research conducted at BU.

## INTRODUCTION

Over the years knowledge and innovation have played an important role in the economic growth of most universities. Intellectual Property (IP) is knowledge, creative ideas, or expressions of human mind that have commercial value and are protectable under copyright, patent, service mark, trademark, or trade secret laws from imitation, infringement, and dilution. Intellectual Property includes brand names, discoveries, formulas, inventions, knowledge, registered designs, software, and works of artistic, literary, or musical nature. It is one of the most readily tradable properties in the digital marketplace. Without a viable Intellectual Property policy, IP rights and assets generated during research findings are left unprotected, optimal utilization of discoveries and inventions are left in abeyance and a sustainable educational system is not guaranteed. The need for universities in developing countries to key into Intellectual Property (IP) for wealth creation and economic development has led to this proposal.

Babcock University has its roots in the Adventist College of West Africa (ACWA), established on September 17, 1959. It metamorphosed into a full- fledged University on April 20, 1999 when the Federal Government of Nigeria gave her a charter. Babcock University consists of eleven schools, thirty nine departments and a postgraduate college.

The vision of the University is to be a first class faith-based Seventh - day Adventist Institution, building servant leaders for a better world. Its mission is to build people for leadership through quality Christian education, transforming lives, impacting society for positive change through the pervading influence of her graduates in service to humanity. The University administration is poised to develop BU into a regional centre of excellence by repositioning academic programmes for innovation and functional research that will meet national needs.

Babcock University philosophy is anchored on the harmonious development of the intellectual, physical, social and spiritual potentials of students and inculcating in men and women, a nobility of character and stability of purpose needed in our society. To achieve this, intellectual property assets generated in the course of research need to be properly harnessed for economic growth through a well-defined intellectual property policy.

## 1.0 Objectives of the Policy

Babcock University operates a knowledge-based system, in the process of which the University resources are utilized by both staff and students in generating inventive and creative activities. The use of the University resources may generate patentable inventions, designs and/or trademarks, art works that can be registered, as well as rights in performances amongst others. The main objective of this policy is to provide a framework within which university-generated intellectual property is managed and utilized for the benefit of the creator, the university and the society at large.

The specific objectives are to

- i. Identify university-generated intellectual property
- ii. Promote disclosure and dissemination of research findings and discoveries
- iii. Provide guidelines for registration, protection and proper management of IP generated at BU and by BU Faculty and staff who may be working outside BU?
- iv. State the framework for commercialization of inventions created by faculty, staff and students of BU
- v. Ensure and encourage scientific investigation and research

## 1.1 Scope of the Policy

The scope of this policy comprise of

- i. Babcock University generated IP,
- ii. Ownership of university intellectual property
- iii. Rights and obligations of inventors and creators;
- iv. Rights and obligation of the University;
- v. Disclosure of research and inventions;
- vi. Commercialization of IP;
- vii. Conflict of interest and compliance issues
- viii. Role of RIIC in Material Transfer Agreement (MTA).

## **1.2 Applicability**

This proposed policy document will apply to the following:

- The inventor
- Babcock University
- Students
- Faculty members
- Members of Staff
- Persons Commissioned by BU
- Visiting Scholars or Persons who use BU facilities for research
- Investors/Spin-off companies

## **2.0 Babcock University Generated IP**

Universities as citadel of learning and research constitute centres of innovative energies. The intellectual properties generated within the University Educational System can be referred to as products of creative efforts. It covers inventions (which can subsequently be patented) textbooks, designs, musical performance, software, art works, new processes and procedure just to mention a few. The aforementioned can be divided into six major headings namely (i) Patents for new or improved products or process (ii) University logo, trade and service marks (iii) Designs for shape or appearance of manufactured goods (iv) Copyright in literary and artistic works (v) Related rights for dramatic, musical or artistic performance (iv) Plant or Animal Breeders Right for new plant or animal varieties

### **2.1 Ownership of University Generated IP**

A patent is an exclusive right granted for new invention, a product or a process that provides a novel way of doing something.

