



FORUM FOR AGRICULTURAL RESEARCH IN AFRICA
INTELLECTUAL PROPERTY POLICY AND IMPLEMENTATION GUIDELINES

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SECTION I – INTRODUCTION

Background

Forum for Agricultural Research in Africa (FARA) is the apex organization for agricultural research in Africa and the technical arm of NEPAD for its research component of CAADP. Since its inception in 2001, it has worked towards reducing food insecurity, poverty and enhancement of environmental conditions by establishing broad based agricultural productivity backed by competitive and sustainable improved markets. Through its diverse stakeholders, FARA complements the innovative activities of National and Sub regional agricultural research institutions by enabling scientific research and building systems for the productive use of resources coupled with the sharing and dissemination of knowledge and technologies amongst researchers and end users including farmers. This it does by facilitating the interaction of role players ranging from policy makers and donors to researchers, strategic partners and farmers.

FARA therefore acknowledges the need for an Intellectual Property (IP) Policy as fundamental to the proper management of intellectual property generated directly or indirectly by it. FARA also recognizes that such policy should allow it to enjoy its legal rights in IP without constraining in any way the process of technology dissemination, sharing of information, innovativeness and the capacity to attract further investment in agricultural research. This policy lays out guidelines that seek to strike this balance and provide the framework for negotiating FARA's IP rights.

Policy Statement

FARA is committed to enhancing and adding value to the effectiveness and efficiency of agricultural research systems in Africa. Its vision is to reduce poverty in Africa as a result of sustainable agricultural growth and livelihoods particularly for smallholder and pastoral enterprises. To further this end, it is FARA's practice to treat all products generated from research under its hospices as International public goods. This is to ensure easy availability and accessibility of these resources to the public for their use and benefit.

It is therefore FARA's policy that publication, disclosure and open access to its data plus sharing of information and knowledge with stakeholders, partners and donors shall be pursued. Research results shall be made easily accessible to the public and FARA shall respect the IP rights of third parties when using their materials in its research.

Scope

This policy limits itself to patent, copyright and trademark management, protection and use. The focus on these rights is because they are and will be the most commonly encountered categories of IP in FARA dealings. Other IPR issues like protection of new plant varieties though not of utmost importance to FARA may be relevant in some instances and can not be completely ignored. Besides laying down principles on IP management and ownership, this policy goes further to explain other crucial issues relating to intellectual property rights such that it acts as a mechanism for sensitization of users on these issues.

Applicability

This policy shall apply to all FARA employees, consultants, researchers, partner organizations and institutions, stakeholders, taskforces and all entities with which FARA transacts or contracts. It shall be the basis for establishing FARA's IPR in all its dealings.

For the avoidance of doubt the IP of any regional initiatives that FARA is overseeing or coordinating from time to time e.g. SCARDA, RAILS, SSA CP,BASIC,ABBI and DONATA shall be managed

under the provisions of this policy and any other agreement made in that regard. This will not only allow for better IP protection under a centralized system but also easier sharing of materials amongst teams working on the initiatives and all stakeholders in Agricultural research in Africa because FARA Secretariat will then take on the form of a central IP resource for all.

The Policy shall not apply to any products or works that are solely developed by research partners at regional and national level without FARA's funding and or coordination but FARA shall be credited for any intellectual input and shall seek through appropriate negotiations and mechanisms, rights to use any of such assets as it considers to be of benefit to it.

These policies shall be deemed to apply in as far as not modified by express agreement or contract between the parties and shall not apply to existing written agreements entered into prior to the date on which the policy is adopted by FARA.

Law Applicable

Article 3 of the FARA Constitution provides that FARA shall be a non-profit public international institution in accordance with Public International Law. The same Article dresses FARA with full legal personality under Public International Law and the National laws of the country hosting its headquarters. Thus, these guidelines are laid out in accordance with International laws, treaties and the laws of Ghana as the host for FARA.

The applicable International laws include but are not limited to the Trade Related Intellectual Property Rights (TRIPS) Agreement of the World Trade Organization (WTO), Patent Co-operation Treaty (PCT) of the World Intellectual Property Organization (WIPO), The Paris Convention and The Berne Convention. Ghana is also a member of the African Regional Intellectual Property Organization (ARIPO), and thus FARA can make use of any IPR processes at that level.

Nationally, Ghana has a set of IP law statutes which are relevant to his Policy including, the Copyright Act 2005, Patents Act 1992 and the Trademarks Act 1965 and unless otherwise indicated, these are the laws referred to in this policy.

Classification of Intellectual Property

a) Patent: Is a set of exclusive rights granted to a person or organization for a specified period of time in exchange for the regulated public disclosure of details of an invention. The patentee will have a monopoly to make, sell or distribute the invention and grant rights of use to others on terms agreed upon by the parties.

b) Copyright: Is the protection accorded for a limited time to the particular form, way or manner in which an idea or information is expressed. Copyright may subsist in literary works, documentaries, sound recordings, photographs, and software. The owner acquires rights to make copies, sell and distribute the work. This is the most frequently encountered category of IP where FARA is concerned not only because it vests each time FARA generates published works but also because copyright may also arise in the process of creating other categories of IP

c) Trademark: Is a word, name, symbol, design, shape or other graphic representation which is distinctive and indicative of the source of particular goods or services (service marks). Marks are afforded legal protection as belonging exclusively to the trademark holder for the period legally provided. FARA's logo is a good example of a mark. *A list of IP that FARA is likely to own appears in the appendix 2.*

Definitions

For purposes of this policy, the following terms are defined as follows:

Assignment: shall mean a transfer of intellectual property rights, title or ownership to FARA by the creator or by FARA to a third party.

