

BIH INTELLECTUAL PROPERTY POLICY

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“Facilitators on the protection & commercialisation of Intellectual Property & IKS-based innovations”

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ABBREVIATIONS

BIH	Botswana Innovation Hub
CIPA	Companies & Intellectual Property Authority
CSIR	Centre for Scientific & Industrial Research
DRST	Department of Research, Science & Technology
BITRI	Botswana Institute of Technology Research & Innovation
BIUST	Botswana International University of Science & Technology
BITC	Botswana Investment & Trade Commission
DAR	Department of Agricultural Research
FMDU	Farm Machinery Development Unit
BVI	Botswana Vaccine Institute
BOBS	Botswana Bureau of Standards
IKS	Indigenous Knowledge Systems
IP	Intellectual Property
TTO	Technology Transfer Office
DCD	Director of Cluster Development
NDP	National Development Plan
BDC	Botswana Development Corporation
NFTRC	National Food Technology Research Centre
NMMU	Nelson Mandela Metropolitan University RSA
NIPMO	National Intellectual Property Management Office RSA
TIA	Technology & Innovation Agency RSA
NWU	North West University RSA
WIPO	World Intellectual Property Organisation
ARIPO	African Regional IP Office
KIPO	Korean Intellectual Property Office
KAIST	Korea Advanced Institute of Science and Technology
PCT	Patent Cooperation Treaty
ROCIP	Registrar of Companies & Intellectual Property
ORD	Office of Research & Development UB
IKS	Indigenous Knowledge System
CESRIKI	Centre for Scientific Research in Indigenous Knowledge
ORI	Okavango Research Institute

1. PREAMBLE

The Botswana Innovation Hub (BIH) has been established pursuant to an Act of Parliament as a science and technology park to inter-alia foster Botswana's transition to a knowledge based economy, that actively responds to the needs of the people of the Republic of Botswana. The Botswana Excellence Strategy of 2008 envisages a transformation of Botswana into a technology-driven and knowledge based economy through promotion of a culture of innovation and competitiveness.

In line with the National Policy on Research, Science, Technology and Innovation of 2012, and our national vision pillar to be a "prosperous, productive and innovative nation" 2016, the Government of Botswana envisages a stronger role of STI in the national economy going forward. Of particular emphasis is demand driven research and commercialisation, adoption of Indigenous knowledge systems, strengthened national systems of innovation and a supportive legal framework through protection of Intellectual Property Rights which is critical for wealth creation and economic diversification. Botswana envisages a two percent (2%) contribution of Gross Domestic Product to be invested in Research and Development (R&D) in partnership with private sector, hence unlocking funding support to commercialisation of R&D towards economic prosperity beyond 2016.

It is under these premises that BIH has been established as a special purpose vehicle as part of the implementation of the National Policy to provide a support structure for commercialisation of technology, innovations, R&D for equitable benefits of the nation. The BIH Office of Technology Transfer presides over the implementation of a Policy Framework that seeks to foster the identification, protection, management and commercialisation of IP, with a particular emphasis on fostering the development of innovations that will be developed for the benefit of the people of the Republic of Botswana.

This BIH Policy seeks to:

- instil confidence on all stakeholders (its clients and resident companies, higher education institutions, national research institute, Small Medium Enterprises (SMEs), IKS holders and the general public), dealing with the Office of Technology Transfer on IP matters;
- address all IP related issues from originators seeking advice on their innovations;

- provide guidance on the approach to assistance to high tech companies seeking to licence out technologies to local entities for commercial value;
- provide a framework for governing the rights and responsibilities of all stakeholders in relation to IP arising from their activities; and
- provide certainty in respect of the assistance that BIH TTO provides in respect of accessing foreign developed IP and technologies.

The Policy will support the national efforts towards IKS Commercialisation, economic diversification (new products and services development and roll out), SMEs, national research institutes' commercialisation efforts, and higher education institutions' adoption of research intensive strategies and further enhancement of Botswana's national system of innovation with overall increased competitiveness as a country.