Section 2(4) of the Patent Act, Cap.P2 Laws of the Federation of Nigeria, 2004 vests the right to a patent on an invention made by an employee on an employer where an invention is made in the course of employment or in the execution of a contract for the performance of specified work. Where the contract of employment does not require him to exercise any inventive activity but he has in making the invention used data or means that his employment has put at his/her disposal or the invention is of exceptional importance, the employee is entitled to fair remuneration taking into account his salary and the importance of the invention.

Consequent to this provision, Babcock University owns the right to patent any invention that is created by any faculty member, staff and students, visiting scholars at BU in the course of their employment. BU owns the right to patent any invention created by a faculty member, staff, research student or visiting scholar where he has in making the invention used data or means that BU put at his/her disposal. The right to patent inventions made outside the course of employment without any significant use of BU resources vests in the inventor.

## **2.2 Ownership of commissioned works**

Babcock University owns intellectual property created by any person hired or commissioned for that purpose unless there is an agreement in writing to the contrary.

## **2.3 Ownership of inventions funded through a grant**

Ownership of intellectual property rights derived from collaborative research between Babcock University and any other organisation is governed by the agreement between Babcock and such organisation(s). Where there is no written agreement between BU and a grantor or funding agency or where the agreement fails to address the issue of who owns the attendant IP rights, the rights in the result of such research shall vest in BU.

## **2.4 Ownership of IP in student research**

The ownership of intellectual property generated by students in the course of their research vests in such student unless such a student is sponsored by Babcock University and there is a written agreement that vests ownership of intellectual property created on the University. The ownership of intellectual property shall vest in Babcock University where the student has made significant use of Babcock University resources in carrying out the research or the IP is jointly generated between the students working with BU employees or associates and such inventions were made in the course of their employment.

## **3.0 Rights/obligation of Inventors/researcher**

It is the obligation of the author/inventor

- i. To make full disclosure of his/her research activities through his/her Supervisor (where applicable) through HOD to the Dean of his/her Faculty, to the Office of Research, Innovation and International Cooperation (RIIC).

- ii. To cooperate with Office of Research, Innovation and International Cooperation in evaluating the research work in order to identify its values and potentials.
- iii. To abide by all the regulations of Babcock University relating to privately funded research.
- iv. To cooperate with the office of RIIC and provide such assistance as may be necessary to ensure successful deployment and working of the invention or the transfer of technology where appropriate and/or assignment/licensing of university generated intellectual property where necessary.
- v. In exceptional situations, where required, to identify possible sponsors, donors, collaborators and link them with Babcock University

### **3.1 Penalty**

Failure to comply with the provisions in clause 3.0 above may result in disciplinary actions which may include:

- i. Suspension for three (3) months and redress of action where non-compliance was due to ignorance or
- ii. Termination of appointment or contract, where non-compliance was due to defiance of the provision in clause 3.0

### **4.0 Obligations of Babcock University**

- i. To provide financial and moral support that enhances effective administration of intellectual property.
- ii. To take steps legally to protect university generated intellectual property against unauthorized use and for the benefit of the institution and creator of IP
- iii. To promote commercialization of intellectual property generated in the University
- iv. To provide necessary linkage of researchers with sponsors and/or external partners
- v. To negotiate with investors, donors, collaborators and sponsors on behalf of the inventor and to manage intellectual property agreements in the best interest of owners of works and the institution.
- vi. To ensure it builds capacity to avoid and manage conflict of interest situations.
- vii. To ensure compliance with university policy and the existing laws of the Federation of Nigeria.

## 5.0 Disclosure of Research

It is the duty of every researcher or inventor to make a full report and disclosure of scientific investigations and research conducted. Researchers are also obliged to report possible commercial potentials and IP rights arising from their research in BU IP Policy Form 1. Failure to make full disclosure amounts to gross misconduct, which attracts the penalty stated in section 3.1.