Attribution-NonCommercial-ShareAlike license: shall mean a license that FARA can use to grant rights to the users of its web materials on condition that they credit FARA as author, the use remains non-commercial and any derivative works are distributed on the same terms as the original.

Commercialization: shall mean the process of making FARA's Intellectual properties available to users on a for-profit-basis.

Creator: shall mean either an inventor in the case of a patentable invention or an author for copyrightable works and trademark.

Creative Commons: shall mean tools that allow an author to distribute work on line with provision for the conditions that attach to the use of the same.

Derivative works: shall mean works based on one or more pre-existing works such as a translation, sound recording, dramatization or other form in which a work may be recast, transformed or adapted. A work consisting of editorial revisions, elaborations or other modifications which as a whole represent an original work of authorship is a derivative work.

Employee: shall mean and include all FARA staff in all locations where FARA carries out its activities.

FARA: means The Forum for Agricultural Research in Africa with all its stakeholders and constituents except where the context requires that its meaning be limited to the FARA Secretariat.

Germplasm: shall mean a collection of plant genetic resources. This can be stored in form of a seed collection or other means that will allow for propagation.

Infringement: shall mean an act that violates FARA'S intellectual property rights

Intellectual property refers to creations of the mind: inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. Particularly in common law jurisdictions, intellectual property can refer to a legal entitlement which attaches to the expressed form of an idea, or to some other intangible subject matter.

Invention: shall mean any discovery which may or may not be patentable including but not limited to processes, devices or techniques enough to produce a change in the application of existing agricultural technologies.

License: shall mean an agreement granting user rights to the licensee over licensor's (FARA) intellectual property and laying out the terms and conditions governing these rights. Where IP has been commercialized, a license also provides for the royalty to be paid.

Open Access: shall mean provision of works for free use without requirements for authentication or payment by publication in a scientific/scholarly journal or depositing a version of the work on initial publication in an online repository that allows for free access and unrestricted distribution.

Plant Breeder's Rights (PBR): shall mean patent-like rights that protect the reproduction and distribution of new plant varieties. The rights accord the breeder some control over propagation material e.g. seeds if awarded a certificate.

Peer- review: shall mean the process of subjecting works of authorship, research or ideas to the scrutiny of others who are experts in that field to determine its quality. Peer review is an essential part of scientific publication.

Post-print: shall mean a manuscript, paper or other work that has been peer- reviewed and is ready for publication.

Pre-print: shall mean a manuscript, paper, article or other work that has not yet been subjected to peer- review.

Public domain: shall mean any research works which are subject to certain exceptions and can be freely copied and used for derivative purposes without permission from any copyright holder.

Public goods: in reference to FARA IP means that it is neither practically possible to charge for it nor to exclude others from using it. An example can be a new plant variety that is patented but can easily be propagated by many farmers acquiring suckers or seeds from one who originally bought it.

Repository: shall mean an accessible online library of articles and other documents authored by or in collaboration with FARA personnel directly or indirectly through funded research.

Software: shall mean programs or instructions pertaining to the operation of a computer system stored in electronic form.

Substantial use of FARA resources: shall mean extraordinary provision of resources by FARA which includes, without limitation, release time from regularly assigned duties for the primary purpose of undertaking the IP generating project, direct discretionary investment by FARA of funds or staff or purchase of special equipment for the creation of the IP. It will in no circumstances include payment of basic salary or mere provision of working space.

Technology dissemination: shall mean the diffusion or sharing of practical knowledge and technologies between organizations e.g. FARA and another through licensing, co-development arrangements, publication in journals, distribution of publications and training or exchange of personnel to enable accessibility to users and further development.

FARA's IP Rights

FARA has rights in IP created from sources including but not limited to direct staff or employees of FARA, short term or project specific employees, researchers under any FARA coordinated projects, research sponsored in whole or in part by FARA plus collaborative teams of which some of the members are working under FARA. This Policy therefore streamlines FARA's ownership rights, responsibilities and processes for IP protection and guidelines for implementation of the policy.

Ownership

Ownership shall be ascertained before creation to avoid conflict. FARA will not pursue an aggressive ownership policy because it generates public goods. Nonetheless the policies below will preserve and foster a culture of open and creative expression of ideas, plus sharing of information and research results. Particularly,

FARA shall have ownership rights over the following categories of IP:

- a) Copyright, trademarks, Inventions, innovations, discoveries and improvements, biological materials and other proprietary materials and plants created through research solely funded by FARA or with substantial use of its resources.
- b) Works including articles, photographs, recordings, books, films and audios created by researchers and institutions out of projects specifically commissioned by FARA for the creation of such material.
- c) Works created by FARA employees under the following circumstances;
 - During the course of their employment or regularly assigned duties. This is in line with Paragraph 3.16 of FARA's Personnel Policies Manual.
 - Research done on FARA time with use of its facilities, resources and or financial support.

Provided that these ownership rights shall be negotiated with due consideration given to any grant or other agreement entered into with sponsors, donors and partners relating to the project.

FARA shall not assert ownership over:

- a) Work created by its employees where it is unrelated to the employees' job responsibilities and no more than incidental use of FARA resources was made.

