

CONFIDENTIALITY AGREEMENT - ENGLISH

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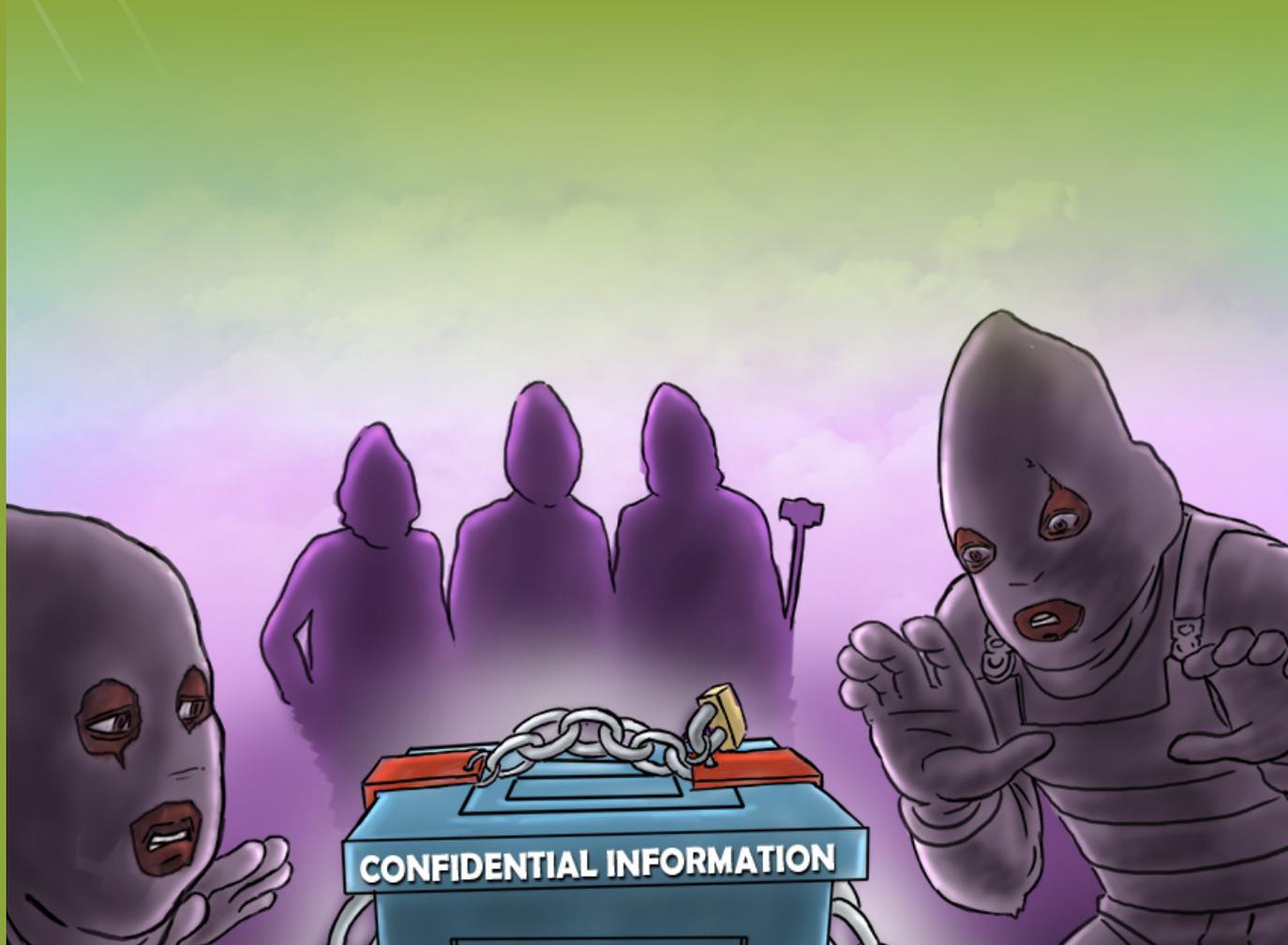
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IDRC Grant/ Subvention du CRDI: 108349-003-Strengthening partnerships among Africa's science granting councils and with the private sector

CONFIDENTIALITY IN COLLABORATIVE RESEARCH

Why should Science Granting Councils Care?



TECHNICAL GUIDE FOR SCIENCE GRANTING COUNCILS IN AFRICA

August 2020



The Science Granting Councils Initiative

The Science Granting Councils Initiative in sub-Saharan Africa (SGCI) is an Initiative which aims to strengthen the capacities of Science Granting Councils (SGCs) in sub-Saharan Africa to support research and evidencebased policies that will contribute to economic and social development. The Initiative is jointly funded by the United Kingdom's Department for International Development (DFID), Canada's International Development Research Centre (IDRC), and South Africa's National Research Foundation (NRF).

The SGCI currently operates in 15 sub-Saharan Africa countries including: Kenya, Rwanda, Uganda, Tanzania, Ethiopia, Côte d'Ivoire, Botswana, Burkina Faso, Senegal, Ghana, Zambia, Mozambique, Malawi, Namibia, and Zimbabwe.

For more details: www.sgci africa.org

Theme 3 of the SGCI focuses on strengthening partnerships between Africa's science granting councils and the private sector, with the ultimate objective to: (a) enhance knowledge exchange between academia and industry and (b) stimulate private sector investments into research and innovation.