2. DEFINITIONS

Certain terms are used in this document with specific meanings, as defined in this section. These definitions do not necessarily conform to customary usage.

- 2.1. **Background IP** means IP that was generated before the commencement of R&D collaboration.
- 2.2. **Benefit** means the contribution to the socio-economic needs of the Republic of Botswana and includes capacity development, technology transfer, job creation, enterprise development, social upliftment and products, or processes or services that embody or use the IP.
- 2.3. **Botswana Industrial Property Act** means the Botswana Industrial Property Act, Act no. 8 of 2010, which regulates the protection of Inventions and Designs.
- 2.4. **Commercialisation** means any form of exploitation of IP for the Benefit of the people of the Republic of Botswana and includes assignment, licensing, establishment of a Spin-off company to offer the IP to the market as a product or service.
- 2.5. **Computer Software** means any computer program (including, without limitation, microcode, subroutines and operating systems), regardless of form of expression or object in which it is embodied, together with any user manuals and other accompanying explanatory materials and any computer database.
- 2.6. **Confidential Agreement** means a duly signed written agreement in terms of which someone who has access to confidential information agrees not to disclose it without

the prior consent of the owner of the information; also referred to as a Non-Disclosure Agreement (NDA).

- 2.7. **Creator** means any person or persons to whom this Policy is applicable, who create, conceive, reduce to practice, author, or otherwise make a substantive intellectual contribution to the creation of IP and who meets the definition of ‘inventor’ as implied in Botswana Industrial Property Act or the definition of Author as generally implied in copyright law.
- 2.8. **Indigenous Knowledge (IKS)** means traditional knowledge of indigenous people of Botswana in respect of any product, process, including medicaments, food, nutrition, and any other forms of doing things.
- 2.9. **Institution** means a higher education Institution or public research institute duly established in terms of the applicable laws of the Republic of Botswana.
- 2.10. **Intellectual Property (IP)** means all outputs of creative endeavour in any field at the Institution for which proprietary rights may be obtained or enforced pursuant to any international law including the laws of the Republic of Botswana, and includes, but is not limited to: inventions (whether patentable or not), all forms of Copyrightable Works, designs (whether registered or unregistered), patents, trademarks, know-how, trade secrets, domain names, information, data, discoveries, mathematical formulae, specifications, diagrams, expertise, techniques, research results, computer software and programs, programming code, algorithms, compositions of matter and devices, techniques, processes, procedures, systems, formulations, databases and compilations of information, laboratory notebooks, business and research methods, institute’s name, badge and other marks associated with the operations of the Institution, Tangible Research Property, and such other items as specified in writing by the Institution.
- 2.11. **Invention** means an idea of an inventor which permits in practice the solution to a specific problem in the field of technology, as defined in the Botswana Industrial Property Act.
- 2.12. **Inventor** means an individual covered by this Policy who individually or jointly with others makes an Invention and who meets the criteria for inventorship under the Botswana Industrial Property Act.
- 2.13. **IP and Innovation Advisory Committee** means the oversight committee appointed by the BIH Board in terms of Article 10 of this Policy

- 2.14. **IP Disclosure Form** means the form which needs to be completed by the Creator(s) to document their Invention and provide key information regarding the Creator(s), funding used to develop the IP and the rights of third parties, for submission to the TTO for assessment of the IP.
- 2.15. **IP Rights** means ownership and associated rights relating to IP, including patents, rights in utility models, plant breeders rights, rights in designs, trademarks, topography rights, know-how, trade secrets and all other intellectual or industrial property rights as well as copyrights, either registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them, and in each and every case all rights or forms of protection having equivalent or similar effect anywhere in the world.
- 2.16. **Licensing** mean the process of transfer of rights of an IP owner to a third party to make use of the IP on agreed terms and conditions.
- 2.17. **Patentable Invention** means IP that meets the criteria for patentability, meaning that it is novel (i.e. where there has not been a Public Disclosure), involves an inventive step (not obvious to a person skilled in the technical discipline) and is useful (can be applied in trade or industry or agriculture).
- 2.18. **Policy** means this BIH Intellectual Property Policy.
- 2.19. **Public Disclosure** means, in the absence of a non-disclosure or confidentiality undertaking, the oral or written communication of information, relating to IP, to a person, or people, that are external to the Institution. For example, but not limited to, communication by email, web blog, news report, press release or interview, journal article, abstract, poster, conference presentation and through the submission of a report placed in the library constitutes public disclosure.
- 2.20. **Research and Development (R&D)**¹ means 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; and comprises three activities: basic research, applied research and experimental development; wherein:
- 2.20.1. **Basic research** is experimental or theoretical work undertaken primarily to acquire new knowledge of the underlying foundation of phenomena and observable facts, without any particular application or use in view;