IP created by the stakeholder organizations and partner institutions e.g., SRO and NARS out of research commissioned and sponsored or funded by a third party. Legal ownership of such works shall be determined according to any sponsored research or other agreement between those parties.

Joint ownership:

FARA shall share or jointly own all IP rights that vest in it by virtue of the above ownership policy with its donors and with organizations, partners and any institutions with which it collaborates on the research/ IP generating project or program This will allow for both accountability and faster dissemination of information among stakeholders.

FARA will ensure that there is a valid, thorough, written and signed agreement before the project commences laying out the rights of the joint owners in any IP that may be created and providing for the grant of the relevant licenses. In the absence of agreement to the contrary, FARA, like the other joint owners shall be entitled to use the work on a non exclusive basis giving credit to all partners in the collaborative venture.

FARA shall jointly determine with the other owners whether to file for statutory protection of the IP and ensure mutual agreement on responsibility for filing, maintaining and enforcing the IP rights. Course of action on infringement of rights shall also be agreed upon e.g. whether to enforce or abate the infringement.

Transfer of ownership

All persons, institutions and organizations bound by this policy shall transfer or agree to do so when required by FARA, all rights that they have in any works which by virtue of the ownership policy above should vest in FARA. Contractual clauses shall be used whenever appropriate to vest IPR in FARA; otherwise, transfer of ownership shall be effected by an assignment of rights from the creator of The IP to FARA. *See Appendix II for a template*

In the event that any person or team to whom this policy applies is subject to an agreement or policy with a third party, the terms of which prohibit assignment of any IP rights to FARA or are indicative of a conflict of interest, it shall be the obligation of that person to notify FARA. This obligation shall be imposed by a clause in the relevant contract. Such conflict of interest may be resolved by an agreement for joint ownership.

SECTION II - PATENT POLICY

FARA is committed to the disclosure and utilization of discoveries for maximum public benefit, protection of the rights of researchers as well as those of FARA itself; and to abide by the policies of its donors. It also acknowledges the importance of the patent system in bringing innovative research findings to practical application and shall endeavor to acquire the necessary patent protection for all inventions over which it acquires ownership in as far as such protection is required to ensure better development and dissemination of the relevant technologies.

Obtaining a Patent

Following disclosure of an invention or discovery (*See disclosure process below*), FARA shall make reasonable efforts to determine the patentability of the invention and any further development needed. If in its judgment there appears to be sound basis for proceeding, FARA will apply for a patent at no cost to the inventor. The inventor will cooperate and participate in obtaining the patent protection e.g. effecting the assignment and signing all relevant documents required.

Filing an Application

FARA can make either a national or international patent application. The filing procedure under each of these differs in only a few aspects and a choice shall be made based on which one is more cost effective and less time wasting. At National level, applications shall be filed with the Patent and Trademarks office in Ghana and the inventor must be named in the application unless he/she, by special declaration addressed to the registrar indicates that he/she does not want to be so named.

Filing Requirements

FARA shall satisfy itself that the requirements below are in order before filing a patent application in order to cut down on delays in publication of the invention;

1) The required documentation

This will include; a patent request form, specification form describing the invention in as much detail as possible with diagrams of it and instructions adequate enough to enable a skilled person to use the invention, indication of full name and address of the inventor and payment of the relevant filing fees.

2) Satisfaction of the patentability test

Legally an invention is patentable if it is novel. The novelty test is met if the invention is new, involves an inventive step, is industrially applicable and not anticipated by prior art. An invention that has been publicized before the date of application will not be new; therefore FARA shall ensure that information regarding its patentable inventions remains confidential until protection is secured.

Patent Duration

The patent will expire at the end of the tenth year after the filing of the application. FARA can renew the registration for 2 additional periods of 5 years each. FARA shall ensure that all patents registered by it are fully worked because this is a condition to any application for renewal that may be made.

International Registration

Ghana is a member of ARIPO and a signatory to the PCT. This gives FARA the option of filing an international application under the PCT. The Registrar's office in Ghana shall serve as the receiving office for this application forwarding it to the ARIPO office which will substantially examine it. FARA shall designate all ARIPO member countries in which the registration should apply and Ghana will also appear as a designated country.

Patent Use

On grant of the patent registration, FARA shall have exclusive rights to work, use and sell, make or have made the invention. However to strictly maintain and enforce these monopolistic rights may in some aspects contradict FARA's mission if it slows down the process of sharing and use of ideas.

FARA shall adopt means to facilitate free distribution of its patented material amongst stakeholders, partners and other organizations that will ensure its dissemination. This shall be done through adoption of various means of technology dissemination including, licensing the patent to the stakeholders and co-development efforts like passing inventions which FARA can't develop or work itself to a third party e.g. AATF to develop and disseminate.

SECTION III - COPYRIGHT POLICY

It is FARA's policy to facilitate easy sharing, use and dissemination of its copyright material and to respect third party copyright in using materials that it has not created.

Creation

Copyright is created and subsists in certain categories of works which vary among jurisdictions. Ghana's copyright law outlines the following eligible works which are of relevance to FARA:

- (a) Literary work e.g. all FARA's written works like articles, reports, strategic approaches e.t.c
- (d) Sound recording for instance audio recordings of interviews and research findings
- (e) Audio-visual work including video recordings which may be part of FARA's website
- (g) Derivative work which will include works in any format based on FARA material
- (h) Computer software or programs as FARA shall develop from time to time.