Acknowledgment

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Executive Summary

The Science Granting Councils promote collaborative research by funding multi-disciplinary, multi-institutional projects through their science, technology and innovation (STI) grants schemes. Such projects require partnerships between different actors within the public and private domains. Some of these projects have the potential of generating new knowledge, bringing new products and new processes to national socio-economic system.

Knowledge production in a collaborative set up involves numerous actors, benefits from continuous feedback and human interactions that are largely tacit. Further, such collaborations are embedded in diverse organizational and institutional contexts that influences the behaviour and performance of individual actors.

Because human interactions are governed by institutions (the rules, norms, practices), the funding agencies – in this case, science granting councils, should place a strong emphasis on providing guidance on partnership governance. While the list of benefits that could accrue from such guidance is long and will be different in each country's context, it would be particularly useful in defining the extent to which partners can:

- a. access and share research facilities and infrastructure
- b. share information in designing and executing projects within teams and consortia
- c. disseminate information through publications and other events, whether jointly or individually
- d. freely participate in research collaborations with other parties beyond current partners
- e. share benefits from commercializable research outputs.

This technical guide addresses two questions and tools to support the science granting councils navigate the policy mix associated their funding and coordination roles. These include:

1. How should SGCs address potential conflicts over IP ownership and data sharing in collaborative research partnerships?
2. How should SGCs balance the protection of public interest with the promotion of industrial needs in government-funded collaborative research projects?

The guide begins by setting the context and explaining why issues of ownership, data sharing and balancing public interest with industry needs are important. It then presents evidence in which conflicts and controversies have emerged in different countries. The following section considers what the Councils could do and delves into confidentially agreements and discusses employment contracts and non-disclosure agreements. A case study is then presented where a breach of confidentiality led to legal redress. It concludes by providing the Councils with two templates (i) sample employer – employee contract and (ii) sample non- disclosure agreement (NDA).

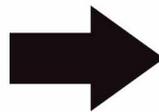
Intellectual property ownership and data sharing

The academic culture thrives on the publish or perish dictum and the speed of publication as a means sharing data, disseminating knowledge, fostering scientific progress is key to the researchers' prestige and career growth. On the other hand, the commercial culture thrives on what has been described as patent and prosper paradigm, in which it may be justified to delay release of data and information (hold in secrecy for longer) as the mechanisms for appropriation are being exploited.

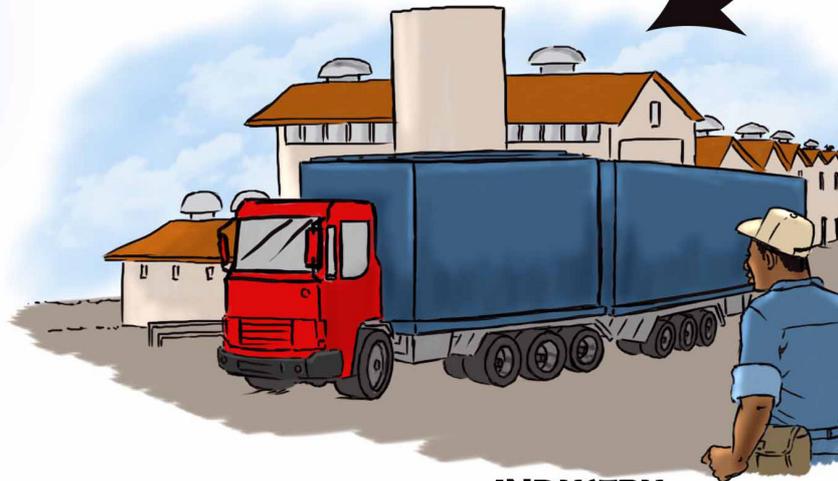
INTELLECTUAL PROPERTY OWNERSHIP



PUBLIC



**SHARING
INFORMATION**



INDUSTRY

Similarly, when researchers have signed non-disclosure agreements (NDAs) with industry, such NDAs could be used to veto the rights of the researchers to publish the outcome of their research without manipulation. Particularly in cases where research has been supported by commercial sponsors, as often is the case with pharmaceutical companies and clinical drug trials, researchers are often required to maintain secrecy about their research and allow the companies to manipulate the findings to their advantage. When results are negative, then the release of information to the public is even more closely monitored and researchers have little room to disseminate and publish their findings.

In cases where potential commercial application exists, self-interest and the profit motive may drive unhealthy competition between researchers and it is not uncommon that some laboratories within universities and research institutes are out-of-bounds even for fellow faculty. Denials of research data and refusal to share data, information and knowledge and increased secrecy have been reported.

Box 1: Who owns the knowledge?

What are the experiences of the SGCs with IP conflicts in funded collaborative projects?

What is the SGC policy position on (a) IP ownership (b) data sharing in collaborative projects?

Are the policy positions (where they exist) in harmony with national IP frameworks?