¹ From Frascati Manual Definition

- 2.20.2. **Applied research** is also original investigation undertaken in order to acquire new knowledge. It is, however, directed primarily towards a specific practical aim or objective; and
- 2.20.3. **Experimental development** is systematic work, drawing on existing knowledge gained from research and/or practical experience, which is directed to producing new materials, products or devices, to installing new processes, systems and services, or to improving substantially those already produced or installed.
- 2.21. **Stakeholders** means any party that may refer IP to BIH and includes BIH clients, resident companies, Institutions, Inventors, SMEs,
- 2.22. **Spin-off** means a company established for the purpose of exploiting IP owned by the Institution.
- 2.23. **TTO** means the Technology Transfer Office established by the BIH in terms of Article 5 to implement this Policy.

SECTION A: SCOPE AND AUTHORITY / OWNERSHIP

3. SCOPE AND AUTHORITY

- 3.1. This Policy applies to all stakeholders dealing with BIH technology Transfer Office.
- 3.2. The BIH TTO will implement this Policy.
- 3.3. The Botswana Innovation Hub Board is responsible for the overall implementation of this Policy on behalf of the Government of Botswana, as a key enabler in line with standard corporate governance requirements.
- 3.4. Given the cross-cutting nature of IP as well as the national stature of the TTO, the IP Advisory Committee established in terms of this Policy will advise the BIH Board on all matters pertaining to the implementation of this Policy.

4. OWNERSHIP

- 4.1. Unless otherwise agreed upon in writing and upon good cause, the BIH will not own any IP referred to it by its Stakeholders.
- 4.2. BIH shall own IP generated by its staff during the course and scope of their employment.

SECTION B: TECHNOLOGY TRANSFER OFFICE

5. TECHNOLOGY TRANSFER OFFICE

- 5.1. The TTO has been established within the BIH, with the cooperation of the Southern Africa Innovation Support Programme [SAIS], the University of Botswana and BIH, to facilitate IP Awareness, IP Protection, IP Management and Commercialisation nationally.
- 5.2. The TTO shall act as a National TTO and have the role of a National Focal Point for the WIPO-supported model of a Technology & Innovation Support Centres [TISC]. In this regard, the TTO shall provide:
 - 5.2.1. access to online patent and non-patent (scientific and technical) resources and IP-related publications;
 - 5.2.2. assistance in searching and retrieving technology information;
 - 5.2.3. training in database search;
 - 5.2.4. On-demand searches (novelty, state-of-the-art and infringement), subject to commercial potential and Benefit to the people of Botswana;
 - 5.2.5. Basic information on industrial property laws, management and strategy, and technology commercialization and marketing.
- 5.3. The TTO shall establish collaborative relationships with any other regional Tech Transfer Offices, IP Agencies, and any other local and international parties, to ensure effective IP protection and commercialisation. Such collaborative relationships may include the establishment of national IP and Commercialisation Resource Centres.
- 5.4. The TTO will report to the BIH Board through the IP and Innovation Advisory Committee comprising members from organisations that are part of the National System of Innovation dealing with IP.
- 5.5. The responsibilities of the TTO include, but not limited to the following:
 - 5.5.1. promoting the identification, documentation and commercialisation of IKS-based products;
 - 5.5.2. IP and innovation awareness activities in collaboration with the Institutions;
 - 5.5.3. Assist in the identification and acquisition of foreign owned IP and international technologies for local adoption and application;
 - 5.5.4. Assist BIH Science Park Resident companies and BIH Incubation programmes on matters of IP and Commercialisation; and