All confidential information received in the Disclosure of Information form shall be subject to the Non-Circumvention, Non-Disclosure (NCND) rule. Information in the Disclosure form or under the Research Contracts must be treated with utmost confidentiality by all concerned.

## 6.0 Commercialization of IP

BU provides 5% of its annual budget as '**BU seed capital fund**' to support inventors and creators in commercialising the results of their work. BU RIIC will explore the following channels among others in commercializing the results of research: licensing of inventions, assignment of inventions, consulting and contract research, creation of spin-off companies and joint ventures, and publishing in traditional as well as electronic media.

Further, BU RIIC will serve as liaison between the inventor and the industry to enhance effective commercialization of research results. The office of RIIC will assist in:

- Identifying, registration and management of any intellectual property arising from the results of any research.
- Establishing proof of concept towards commercial viability of results of the research
- Carrying out early stage commercialization/pilot implementation.
- Identifying potential licensees, assignees, financiers and investors that can commercialize the results of the research.

### 6.1 Distribution of income derived from commercialization of IP

To encourage creativity at the university, income derived from the commercialization of an IP owned by Babcock University shall be distributed as follows.

100% of the revenue generated goes to Babcock University until all out of pocket expenses associated with the legal protection, exploitation of the patent or copyright have been

reimbursed, thereafter the net income is shared as follows:

- 30% shall be allocated to the inventor/author
- 35% shall be allocated to Babcock University
- 10% shall be allocated to the School of the inventor/author
- 15% shall be allocated to RIIC for use in research work
- 10% shall be allocated to the Department of the inventor/author

Distribution of subsequent royalties generated by BU upon commercialization will be revised (as necessary) subject to inflation rates and the economy of the country.

## **7.0 Usage of University Name and Logo**

Marks are a valuable form of intellectual property because they become associated with quality and consumer expectations in a product or service.

The Babcock University name, logo and combination of colours are its properties, hence intellectual property rights in the use of the University name and logo is the exclusive right of Babcock University. Rights to use Babcock University name and logo may be licensed (pursuant to an agreement) to third parties upon suitable terms and conditions approved by the University Senate in line with the vision, mission and philosophy of the University.

The right to use the name and logo of Babcock University is also vested in its entities and BU Group of Companies. Whoever uses name and logo identical with Babcock University or so nearly resembling it (without the consent of the university) as to likely deceive or cause confusion in the course of trade in relation to any goods or services in respect of which it is registered and in such a manner as to render the use of the logo likely to be taken either as being used or as importing a reference to some person having the right to use the logo, shall be deemed to have infringed such mark.

## **8.0 Settlement of Dispute**

In the event of any dispute between any creator of intellectual property and BU, recourse shall be to consensual processes such as mediation, conciliation and arbitration whereby parties attempt to reach an amicable resolution of the dispute. The disputants shall agree to one arbitrator whose decision shall be binding on the parties. Where the parties fail to agree to an Arbitrator, the President of the Intellectual Property Law Association of Nigeria or the

Chief Judge of the Federal High Court shall appoint an Arbitrator whose decision shall be binding. Babcock University's Employee Handbook and the Students' Handbook form part of the contract between BU and BU faculty, staff, students and visiting scholars and they bind all faculty, staff, students, visiting scholars and independent persons hired by BU to BU's IP Policy.

## **8.1 Conflict of interest**

Conflicts of interest arise where financial or other personal considerations may compromise, or have the appearance of compromising a researcher's professional judgement in conducting or reporting research. Conflicts of interest may affect the integrity of the research, or tarnish the reputation of the investigator and that of Babcock University. BU appreciates that conflict of interests cannot always be avoided but BU seriously frowns at undisclosed conflict of interests.