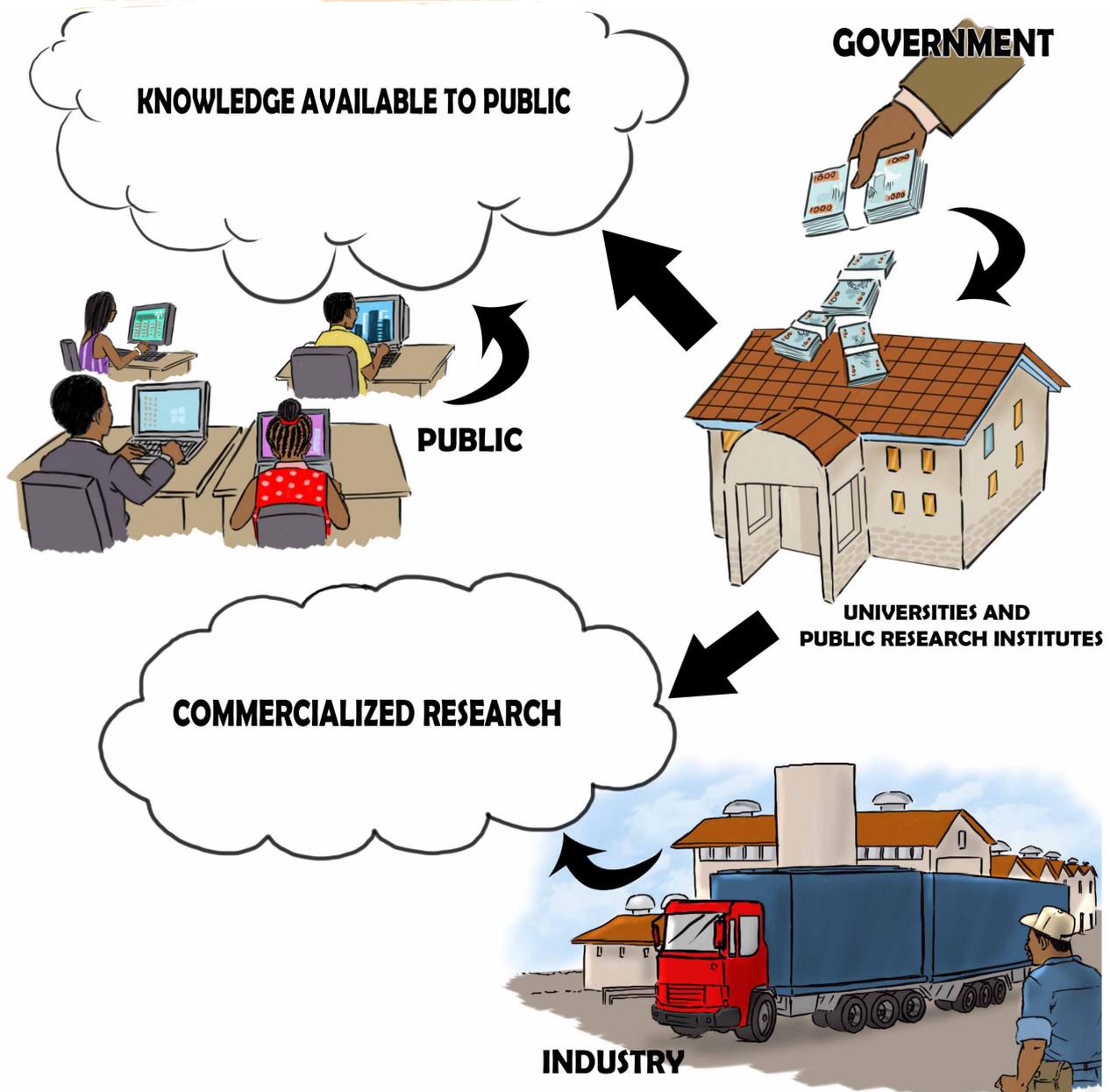
Are the policy guidelines built into the funding/granting contracts?

What sort of enforcement and conflict resolution mechanisms exist? Are these adequate?