- 5.5.5. Assist the general public with identification of Patentable Inventions and any other IP that may be subject of Commercialisation.
- 5.5.6. Receipt and consideration of IP Disclosure Forms and supporting documentation from its Stakeholders;
- 5.5.7. Submissions to the IP and Innovation Advisory Committee for consideration and input if necessary;
- 5.5.8. Analysis of the disclosures contained in the IP Disclosure Form within 30 (thirty) days of receipt. The analysis will include *inter-alia*, whether or not the IP is protectable, commercial merit, technical and commercial viability, Benefit to the Republic of Botswana and the rest of the world that may be derived from the IP and its Commercialisation, prejudice that may be suffered from failure to seek IP protection, extent of readiness of the IP for protection and whether any additional R&D needs to be undertaken before IP protection can be obtained, forms of IP protection that are most appropriate for the IP in question, scope of the protection of the IP in all geographic territories subject to the commercialisation potential, costs and advantages of the various options for protection, commercialisation options and whether the IP should be placed in the Public Domain.
- 5.5.9. After analysis, provide a recommendation for consideration by the Stakeholder to proceed on an appropriate course of action which may include:
 - 5.5.9.1. the Stakeholder to proceed with an application for protection of the IP, such as via the filing of a provisional patent application or the registration of a design or other IP title as it may be deemed fit;
 - 5.5.9.2. delaying the IP protection application for strategic reasons, but ensuring that confidentiality is maintained until the application has been made;
 - 5.5.9.3. where necessary, for the IP Creator to carry out additional work to enable an IP protection application to be made; whilst confidentiality is maintained;
 - 5.5.9.4. where the IP is found to not to have prospects of 'providing Benefits to the Institution or the Republic of Botswana or of being commercialised, not proceeding with protection, advising the IP

Creator that they are free to publish the work and also rights of third parties.

5.5.10. Attend to all aspects of protection of the IP, including the appointment of a patent attorney or IP agent;

5.5.11. Attend to all aspects of IP Commercialisation, including the negotiation and conclusion of licenses and assignments of the IP;

5.5.12. Assist in negotiation of IP clauses of Sponsored R&D agreements in accordance with applicable policies of the Institutions and any other applicable legislation.

6. COST RECOVERY MODEL

6.1. The establishment of the National TTO is not intended to generate income for the BIH.

6.2. Unless otherwise agreed, the TTO services shall be at no cost to the clients and Stakeholders

6.3. Where the TTO subcontracts any paid services on areas that it is not competently capacitated in, such costs shall be for the relevant Stakeholder's account.

6.3.1. The TTO may negotiate for these services.

6.3.2. Stakeholders shall be furnished with a quotation for the services requested, for their consideration.

6.3.3. The Stakeholder will however conclude the agreement with the subcontractor for the services and shall absolve BIH of any responsibility should conflicts arise from the performance of the subcontractor.

6.4. The TTO may also negotiate subsidised fees with third party organisations on specialised services, which may include but not be limited to patent drafting and filing, market research reports, commercial patent databases, etc.

6.5. The Not-for-profit position of the TTO shall be reviewed periodically for relevance and applicability by the IP and Innovation Advisory Committee, which shall make a recommendation to the BIH Board.

6.6. BIH reserves the right through any of its other support instruments, to provide financial support to any Stakeholder with IP that meets its support instruments' criteria.