FARA's rights arise in any of these works if they are created by its employees, partners, stakeholders and other research organizations working under its hospices.

Use of Copyright

FARA as copyright holder shall enjoy economic and moral rights in its works. With the former, it shall have exclusive rights to reproduce, translate, transform, publicly perform, distribute to the public in any form and transfer ownership in the work while the latter rights allow FARA to claim authorship and object to prejudicial distortion or modification of the work. Where FARA is not the original creator of the works but has just had copyright transferred to it, the moral rights will remain vested in the creator and FARA shall observe them.

FARA may assign or license its copyrights to other entities as it deems fit taking into account any conditions imposed by donors/sponsors, the needs of the stakeholders and partners and its mission and objective.

Copyright Protection

Copyright shall vest automatically in FARA from the moment its eligible work is fixed into a tangible medium of expression and satisfies these further conditions:

- i. It must be original: a work will qualify as original if it has been independently conceived by its creator.
- ii. It must be written down, recorded or otherwise reduced to a material form
- iii. It must be created by a citizen of Ghana or a person resident in Ghana which FARA is

- iv. It must be published in Ghana, when published outside Ghana it must be published in Ghana within 30 days
- v. A work under which Ghana has an obligation under an International Treaty to grant protection.

Registration

To maintain a record of works, publicize copyright and secure evidence of ownership and authentication, FARA shall at its discretion register its copyrights although validity of copyright protection shall not dependant on registration. The requirements for registration are as follows:

- Registration should be done within three months of publication
- Fill out the application form and attach 2 copies of the best edition of the work sought to be registered correctly and clearly dated
- After an examination for originality, registration takes place. The process takes a maximum of two weeks

With or without registration, FARA shall publicize its copyright by marking its publications with the internationally recognized copyright symbol illustrated below:

© Copyright FARA, 2007 “include the kind of rights reserved or statement of use”

Distribution of protected works

FARA recognizes the need for easy, fast and cost effective means of publishing and distributing research results and information. It shall therefore ensure a smooth flow of information through to the grass root small holder farmer with necessary modifications (e.g. interpreted versions) to suit various users. FARA has the discretion to choose the best mode for distribution of its material while ensuring that it remains undistorted and that FARA is attributed as the author of the material. If work is to be printed and handed out, it shall bear the recognized copy right mark illustrated above. Otherwise issuing licenses, web access and publishing in journals present viable options.

The Public Domain

FARA shall at its discretion deposit works in the public domain which consists of works that are ineligible for copyright protection, those whose copyright has expired and those which creators voluntarily choose to deposit there. Once deposited, the works shall be usable without any restraint from the rules on copyright. Voluntary dedication into the public domain shall be done by making it clear in the work itself that it is usable for any purpose without restriction. Because these works are prone to distortion, Co-creators and sometimes donors shall be consulted before depositing work into the public domain if their rights stand to be prejudiced.

Creative Commons (CC) Licensing

FARA will use CC-licenses to publish or distribute its works on-line e.g. via website, blog or wikis to enable free public access while regulating what users can and can not do with the work. The user must adhere to the confines of the rights granted by FARA in the license. The following aspects shall be ascertained before applying a CC-license to any material:

- a) That FARA is vested with the copyright to the materials it wishes to license. Where FARA is the creator or has an assignment of the copyright, it shall have the right to license. If the creation of the work was governed by an agreement, it shall be re-visited to ascertain the kind of rights it grants to FARA.

b) That there is a clear understanding of how the CC-license will operate

FARA shall not use CC licenses to regulate use that is exempted by law or otherwise permitted e.g. fair use. Once applied, the license shall bind all users of the work and shall be non-revocable meaning that once someone has obtained the work under it, FARA can not stop them from using it within its confines. FARA may withdraw the license anytime but this shall not affect the rights to use copies already in circulation under it.

c) Specificity on what is being licensed

Where the material being licensed is comprised in various elements e.g. mixed texts and images, FARA shall only CC-License it if it has the copyright to all the elements or otherwise has permission to license from the copyright holder and even then shall be specific about what elements are covered by the license.

Applying the CC-license

Licenses shall be applied directly from the CC website <http://creativecommons.org/licenses> . There steps to follow and licenses to choose from. The ‘Attribution-NonCommercial-ShareAlike-3.0Unported’ license fits in well with FARA's non-commercialization and free sharing policy and FARA shall use it to grant unrestricted user rights for its works as long as user attributes FARA for the work, uses it for non-commercial purposes and distributes all derivative works under the same license or similar terms. A license for public domain dedication is also available.

Until Ghana adopts jurisdiction specific licenses, FARA shall use the “unported” CC-licenses which are not based on copyright law of any specific jurisdiction but rather on International IP laws and are therefore enforceable in the same manner provided under Ghana's law to the extent that Ghana has ratified these International IP laws they are embedded in its Statutes.

Open Access (OA)

FARA shall whenever possible maximize the impact of its projects by making its articles and other such publications openly accessible. This will not only allow such works to be built upon, developed further and improved but also encourage donors to invest more in agricultural research in Africa. OA shall be done by either or both these mechanisms:

- i. Publishing in OA journals: Depending on the journal, publishing will be free or at a small fee. Upon publication, the work will be openly accessible on line or in hard copy. Examples of journals appear in the “African Digital Commons Report” at <http://www.commomns-sense.org> . If required, a copyright license shall be granted to the publisher for this purpose.
- ii. OA self archiving: FARA shall do this by depositing work in its institutional repository. The institutional repository will be an on line location for collecting, preserving and disseminating FARA, intellectual output including but not limited to, newsletters, reports and other publications. Works shall be deposited before (pre) or after (post) peer reviews.