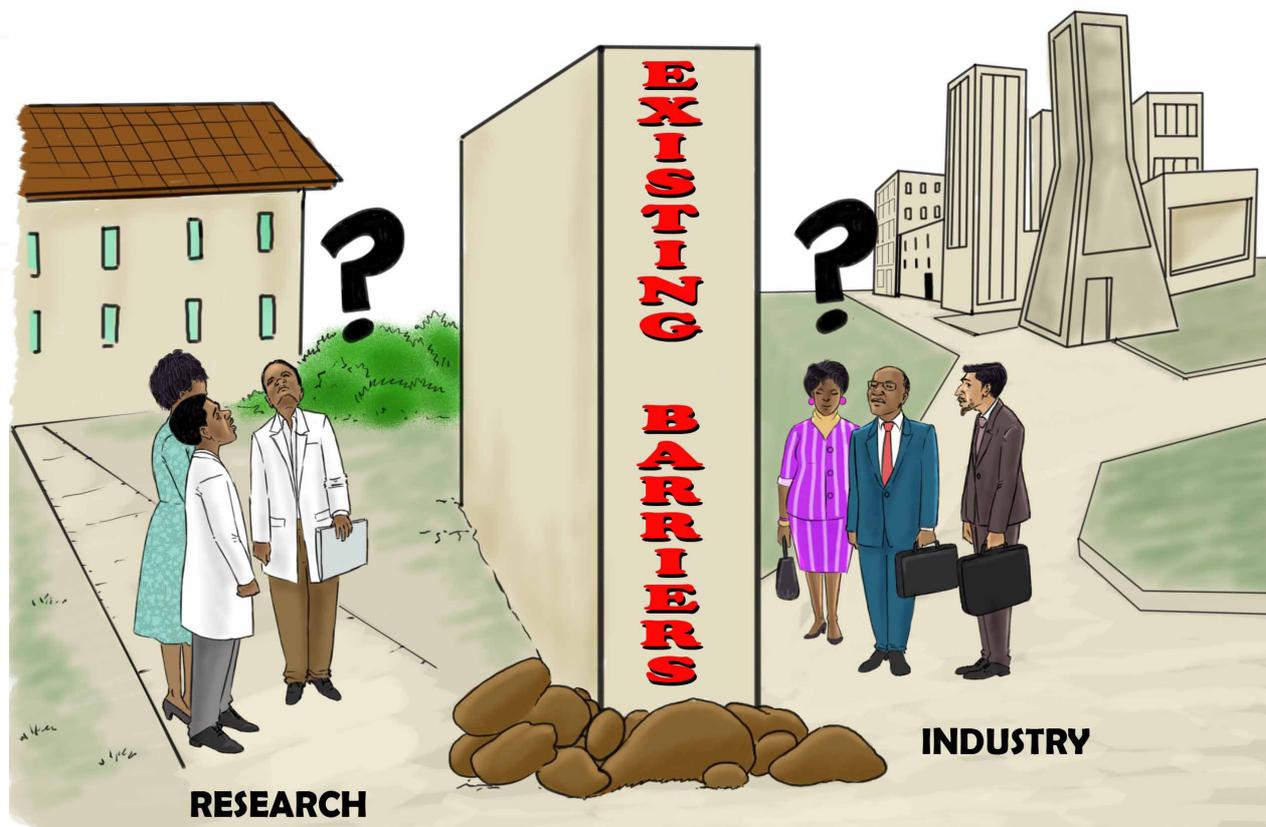
What else could be done/should the SGCs do?

Public interest and industrial needs in government-funded projects

The need to make knowledge widely and publicly available, while at the same time encouraging researchers to commercialize their products creates a policy dilemma that faces the research community, particularly in the publicly-funded research establishments such as the universities and public research institutes (PRIs). While on the one hand they are encouraged – even demanded – to commercialize their research through patenting, licencing and forming close relationships with industry (privatizing and protecting knowledge generated through public funds), on the other hand they are encouraged to share data and disseminate knowledge quickly and foster scientific progress (adopt an open science model).



In the absence of clear research policy guidelines on how to behave in this potentially conflicting policy mix, researchers are likely to face practical as well as ideological difficulties while forging research partnerships and collaborations, especially with private sector actors.



Box 2: To share or withhold

The demand on universities and public research institutes to become more entrepreneurial and build linkages with private sector has been on the rise and behoves the universities and public research institutes to produce research that have commercial potential and interact more closely with intended beneficiaries of their research.

Similarly, partnering with industry requires that universities and public research institutes overcome some existing institutional and cultural barriers that may undermine their propensity to engage in collaborative research. Such barriers include but not limited to the focus on academic excellence, teaching and research coupled with incentives and rewards systems that emphasize on publications rather than commercial exploitation as the basis for promotions and growth.

Being largely publicly funded, universities create what is largely viewed as 'public goods' while commercialization thrives on deriving private benefits i.e. exploiting products that are of a 'private goods' nature.

Are these policy positions (open science versus commercialization) necessarily mutually exclusive or could they blend and work together for enhanced knowledge and technology transfer?

Deriving from actual SGC experiences, under what circumstances, contexts, conditions have they:

(a) worked together to successfully facilitate technology transfer and knowledge exchange?

(b) conflicted and undermined, hindered knowledge and technology exchange?

What sorts of policy strategies and guidelines are required to blend these seemingly contradicting policy positions?

Why is this important?

Access to technologies and innovations

Technologies and inventions ought to move out of laboratory and library shelves and diffuse into the economy in order to generate the expected impacts on development. The science granting councils, acting as catalysts for enhancing access, uptake, and use of technologies and inventions out of projects not only funded by them but also by other funders and actors in the innovation system, ought to be aware of the alternative models available to them. They also need to know how they can apply each model for enhanced access to technologies and inventions. Providing a framework that allows for free exchange of information by the partners in collaborative arrangements prepares the ground for more trust and inclusive behaviour under-guarded by institutional and legal support.

Knowledge generation and exchange

In their book, *Re-thinking Science*, Nowotny, Scott and Gibbons¹ have reviewed the processes around knowledge production, sharing and application. They distinguish between what they have termed Mode 1 which is characterized by linear thinking to the production and application of knowledge and driven purely by academic instincts of researchers and Mode 2, where there is more emphasis on trans-disciplinarity; production of knowledge in the context of its application; need based and problem oriented research that is socially accountable, reflexive, heterogeneous and involves diverse organizations.

The science granting councils are at the forefront of promoting multi-disciplinary and multi-institutional projects in their funding models. Often issues arise out of the research consortia formed to respond to the calls for funding proposals. For example, a recent case study of contemporary collaborative research partnerships in Kenya² under the Open and Collaborative Science in Development Network (OCSDNET) concluded that lack of an IP management framework and policy guidelines was a major hindrance to partnerships and collaborations.

Where is the evidence?