7. PARTNERSHIPS AND COLLABORATIONS

- 7.1. BIH shall work with local and international partners on cultivating the culture of innovation, research, experimentation, technology tracking, Prior Art searching, IP search, protection, and Commercialisation of research outputs.
- 7.2. The local partners may include, but not limited to DRST, CIPA, ORD-UB, ORI, BIUST, BITRI, BITC and NFTRC.
- 7.3. BIH shall engage expert advice of Regional and International Intellectual Property agencies and organisations on protection, management and Commercialisation of IP, Technology Transfer, IKS, technology identification, acquisition and commissioning. This may also include procuring advisory services on the setting up and management of a number of BIH instruments or offerings including but not limited to, the Innovation Fund, the Technology & Innovation Support Centres, the Innovation Ambassador programs, and a fully-fledged National Tech Transfer Office.
- 7.4. The external partners may include, but not limited to WIPO, ARIPO, KIPO, KAIST, EPO, NIPMO, TIA, the Innovation Hub (South Africa), NBSC, SAIS, SARIMA and South African Universities' Tech Transfer Offices.
- 7.5. Any partnerships shall at all times be governed by the laws of the Republic of Botswana.
- 7.6. BIH, through this Policy document, commits to liaison, collaborate and facilitate advanced research, development, protection and dissemination of outputs from the Science Park resident companies.
- 7.7. The Policy supports the participation of the TTO in Entrepreneurship Development as counsel on IP, Franchising and Technology Transfer. Services shall include assisting resident and virtual members in registration of IP work (Trademarks and Designs), and Commercialisation of their innovative ideas and prototypes.

SECTION C: OBLIGATIONS

8. OBLIGATIONS OF THE TECHNOLOGY TRANSFER OFFICE

- 8.1. The TTO shall guard against infringement by its staff of Clients and Stakeholders' IP disclosed to it. In particular, all BIH staff shall treat all information it received from its Stakeholders as confidential until the contrary is confirmed by the disclosing party in writing. The staff receiving confidential information may disclose to another party who is also under an obligation of confidentiality or has signed a Confidentiality

Agreement or NDA for the purposes necessary to provide appropriate advise or for Commercialisation.

- 8.2. Given the fact that the TTO interacts with a variety of Stakeholders, it is impractical for its staff to sign Confidentiality Agreements or NDAs with Stakeholders desirous of disclosing information pertaining to their IP. In this regard, the TTO shall ensure that its Stakeholders are made aware of the IP Disclaimer Statement to the effect that BIH staff and affiliates commit to accord confidentiality to all its customers, stakeholders and clients' discussions, disclosures, exhibitions, and presentations (oral, written or recordings).
- 8.3. The TTO shall use best efforts to provide assistance and advice to its Stakeholders, and timeously resolve queries and enquiries made to it.
- 8.4. In the case of a Stakeholder submitting an IP Disclosure Form, the TTO, shall provide a written response of its assessment and advise within 30 (thirty) days of receipt.

9. OBLIGATIONS OF THE STAKEHOLDERS

- 9.1. The Stakeholders shall ensure that they provide appropriately detailed Disclosure Forms or disclosures to the TTO to enable analysis and assessments.
- 9.2. The Stakeholders undertake to make payments directly to any subcontractors.

SECTION D: IP AND INNOVATION ADVISORY

10. IP AND INNOVATION ADVISORY COMMITTEE

- 10.1. The BIH Board shall through its sub-committee dealing with collaborations, scientific and technology issues, establish and appoint members of the IP and Innovation Advisory Committee to advise it on all matters relating to the implementation of this Policy, and in particular:
 - 10.1.1. interpreting this Policy;
 - 10.1.2. resolving disputes over any disputes arising from implementation of this Policy;
 - 10.1.3. establishment of any Spin-off company and the share in equity of the founders of such company;
 - 10.1.4. reviews of this Policy; and
 - 10.1.5. any other matters as the IP and Innovation Advisory Committee may deem appropriate.

- 10.2. The IP and Innovation Advisory Committee shall comprise members appointed by the BIH Board selected as follows:
- 10.2.1. At least 5 (five) representatives from Institutions in Botswana;
 - 10.2.2. BIH Chief Executive Officer or his representative;
 - 10.2.3. 3 (three) experts with experience in commercialisation of IP or innovation;
 - 10.2.4. Representative of Companies Intellectual Property Authority (CIPA); and
- 10.3. The Head of the TTO shall provide the secretariat function for the IP and Innovation Advisory Committee.
- 10.4. The IP and Innovation Advisory Committee shall meet at least quarterly.