Third Party Copyright

It is the responsibility of FARA to ensure that its employees adhere to the relevant copyright rules while using third party materials e.g. software and publications, web or otherwise. In all other circumstances FARA shall seek indemnity for any liability for infringement. Materials shall freely be used if they:

- Are usable within certain confines set by the copyright holder. It is extremely important that the use be confined to any conditions so imposed.
- Fall within the permitted uses of copyright. *See S.19 Ghana Copyright Act.*

An employee, who wishes to use work that expressly requires the permission of the copyright owner, shall seek it individually or request FARA to secure licensed access to the material.

Fair Use

FARA encourages and shall continue to encourage fair use of its copyright works and those of third parties. Fair use shall be determined by application of the “four point test” to the use in question. The test considers the character of the use (commercial or not), nature of the work used (published or not), portion of the work used (small fraction or not) and the effect the use will have on the need for users to seek permission to use the work from the copyright holder. This last element is only relevant in a commercial setting.

For FARA fair use shall be satisfied whenever its published works are used for a non-profit purpose which in one way or another promotes its mission and are properly quoted with due credit given to FARA as the author.

SECTION IV -TRADEMARK POLICY

FARA shall ensure that its name, logos and other marks are properly used in a manner that avoids confusing the public and FARA shall not use marks, logos, signs or names belonging to another entity without acquiring the necessary permission.

FARA Logo

It represents the image of FARA because the public associate it with FARA. The logo shall therefore be used as a stand alone icon to connote origination of FARA works and presentations, internal or external. If the works are produced in conjunction with other partners then the logos/marks of those other partners will stand together with that of FARA to connote the partnership.

Logo Sizing

Where materials are co-branded as above, the prominence of the FARA logo shall be at least proportionate to its contribution to the partnership. Therefore the logo shall be of equal size and prominence with an equal partner. If FARA is one of the lesser partners in an initiative headed by a dominant partner, then FARA's logo shall at least be of equal size with those of other partners but smaller than that of the dominant partner.

Reservation Of Rights

FARA is the owner of all right, title and interest in its logo and any other marks it may own. No person or entity may reproduce or use or authorize the reproduction or use of these marks in any manner other than expressly authorized by FARA. Unauthorized use of FARA's name and marks is hereby strictly prohibited.

FARA reserves the right to, at its sole discretion; modify its marks at any time. In such instances it shall be the responsibility of FARA to ensure that any users of its marks are duly notified of the modification in order to ensure compliance and avoid confusing the public. The logo must never be modified or altered except in the foregoing circumstances.

Commercial Use

Commercial use of FARA marks is not permitted. Use of the logo on items like T-shirts and or caps won at functions to promote the cause of FARA or Agricultural research in general requires the prior

permission of the Executive Director of FARA especially if these items are going to be sold. Even then the logo must be reproduced in its true colors and form.

Use Of FARA's Name

An employee may use FARA's name in making a true and accurate statement of his/ her relationship or employment with FARA. However employees may not use FARA's name or marks or their affiliation with FARA in any manner which suggests or implies FARA support or endorsement of any product, movement, activity or program unless such support has been approved. In circumstances where there is potential for FARA endorsement or support to be construed a disclaimer is required.

Registering Marks

Notwithstanding the fact that FARA's marks are legally protected even without registration and it's entitled to use them to the exclusion of all others, FARA shall register its marks to give constructive notice of their ownership to the public. In Ghana, registration is done by the Registrar of Trademarks at the Registrar General's office, Department of the Ministry of Justice and the requirements for registration include:

- The full name, address and description of FARA (applicant)
- The mark and class of products for which the mark should be protected which for FARA shall include, agricultural research strategies and funding proposals, research output for example results publications.
- A power of attorney simply executed by the FARA.

SECTION V – SUPPORTING PROVISIONS

Protection of New Plant Varieties

Where FARA is part of a research partnership or other project engaged in plant breeding, the transfer, protection and ownership of materials such as plant germplasm shall be dealt with by agreement provided that FARA shall not seek PBR where they may undermine farmer's rights by promoting "piracy" of farmer developed crops or threaten food security by constraining the transfer and adaptation of better varieties.

FARA recognizes farmer's rights to freely access genetic resources unrestricted by IP rights and will ensure that any plant varieties under its auspices are disseminated in a manner pertaining to public goods unless otherwise necessary.

Indigenous Knowledge (IK)

FARA shall support efforts to conserve, protect and build on the existing indigenous knowledge e.g. indigenous pest control, control of soil erosion, fodder management, selection of area thriving varieties e.t.c. The focus shall be on working with other organizations to establish databases and registers for IK plus devising mechanisms and forging research partnerships that not only allow for greater understanding and utilization of appropriate IK but also protect it from exploitation, especially commercial by the country of discovery.