Kenya: Collaborative research in health and natural products

The OCSDNET case study in Kenya depicts typical challenges of confidentiality in collaborative research. In one of the cases, for example, a consortium consisting of a public university, two public research institutes and a private sector company sought to improve the functions and design of the production process of *sunguprot*³ and porridge as food supplements, by obtaining data that aims not only at validating the products and process, but also to develop agronomic strategies for sustainable production of one of the least studied plants, *Tylosema fassoglensis*, an important ingredient of the products.

Sunguprot was initially an invention of a private sector company which had already obtained IP protection⁴ and regulatory approvals from the Kenya Bureau of Standards (KEBS) and the Pharmacy and Poisons Board (PPB) to sell and market the product as food supplements. However, the product still required validation that necessitated further physio-chemical, micro-chemical, clinical, and pharmacological analyses to determine safety, quality and efficacy of the products prior to producing prototypes and moving into large scale commercialization.

¹ See Nowotny et al, 2002

² Bolo et al (2016)

³ Sunguprot is a herbal food supplement with both anti-retroviral and nutritive properties. It comes in the form of porridge and is ideal for people suffering from HIV/AIDS, the malnourished and the aged.

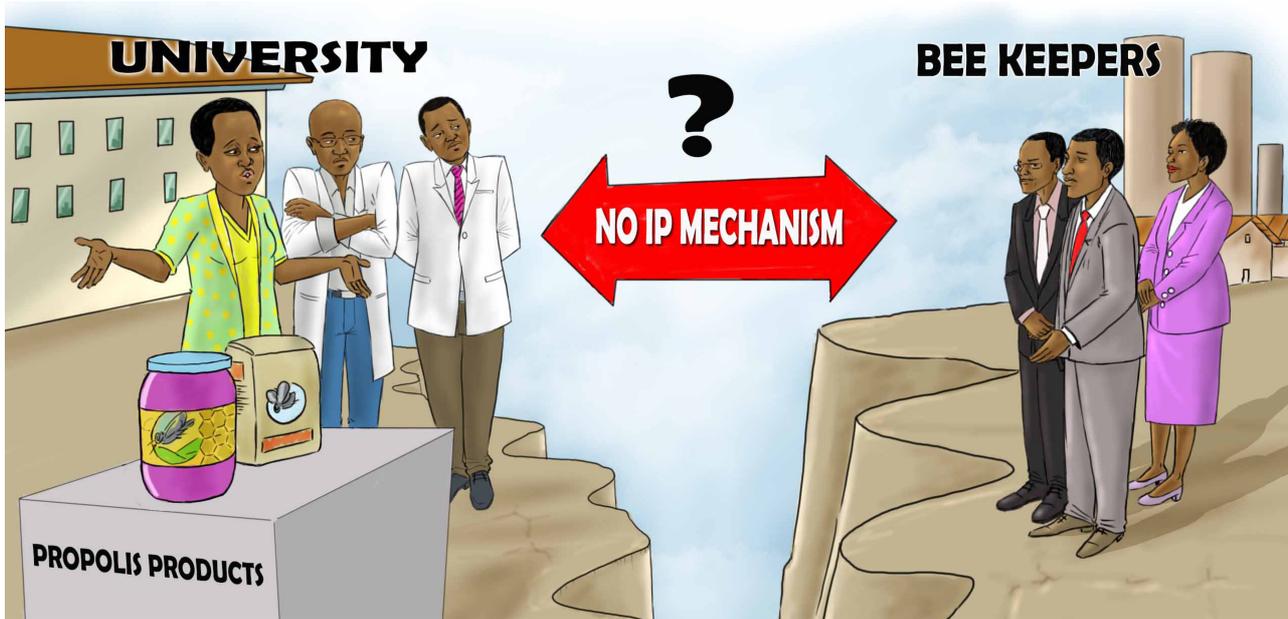
⁴ In the form of a utility model



The partners did not sign any consortium agreement that would provide guidance on IP rights, publication guidelines and data protection issues. When the research was finalized and dissemination planned, the private sector actor feared losing both the current data as well as his initial invention through public disclosure of the research findings.

With no guidelines on how to resolve the IP rights issue and no agreement defining partners' obligations, the private sector actor sought and obtained approval from the funder (NACOSTI) to apply for IP rights over the research findings. He applied and got protection over all the data from the research and has gone ahead to develop super sungprot as a superior product based on the research findings.

Uganda: public – private partnerships in agro-processing



The “*Commercial Exploitation of Propolis and Bee Venom in Uganda*”⁵ has developed propolis and bee venom-based products including: propolis powder, and propolis tea as a ready – to – drink beverage. The School of Veterinary Medicine & Animal Resource-Research Center for Tropical Diseases and Vector Control (SVAR-RTC) at the College of Veterinary Medicine, Animal Resources & Biosecurity (COVAB)-Makerere University, have partnered with private sector players such as The Uganda National Apiculture Development Organization (TUNADO) which has a network of 9,000 beekeepers and Aryodi bee farm (private sector partner) with a network of 500 producers, an already running business with between 10,000 kg to 15,000kg of honey per season. While the project has developed products within the university laboratory; the private sector partners (TUNADO - the bee keepers association and ayordi farm) are ready to take over and commercialize the products. However, “there’s no vehicle” (read IP mechanism) to move the products from the University to the hands of the private sector.