To avoid or manage conflict situations, researchers must submit financial disclosure form BU IP Policy 1 at the time of proposal submission for research funding, when research gift funding is received, and when an application for protocol is submitted for a human clinical study.

Where a financial interest and possible conflict of interest are disclosed, each situation is reviewed by the BU Health Research Ethics Committee (BUHREC).

## **9.0 Material Transfer Agreements (MTAs)**

A Material Transfer Agreement (MTA) is a contract that governs the transfer of tangible research materials between two persons or organizations, when the recipient intends to use it for his or her own research purposes. The MTA defines the rights of the provider and the recipient with respect to the materials and any derivatives. Biological materials, such as human materials, reagents, cell lines, plant materials, plasmids, and vectors, are the most frequently transferred materials, but MTAs may also be used for other types of materials, such as chemical compounds and even some types of software.

At Babcock University, the RIIC reviews and approves incoming MTAs. To expedite the process of negotiation, BU investigators are asked to complete and sign an MTA Review

Form and submit it with the MTA (BU IP Policy Form 2). All MTAs from BU to other organizations are issued by the office of Research, Innovation and International Cooperation in line with approved format of the National Health Research Ethics format.

In negotiating MTAs, RIIC ensures that the agreements;

- i. Do not materially inhibit research and publication.
- ii. Outline the relevant materials in some reasonable detail.
- iii. Follow BUHREC compliance procedures.
- iv. Do not conflict with existing agreements.
- v. Do not jeopardize BU IP rights or academic freedom.

### **10.1 Policy Implementation**

- i. The Office of Research, Innovation and International Cooperation (RIIC) shall oversee the implementation of this policy.
- ii. The capacity of the IP implementation shall be strengthened among members of staff of RIIC and all employees through collaboration with other Universities and organizations.
- iii. Babcock University shall recognize members of staff whose work have been patented by awards and recognition.
- iv. The dissemination of this policy shall be through University Colloquium, workshops and seminars for all members of the University community and during orientation programme for new employee and research students. Also, a copy of the policy shall be posted on the University website.
- v. In the event circumstances require any exception to the terms of this Policy, such exceptions shall require the consent of the President/Vice-Chancellor. The President shall, seek the advice of the University Senate prior to approving any exception to the terms of this Policy.

### **10.2 Review and Amendment**

- i. This policy shall be reviewed or amended every three (3) year and/or in response to emerging realities in the light of legal, policy and institutional development in IP at the international and national levels.

- ii. A review committee shall be constituted by the President/Vice-Chancellor to be chaired by the Director, Research, Innovation and International Cooperation with members drawn from the university and outside where necessary.

# APPENDICES

## FORM I

### BABCOCK UNIVERSITY RESEARCH, INNOVATION AND INTERNATIONAL COOPERATION INTELLECTUAL PROPERTY DISCLOSURE FORM

CONFIDENTIAL – BABCOCK UNIVERSITY RIIC USE ONLY

**All documents submitted to the office of RIIC are treated as confidential, including technical and personal information submitted within this Intellectual Property Disclosure Form.**

This form should be used for reporting:

Inventions that can be protected under patent laws, including compositions; methods and processes; Machines; medical devices; Algorithms; plants and animal varieties;

“Works of Authorship” that can be protected under copyright laws: include: Software Applications (“Apps”); testing materials; Analytical profiles; Designs; and Architectural plans.

The questions in this form are designed to assist you in this disclosure process. Please fill out every section as completely as possible as it pertains to the intellectual property you are disclosing.

If you require more space for your disclosure, attach additional disclosure materials as needed to this document or send as attachments in the e-mail message you send with this document.

Submit the completed form and all attachments via e-mail to the Office of the Director, Research, Innovation and International Collaboration: (riic@babcock.edu.ng)

#### **1. Intellectual Property Title**

1.1 Intellectual Property Title – Title must be short, simple and non-confidential

#### **2. Intellectual Property Description**

2.1. Summary of the Intellectual Property- attach drawings, documents, figures, graphs etc that could assist RIIC in understanding the intellectual property

2.2. What are the essential components of the IP that need to be protected – new methods, tools, works of authorship, chemical structures work of authorship etc.