SECTION E: COMMERCIALISATION

11. COMMERCIALISATION

- 11.1. The BIH shall through its other instruments, assist its Stakeholders with IP Commercialisation.
- 11.2. The assistance may include but not limited to negotiation and conclusion of licence agreements, acquisition of foreign originating IP and technologies.
- 11.3. BIH shall not be entitled to proceeds of any Commercialisation save for recovery of any direct costs or out of pocket expense incurred

SECTION F: MISCELLANEOUS

12. MISCELLANEOUS

- 12.1. **Conflict of Interest:** Employees, Visitors and Students should avoid situations where they have a significant financial interest that could directly and significantly affect their responsibilities within the Institution. Generally, these situations arise when the external interest provides an incentive which may compromise one's ability to perform all their responsibilities within the Institution and when the individual has the opportunity to affect the Institution's decision or other activity.
- 12.1.1. When conflicts of interest do arise, however, they must be recognized, promptly disclosed to the Institution and either properly managed or eliminated.

- 12.1.2. Employees, Students and Visitors shall promptly report all potential and existing conflict of interest to the TTO in order to reach solution satisfactory to all parties concerned.
- 12.1.3. The Institution will develop a separate and comprehensive policy dealing with Conflict of Interest.
- 12.2. **Dispute Resolution:** Any disputes or questions of interpretation arising under this Policy must in the first instance be referred to the BIH Chief Executive Officer. If the matter remains unresolved after a 30 (thirty) day period, then the dispute or question of interpretation must be referred to the IP and Innovation Advisory Committee, whose decision may be appealed to the BIH Board.
- 12.3. **Revision of the Policy:**
- 12.3.1. This Policy will be reviewed from time to time for relevance, applicability and consistency with other BIH Policies; and may be changed or amended at any time by a decision of the BIH Board upon recommendation of the IP and Innovation Advisory Committee. Such changes or amendments shall not affect rights accrued prior to the date of such action.
- 12.3.2. Any review and update of this Policy shall consider feedback received from the Stakeholders.

13. ADDENDUMS AND GUIDELINES

13.1. **Implementation Guidelines, Procedures and Documentation:**

- 13.1.1. The BIH may develop guidelines and practice notes to assist in the interpretation and implementation of this Policy.
- 13.1.2. The Director of Cluster Development shall be responsible for the implementation of this Policy, including the TTO; and also for developing guidelines, procedures and any documentation as necessary for effective implementation of this Policy, and operations of the TTO. The Director Cluster Development may be assisted by such other persons as the Chief Executive Officer may otherwise determine from time to time. The IP and Innovation Advisory Committee shall recommend to the BIH Board, approval of such guidelines, procedures and documentation.
- 13.1.3. BIH shall put in place mechanisms for Stakeholders to provide feedback and complaints in terms of anything under this Policy.

- 13.1.4. BIH shall in all cases act in a manner that is consistent with its values, vision and mission Statements.
- 13.2. A number of illustrative charts and addenda may be developed for any aspect of this Policy. The following initial Addenda are attached to this Policy:
- 13.2.1. Addendum 1: Foreign Technology Acquisition route. This offering by TTO illustrates how Clients seeking Technologies to commercialise their inventions will be assisted.
- 13.2.2. Addendum 2: Traditional Knowledge System route. This service offering acknowledges the prevalence of IKS issues in Botswana, and how they will be handled by the office.
- 13.2.3. Addendum 3: ICT Cluster Development support. Botswana has a high number of ICT graduates and innovators. The route illustrates how they will be assisted in their work processes by TTO.
- 13.2.4. Addendum 4: The Conventional IP Route. This model appreciates that some inventions and innovations will have notable elements of intellectual Property that warrants assistance towards registration and protection.

....end//.12 September 2016