The “*Cocoa waste to wealth using yeast strains from Ugandan box fermentation*”⁶, developed a single cocoa fermentation box to help small scale farmers who cannot generate

large quantities of cocoa beans required in storey box fermentation. This project was led by the

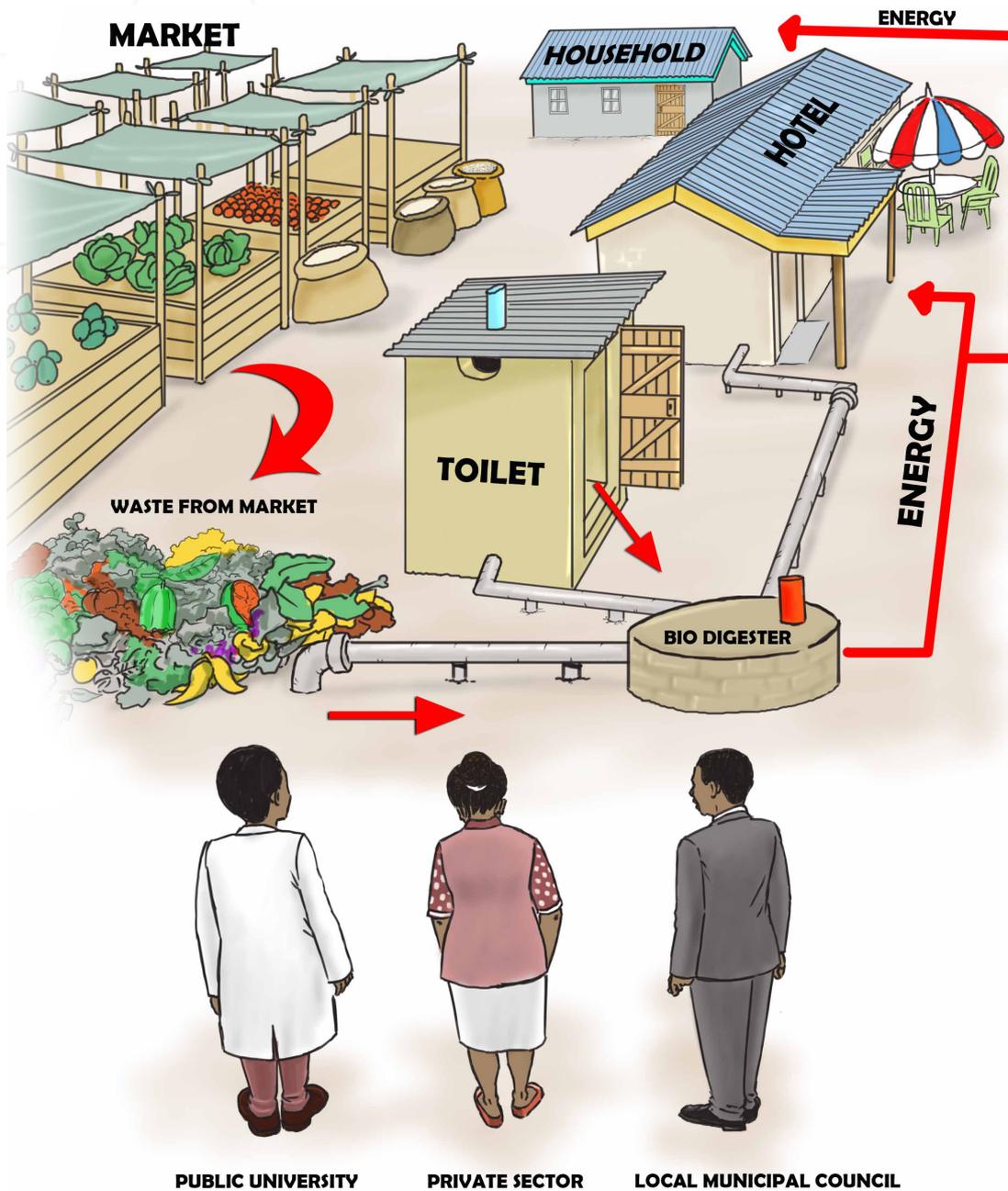
National Coffee Research Institute (NACORI) in collaboration with the private actors in the cocoa industry namely ICAM Chocolate and Lwanga enterprises. The researchers hired private local artisans/consultants to design and fabricate the fermentation box and steel press. These consultants were not party to the initial collaboration/partnership agreements.

Now as the products are ready to move to the market, the project is struggling with how to negotiate IP with these consultants. A related challenge emerged when the initial principal investigator (PI) of the project changed jobs and wanted the project moved to his new employer or one of the academic partners. He also wanted to continue his roles as the PI even though his new employer was not party to the project partnership. While this challenge may seem administrative, it touches on governance of collaborative projects and the need for guidelines on the same. Such disagreements and conflicts can cause considerable delays in project implementation. Luckily for the project in this case, The Uganda National Council for Science and Technology (UNCST) intervened and helped resolve the imminent conflict.