2.3. What existing problem(s) does the IP solve?

2.4. What is unique about this IP- what makes it better and different from solutions or methods used by others

2.5. What are the commercial application or products and services that can emanate from this IP?

2.6. What is the stage of this IP *in-vivo*; *in-vitro* data, scripted, working prototype, etc

2.7. What plans are being made to advance the IP? Is funding available to do so? - Any additional development to make it ready for commercialization?

**3. Funding sources** – *Please itemize all the funding available from conception to the development of this IP (Federal grants, foundations, BU research grant, industry sponsor, gifts etc) It is important that this list be comprehensive because sponsors may have certain rights in the IP*

Sources	Grant number
---------	--------------

1.

2.

3.

4.

5.

**4. Third Party rights in the IP** – Are there other agreements with a third party that can affect ownership of IP e.g. MTA

Yes: Identify the third party

No:

**5. Public Disclosure Use/ Sale** List all titles and dates of all possible public disclosure of the IP (past, present, future) and attached copies of published or submitted versions

Papers	Date
--------	------

1.

2.

3.

Add more if applicable

Presentations and Posters Date

1.

2.

3.

Add more if applicable

Thesis Date

Websites Date

Other Public Disclosure Date

**6. Contributors** - List all individuals who contributed from conception of the IP including students, Post doctorates, scientists, non BU personnel etc. Primary investigator should be the first to be listed. Information should include

Full name:

Department:

Phone number:

Email address:

Employment Status:

**7. References** – Attach a list of known background publications or materials

**8. Industry or other contact for commercialization (optional)** – Please provide contact(s) if available with which RIIC can discuss possibility of commercialization

**9. Additional information or comment**

**Form II**

**BABCOCK UNIVERSITY  
RESEARCH, INNOVATION AND INTERNATIONAL COOPERATION**

**MATERIAL TRANSFER AGREEMENT (MTA)**

The purpose of this agreement is to provide a record of the biological material transfer from the PROVIDER SCIENTIST (identified below) and the RECIPIENT SCIENTIST (identified below) to abide by all terms and conditions of the Nigerian National Code for Health Research Ethics and to certify that the RECIPIENT (identified below) organization has accepted and signed an unmodified copy of this agreement. The RECIPIENT organization's Authorized Official will also sign this letter if the RECIPIENT SCIENTIST is not authorized to certify on behalf of the RECIPIENT organization. The RECIPIENT SCIENTIST (and the Authorized Official of RECIPIENT, if necessary) should sign both copies of this letter and return one signed copy to the PROVIDER. The PROVIDER SCIENTIST will forward a copy of this agreement to the National Health Research Ethics Committee of Nigeria after which approval for proposed research will be given by the Institutional Health Research Ethics Committee (HREC). The PROVIDER SCIENTIST will send the biological materials to the RECIPIENT SCIENTIST as outlined in the research protocol approved by the HREC. This Implementing Letter is effective after the institutional HREC issues approval for the research. The parties executing this Implementing Letter certify that their respective organizations are conversant with and accept the authority of the Nigerian National Code for Health Research Ethics (NCHRE), and further agree to be bound by its terms, for the transfer specified above. Please fill in all of the blank lines below:

1. TITLE OF RESEARCH:

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2. HREC ASSIGNED PROTOCOL NUMBER: \_\_\_\_\_

3. ORIGINAL MATERIAL (Enter description):

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4. PROVIDER (Organization providing the ORIGINAL MATERIAL)

a. Name of Organization:

\_\_\_\_\_

b. Street Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. City/State: \_\_\_\_\_

d. Phone/Fax: \_\_\_\_\_

e. E-mail: \_\_\_\_\_

\_\_\_\_\_

f. Signature of Head of Provider Institution/Date:

5. PROVIDER SCIENTIST

a. Name and Title: \_\_\_\_\_

b. Street Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. City/State: \_\_\_\_\_

d. Phone/Fax: \_\_\_\_\_

e. E-mail: \_\_\_\_\_

f. Signature/Date: \_\_\_\_\_

6. RECIPIENT SCIENTIST

a. Name and Title: \_\_\_\_\_

b. Street Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. City/State: \_\_\_\_\_

d. Country: \_\_\_\_\_

e. Phone/Fax: \_\_\_\_\_

f. E-mail: \_\_\_\_\_

g. Signature/Date: \_\_\_\_\_

7. RECIPIENT ORGANIZATION CERTIFICATION (Organization receiving the ORIGINAL MATERIAL)

I hereby certify that the RECIPIENT organization has accepted and signed the Materials Transfer Agreement (this may be the RECIPIENT SCIENTIST if he/she is authorized by the RECIPIENT organization)

a. Name of Organization: \_\_\_\_\_

b. Street Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

c. City/State: \_\_\_\_\_

d. Country: \_\_\_\_\_

e. Phone/Fax: \_\_\_\_\_

f. E-mail: \_\_\_\_\_

g. Signature of authorized official/Date: \_\_\_\_\_

h. Name and Title: \_\_\_\_\_

8. In response to the terms of the research protocol titled \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_, the PROVIDER asks that the RECIPIENT and the RECIPIENT SCIENTIST agree to the following:

a. The above BIOLOGICAL MATERIAL is being made available to the RECIPIENT for the sole purpose of research outlined in the protocol named in this letter only. Within the context of this research proposal only, the MATERIALS, their modifications and progenies are jointly owned by the parties to this agreement.

b. The BIOLOGICAL MATERIAL will not be further distributed to others without

the PROVIDER's written consent. The RECIPIENT shall refer any request for the BIOLOGICAL MATERIAL to the PROVIDER. To the extent supplies are available, the PROVIDER or the PROVIDER SCIENTIST agrees to make the BIOLOGICAL MATERIAL available, under a separate MATERIALS TRANSFER AGREEMENT, to other scientists who wish to replicate the RECIPIENT SCIENTIST's research.

c. Any BIOLOGICAL MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. The PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE BIOLOGICAL MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS. Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the BIOLOGICAL MATERIAL. The PROVIDER will not be liable to the RECIPIENT for any loss, claim or demand made by the RECIPIENT, or made against the RECIPIENT by any other party, due to or arising from the use of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.

d. The RECIPIENT agrees to use the BIOLOGICAL MATERIAL in compliance with all applicable statutes and regulations, including, for example, the Nigerian National Code for Health Research Ethics, 1992 UN Convention on Biological Diversity and those relating to research involving the use of human and animal subjects or recombinant DNA.

e. The BIOLOGICAL MATERIAL is provided at no cost other than as specified in the research protocol.

f. The BIOLOGICAL MATERIALS are to be stored at \_\_\_\_\_ and used at the laboratories of the RECIPIENT SCIENTIST and collaborators under the RECIPIENT SCIENTIST's direct or delegated supervision as specified in the research

protocol approved by the Institutional HREC.

g. Without written consent from the **PROVIDER**, the **RECIPIENT** and/or the **RECIPIENT SCIENTIST** may NOT provide **MODIFICATIONS** for **COMMERCIAL PURPOSES**. It is recognized by the **RECIPIENT** that such **COMMERCIAL PURPOSES** may require a commercial license from the **PROVIDER** and the **PROVIDER** has no obligation to grant a commercial license to its ownership interest in the **MATERIAL** incorporated in the **MODIFICATIONS**. Nothing in this paragraph, however, shall prevent the **RECIPIENT** from granting commercial licenses under the **RECIPIENT's** intellectual property rights claiming such **MODIFICATIONS**, or methods of their manufacture or their use.