Tangible Research Property (TRP)

FARA shall use a Material Transfer Agreement (MTA) whenever transferring TRP (research results which are in tangible form including but not limited to biological organisms e.g. cell lines and germplasm plus certain types of computer software) to another institution or receiving it. The MTA shall deal with the agreement of the parties as to the material being transferred, conditions of use, and rights of the parties in the material and any derivatives there from and return of the original material at end of project to the owner. The MTA will also handle any IPR issues that may arise in transferring and dealing with the material.

Consultancies

Unless specifically stated hereunder, intellectual property generated by consultants hired by FARA is the property of FARA.

The exceptions to the above policy will include;

- Where the consultancy is negotiated through the consultant's employer on the consultant's behalf, here FARA shall jointly own any IP generated by the consultant with the consultant's employer.

Where FARA staff undertakes a consultancy with a third party, (due authorization secured), FARA has no ownership rights over any IP generated there from unless;

a) The consultancy is negotiated by the third party through FARA as the employer of the consultant. In such cases FARA shall jointly own IP with the contractor or third party.

b) The consultant makes substantial use of FARA resources in the generation of such IP. Substantial use in this case shall mean, use of FARA's existing IP and time that should otherwise be dedicated to FARA. In these cases, FARA shall be entitled to a non-exclusive royalty free license to use the material.

Hosted Programmes

FARA shall not, unless otherwise negotiated in accordance with the FARA Hosting Conditions, assert ownership over any form of IP generated by programmes hosted at its Secretariat e.g. Program for Biosafety Systems (PBS) and Alliance for a Green Revolution in Africa (AGRA). Such IP shall be owned entirely in accordance with the policies or other organizational structures of the hosted programmes. FARA shall negotiate for rights to use the IP as licensee or by acquiring the necessary permission as and when need for it arises.

Confidentiality

Confidential information shall not be disclosed unless it is safeguarded by either an autonomous Non-Disclosure Agreement (NDA) or such clause in the general contract binding the receiver of the information to hold it in confidence. All parties bound by this policy shall ensure that;

- i. Confidential information is held and disclosed strictly in accordance with this policy
- ii. They inform any receivers of the confidential nature of the information
- iii. Request, as soon as its purpose is accomplished, that the receiver redelivers all the materials containing and reflecting the confidential information within a stated number of days of such request by the discloser of the information or destroy the same if so requested by the discloser of the information.
- iv. All their personnel and contractees have knowledge of and abide by FARA's confidentiality policy.

FARA shall handle in confidence all information that it is bound to do so by agreement or that which is clearly marked as confidential when disclosed to it e.g. inventions whether patentable or not.

Release Of Rights

FARA shall release its rights in IP to the creator where;

- i. It is not useful to its mission and objective and,
- ii. FARA's interests are best served by releasing it for instance in the case of an invention where it is unworkable and too costly to manage and,
- iii. There is no overriding obligation to a sponsor or other third party which is breached as a result of the release and,
- iv. There is no inconsistency with other FARA policies.

A release of rights shall be contingent on the agreement of the creator(s) that no further development of the work will be done using FARA's resources and that FARA is discharged of any obligations that it would otherwise have had in relation to the IP and that it will be granted a cost-free, non-exclusive, world wide license to use the Materials should it need to. The creator shall be promptly notified of such release so they can seek the appropriate protection for it.

Commercialization

FARA generates Public goods from all its projects and primarily, its IP will not be commercialized. Any licenses granted for dissemination of the IP shall be cost-free licenses and FARA shall ensure that licensees sub-license only on the same terms as the original license by binding them to do so in the original license.

FARA however reserves the right to commercialize IP in certain circumstances as approved from time to time by the Secretariat Management especially in instances where commercialization is the best way to disseminate a particular technology. Where the decision to commercialize has been taken, the terms e.g. royalties shall be negotiated by agreement with the party(s) concerned.

Where proposed contractual requirements of a sponsor are contrary to FARA's non-commercialization policy and can not be reasonably re-negotiated, the Committee shall determine whether to accept the proposed sponsorship on its terms.

Indemnity

FARA shall bear no responsibility whatsoever or be liable in any way for infringement of third party IP rights by partners, organizations, researchers, trainers, consultants and other contractees involved in any FARA overseen or coordinated and hosted projects except where it has undertaken to do so by express agreement.

Enforcement

FARA shall whenever practicable attempt to amicably settle any infringement or other violation of its IP rights. Arbitration following applicable legal procedure under Ghana Arbitration Act 38, 1961 (where both parties are domiciled in Ghana or the ICC Rules of Arbitration at the International level) shall be an alternative to direct party negotiations.

FARA however, reserves the right to bring an action before an appropriate Court of law seeking redress for infringement of its rights. The procedure for bringing the action shall depend on laws of the jurisdiction where the action is originated as will the remedies that can be sought.

Precedence

Where there is a subsisting contract or agreement that outlines IP ownership and management issues between FARA and the contractee, grantee, partner, researcher or other such other institution, it shall

be the first point of reference in deciding all such matters. Should there be inconsistency between the provisions of these policies and those of such agreement, the latter shall prevail. FARA shall endeavor to take into consideration the provisions of this policy in drafting contracts and agreements to minimize contradictions.