⁵ For details on this project, see policy brief, “Strategies for increased utilisation of new propolis products in Uganda” available here: <https://scinnovent.org/wp-content/uploads/2020/02/Policy-Brief-11-for-print.pdf>

⁶ For details on this project, see Policy brief, “Building the capacity of small-scale cocoa farmers to conduct on farm fermentation available here: <https://scinnovent.org/wp-content/uploads/2020/02/Policy-Brief-04-forprint.pdf>

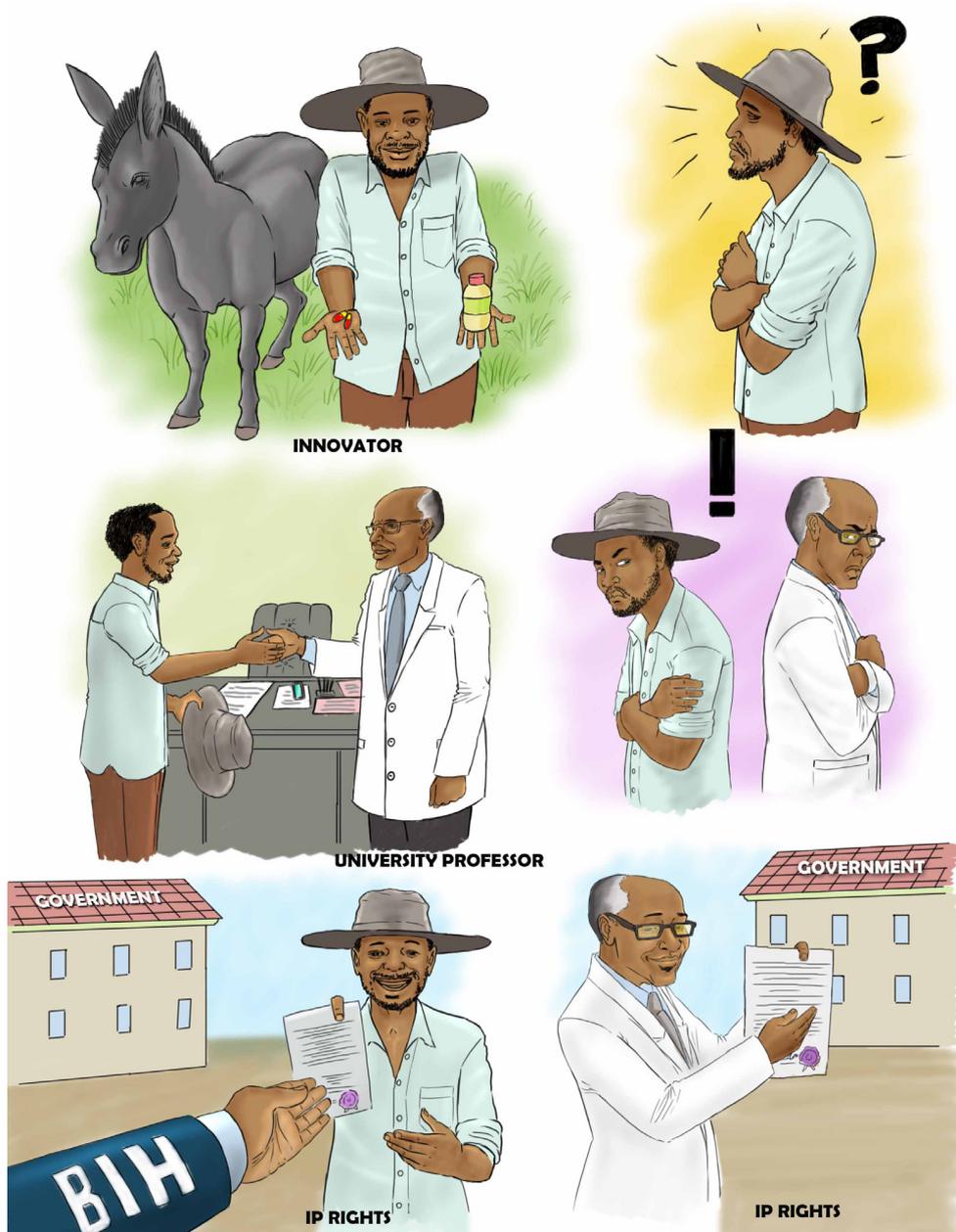
Malawi: public – private partnerships in renewable energy



The project *“Piloting biogas as a social enterprise at Tsangano vegetable market, in Ntcheu District”* is premised on the fact that production of biogas from the abundant vegetable waste at the market would help to provide alternative source of energy for cooking to restaurants, chips making businesses and households. The project seeks to pilot “Fee-For-Service Social Enterprise Business Model” in biogas and generate funds for operation and maintenance of the biogas plants. Malawi

University of Science and Technology (MUST) implemented this project in partnership with a local energy company, Green Impact Technologies (GIT). The researchers modified a patented technology by a private firm not initially party to the PPP project. Additionally, the local municipal council has donated a public toilet facility to the project. As the project is based on a fee-for-service model the project is struggling with how to balance the IP interests of all these groups.