h. If the **RECIPIENT** desires to use or license the **MATERIAL** or **MODIFICATIONS** for **COMMERCIAL PURPOSES**, the **RECIPIENT** agrees, in advance of such use, to negotiate in good faith with the **PROVIDER** to establish the terms of a commercial license. It is understood by the **RECIPIENT** that the **PROVIDER** shall have no obligation to grant such a license to the **RECIPIENT**, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the **MATERIAL** to any third party(ies), subject to any pre-existing rights held by others.

i. The **RECIPIENT AND PROVIDER** as joint owners are free to file patent application(s) claiming inventions made by the **RECIPIENT** through the use of the **MATERIAL**.

j. The **RECIPIENT** agrees to use the **MATERIAL** in compliance with all applicable statutes and regulations, including Nigerian National Code for Health Research Ethics and institutional regulations and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA.

k. This Agreement will terminate on completion of the **RECIPIENT's** current research with the **MATERIAL**, after which full ownership reverts to the **PROVIDER** and the **RECIPIENT** will discontinue its use of the **MATERIAL** and will, upon direction of the **PROVIDER**, return or destroy any remaining **MATERIAL**. The **RECIPIENT**, at its discretion, will also either destroy the **MODIFICATIONS** or remain bound by the terms of

this agreement as they apply to **MODIFICATIONS**.

The RECIPIENT and the RECIPIENT SCIENTIST should sign both copies of this letter and return one signed copy to the PROVIDER SCIENTIST. The PROVIDER will then forward the BIOLOGICAL MATERIAL.

## **SECTION OF NATIONAL CODE FOR HEALTH RESEARCH RELATING TO MTA**

### **(n) Materials Transfer Agreement**

Transfer of samples and biological materials such as animals, herbs and plants out of Nigeria shall require a Materials Transfer Agreement (MTA) detailing the type of materials, anticipated use, location of storage outside Nigeria, duration of such storage, limitations on use, transfer and termination of use of such materials subject to any law, regulations and enactment in Nigeria.

The purpose of MTA is to protect the interests of local researchers and Nigeria's human and natural resources in all its biodiversity as well as how they can be legitimately used. It ensures that the interests of all relevant parties, human and community participants in research and the Nigerian nation are protected from exploitation and egregious harm.

(a) The MTA shall be signed by all parties involved in the research including local and international principal investigators, heads of local institutions, research sponsors and other relevant parties.

(b) HREC shall review the MTA to ensure consistency with the stated objectives of the research, the contents of the informed consent documents and the principles enumerated above. The HREC shall grant provisional approval pending the submission of MTA to NHREC and receipt of acknowledgement from the NHREC.

(c) The applicant for research review shall file a copy of the MTA and provisional approval by the institutional HREC with the NHREC for record purposes only.

(d) NHREC shall acknowledge receipt of the MTA to the applicant who shall inform the institutional HREC.

(e) Institutional HREC shall grant final approval to research involving international transfer of Nigerian samples after all other criteria stated in this code for approval of research has been met and upon receipt of acknowledgement of MTA.

(f) The MTA does not vitiate the right of research participants or communities to request that their samples be withdrawn from research according to the terms of the informed consent process.

(g) Where there is any change in the MTA, a request for amendment of protocol shall be submitted to HREC and HREC shall consider this in the usual

manner used for amendment of protocol.

(h) Where there is verifiable proof that the applicant has sent a copy of the MTA to the NHREC and has not received an acknowledgement in 2 weeks, the applicant shall file evidence of this with the institutional HREC who shall proceed to issue the final approval for the research.

## **LIST OF CONTRIBUTORS**

1. Professor Bankole Sodipo.
2. Professor Grace Tayo.
3. Dr Dorcas Odunnaike.
4. Mrs Princess Adebola.
5. Mr Samuel O. Dada.
6. Barrister 'Niyi Arije.