SECTION VI- POLICY IMPLEMENTATION

General Guidelines

- a) This policy as currently set forth and as it may change from time to time constitutes an understanding that is binding on FARA and all parties to whom it applies.
- b) FARA may at its sole discretion require a formal written IP agreement incorporating any of these provisions or other relevant document to facilitate implementation of the policy as appropriate. The absence of such executed agreement shall not invalidate the applicability or enforceability of this policy.
- d) For inventions in particular, FARA recognizes that the evaluation of inventions and the administration, development and management of inventions involves substantial time and expense and requires talent and experience not ordinarily found among its staff, it may contract outside agents for certain services or enter contract with third party organizations e.g. AATF regarding management and dissemination of specific inventions.
- e) With respect to IP developed during the course of employment at FARA, this policy shall continue to bind any person whose relationship with FARA is terminated.

Administrative Responsibility

The duty to manage and oversee the implementation of the policy is entrusted to the FARA Secretariat which shall then delegate the same to the appropriate unit. Such unit shall be manned by properly qualified personnel with the ability to review the viability of the policy and negotiate FARA's IPR accordingly provided that external expertise may be sought as and when required.

The unit shall be responsible for ensuring that staff and participants in research projects comply with this IP policy and sign the appropriate documents. Failure to execute such documents will however not relieve such party of the obligation to conform to this policy.

The Executive Director shall issue final approval to all IPR decisions and act as arbiter at FARA regarding any disputed issues or questions of interpretation relating to the policy.

The unit shall also be responsible for all matters to do with the negotiation of licenses between FARA and prospective licensees and for FARA as licensee should such need arise. Where FARA exercises its right to commercialize any of its IP, the unit shall in good faith negotiate the most favorable position for FARA subject to approval by the Executive Director.

The designated unit shall also ensure that all contracts signed by FARA which may give rise to any IP related issues contain the appropriate clauses to assert FARA's IPR in concurrence with this policy and that where separate agreements are required, they are duly signed.

Record Keeping

FARA shall maintain a central IP assets register for proper record keeping. The assets shall be entered as and when disclosed to FARA which will ensure maintenance of records for priority proof. Any legal protection secured, licenses granted and their expiry dates should be recorded. IP shall be categorized according to the project of generation.

Disclosure Process

a) Creator(s) shall disclose the IP before any contract or agreement is signed or consideration is accepted in exchange for any interest in the IP and before the IP is disclosed to the Public or before any application is made for a patent in case of patentable IP. Failure to make timely disclosures will be considered a violation of this policy.

b) Required disclosures shall be submitted on an IP disclosure form signed by the creator. A standardized version of this form will be developed through practice to tailor it to FARA's needs but to start with, the following shall be disclosed:

- The existence of an intellectual property.
- The legal category e.g. Patent, copyright, trademark, plant, etc.
- A description of the IP that need not include confidential or proprietary information, the disclosure of which may jeopardize the value of the IP.
- Mention funding sources for the IP generating project and co-creators if any.
- If it is an invention, what end user problems with the existing technology it solves.
- Mention any disclosures that have been made and any intended ones and dates.

c) All forms shall be delivered initially in hard copy to the immediate project supervisor, department head or other personnel to whom the creator(s) is immediately answerable. The supervisor shall sign and forward the form to FARA within a reasonable time after such receipt or within such timeframe as stipulated in any agreement between the parties.

Review Process

a) Any IP disclosures forwarded to FARA Secretariat shall go to the designated unit for review. Disclosures shall be promptly acknowledged by e.g. stamping and dating the disclosure form and making corresponding entries in the register mentioned above with a note of whether the disclosure is complete or not.

b) A filing number must be assigned to all submitted disclosures but if the disclosure is not initially complete, then the register must show the date the first disclosure was made and the subsequent completion of disclosure. The creator shall be notified of the further information required to make the disclosure complete.

c) A complete disclosure shall then be reviewed by the FARA designated unit to establish the extent of FARA's rights, its usefulness to FARA's mission and objective plus the most effective way of making the IP asset available for public use for instance licensing, distribution or under a cooperative agreement with a non commercial partner.

d) Where an invention is being considered, it may be important to submit it for review by an invention management firm or agent to conduct a search of published and public databases to evaluate the novelty and utility of the invention.

e) If FARA has no rights in the IP, then it shall release it to the creator in line with the release of rights policy above. If, on the other hand FARA has ownership rights, then the designated unit will make a recommendation as to whether FARA should seek legal protection for it or not. The

recommendation should justify the importance of seeking the protection recommended; consider the cost and any expertise that may be required for the procedure, length of process, its impact on timely publication and any alternative way to handle and disseminate the IP if protection isn't sought.

f) Any recommendation to file for a patent, register a trademark or copyright, publish work in scientific journals or apply CC-license to online material shall be approved by the Executive Director first. Provided that assertion of copyright by endorsing a publication with FARA's copyright or logo shall not go through this entire process and should be treated as mandatory.

Publication and Public Use

FARA strongly encourages publication of research results. Though these procedures don't limit the publication except for short periods of time required to secure the necessary IP protection, publication of an invention constitutes a statutory bar to the granting of a patent. In order to preserve FARA's rights, all parties involved shall ensure that:

- i. The IP is kept confidential until the appropriate protective mechanisms are in place
- ii. External organizations or companies are not involved in prototyping or testing the invention without a written agreement.
- iii. No contracts or agreements in relation to the invention are signed until they have been properly scrutinized and don't adversely affect FARA's IPR.

Termination of Application

FARA reserves the right to terminate the filing or application process at any point. The creator shall immediately be notified of such decision given the opportunity to take over the process and all costs to an extent permitted by law and regulation. In return for the processing fee and waiver of all FARA rights, the latter may have the creator agree in writing to reimburse it's out of pocket expenses in connection with the IP. The agreement will outline all such expenses and the creator will acknowledge their appropriateness.

Creator's Responsibilities

Employees, institutions, scientists, researchers, Lead Institutions and others working on FARA grants and therefore bound by this policy have an obligation to,

- i. Observe these policies and abide by all IPR commitments made in license, funding and other agreements with FARA.
- ii. For any IP in which FARA has an interest under this policy, sign promptly or when requested to by FARA any contracts, assignments, acknowledgements, waivers or other legal documents as may be required to vest in FARA or its assignees the relevant rights in the IP.
- iii. Create and use IP according to the laws of Ghana, International laws and this policy.
- iv. Disclose promptly all IP created under sponsored research and other contractual arrangements and assign the same to FARA as required.
- v. Cooperate with FARA in protecting the IP including, maintaining proper records of creation for example record dates, take daily notes and pictures where necessary especially for inventions to prove priority and providing any further information.
- vi. Notify FARA of any potential conflicts of interest and infringing acts and cooperate fully in any legal action it may take to enforce its rights.

Notification

FARA shall bring this policy to the notice or attention of those that should be bound by it immediately after adoption. This will be done by incorporating the provisions as applicable from time to time in contracts and agreements. A copy of the policy shall be availed to long term partners,

contractees, employees and stakeholders for careful study and also deposited on FARA's website and contractees provided with a link to it.

Sanctions

Sanctions shall be visited for violation of these policies to ensure ongoing policy compliance. Acts of violation shall include but not be limited to;

- Failure to make the required disclosure promptly
- Disclosure of otherwise confidential information
- Failure by researcher to keep proper records of IP during creation process

Sanctions shall range from fines to withdrawal of research grants and in the case of employees, suspension or dismissal in accordance with the Personnel Policies Manual may be applied depending on the magnitude of the violation and loss suffered by FARA. Legal redress may also be sought for remedies such as injunctions and damages where necessary and applicable.

Evaluation and Revision

Periodic review, evaluation and revision of the policy shall be undertaken following the procedure used to review all other FARA policies. The review shall examine the factors that have affected the policy implementation and the impact, both intended and unintended of the policy on FARA contractors and FARA itself. The Unit shall make necessary recommendations for revision or amendment to the Secretariat Management for review. Management shall make its observations and recommendations to the Board which will approve and consequently any amendments or revisions from time to time.

Effective Date

This policy shall take effect immediately upon its adoption by the FARA Executive Board and shall remain in force until otherwise determined by the Board. Amendments to the Policy will become effective in a similar manner.

ABBREVIATIONS AND ACRONYMS

AATF	African Agricultural Technology Foundation
ABBI	African Biotechnology and Biosafety Initiative
AGRA	Alliance for a Green Revolution in Africa
ARIPO	African Regional Intellectual Property Organization
ASARECA	Association for Strengthening Agricultural Research in East and Central Africa.
BASIC	Building Africa's Scientific and Institutional Capacity
CC	Creative Commons
WECARD	West and Central African Council for Agricultural Research and Development
DONATA	Dissemination of New Agricultural Technologies in Africa
IK	Indigenous Knowledge
IP	Intellectual Property
IPR	Intellectual Property Rights
MTA	Material Transfer Agreement
NARS	National Agriculture Research Systems
NDA	Non-Disclosure Agreement
OA	Open Access
PBR	Plant Breeder's Rights
PBS	Programme for Biosafety Systems
PCT	Patent Cooperation Treaty
PVP	Plant Variety Protection
RAILS	Regional Agricultural Information and Learning System
SCARDA	Strengthening Capacity for Agricultural Research and Development in Africa
SMC	Secretariat Management Committee
SRO	Sub-Regional Organizations
SSA-CP	Sub Saharan Africa Challenge Programme
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

APPENDICES

Appendix I- List of FARA IP

Patent	Copyright	Trademarks
Scientific processes	Reports	Logo
“ methods	Books	Name
	Recordings-audio or video	
	Publications	
	Software	
	Databases	
	Manuscripts	
	Policies and Manuals	
	Agreements and contracts	

Appendix II- Template for Assignment (Copyright is the example, it can be used for all IP)

This Agreement is made between FARA of [insert address] and [author's name and address] who is the sole creator and owner of [describe work here] and holds the complete and undivided copyright interest of the work.

For valuable consideration receipt of which is hereby acknowledged the author and FARA agree as follows:

1. The author does hereby assign transfer and to FARA its successors and assigns, the entire right, title and interest in the work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon derived from or incorporating the work and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto and in and to all causes of action, either in law or in equity for past present or future infringement based on the copyrights and in and to all rights corresponding to the foregoing throughout the world.
2. The author agrees to execute all papers to perform such other proper acts as FARA may deem necessary to secure for itself or its designee the rights herein assigned.

In witness whereof, the parties have executed this agreement, effective this.....day of 2007

For FARA

Signed: _____
Name, Title

For Author

Signed _____
Name, Title (where applicable)

REFERENCES

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See at <http://www.common-sense.org/papers/digitalcommonsguide.eng.doc>
7. Indiliga: African Journal of Indigenous Knowledge Systems; Vol 4(1) 2005 and
Vol 6(1) 2007 available at <http://www.indiliga.org.za/>
8. The University of Texas Intellectual Property Policy 2006 at <http://www.utsystem.edu/>