Botswana: Novel donkey milk products and a collaboration gone wrong



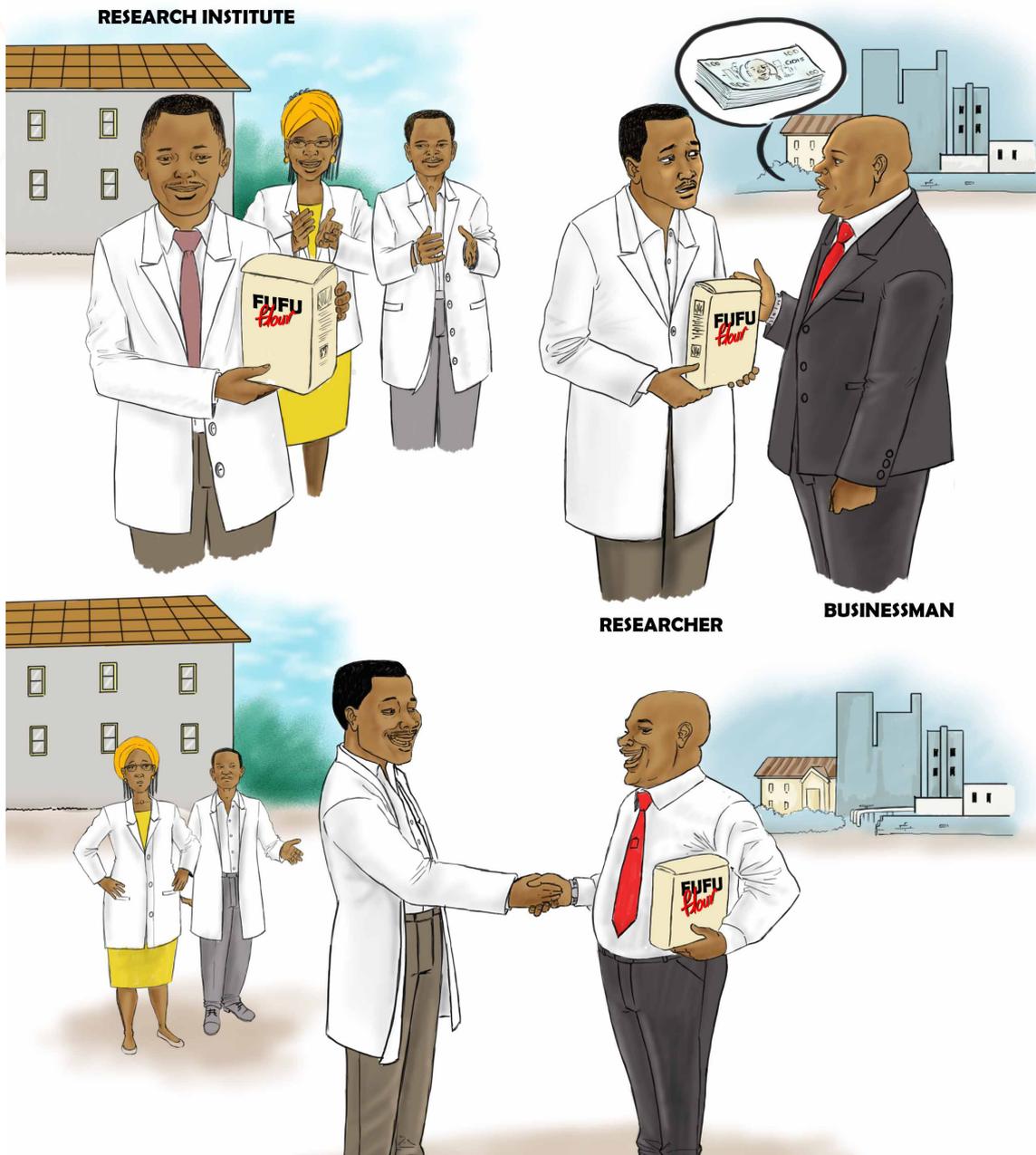
A local innovator working on developing donkey milk products has developed a facial lotion and baby milk solution which comes in the form of tablets and another one in the liquid form.

When the innovator was linked up with a University professor to support him in improving the products, get market acceptance and patent his products, an IP controversy immediately erupted. Eventually the two had a disagreement and they parted

ways. The professor went ahead and patented the product by himself and the innovator was just left in the dark.

Through assistance from some other groups, the innovator formed a company and then on his own, got IP rights over the same products. Eventually, the two managed to get the IP for this product independently. The Botswana Innovation Hub (BIH) is now supporting the local innovator get standardization and access local and export markets

Ghana: Staff poaching, labour mobility and competition for local market



Ghana's Council for Scientific and Industrial Research (CSIR) has undertaken steps geared towards unlocking the entrepreneurial potential of its constituent Institutes and their employees. The Food Research Institute has come up with numerous products including fufu flour and other maize-based cereals currently being produced on a pilot basis at the Institute's premises. Even though Ghana has a Patent Act (1994) and other IP-related laws such as copyrights and trademarks, not

all the institutions have developed institutional IP policies to guide their technology transfer and commercialization approaches. It has been alleged for example that a suave local businessman had poached the technician involved in the formulation of the *fufu flour* from the Food Research institute and had succeeded in establishing the Institutes' technology as a competing product in the domestic market.



Develop policy guidelines on confidentiality and non-disclosure.

Collaborative research and innovation lays emphasis on the interactions among actors in the system and their embeddedness in organizational and institutional contexts that influences their behaviour and performance. Currently, the science granting councils fund collaborative research – some of which may have the potential to generate IP assets in the form of new knowledge, technologies, products, processes – but lack policy guidelines for researchers and their partners on how to handle confidential information. In cases where such confidential information may have proprietary and commercial value, conflicts are likely to arise sooner or later.



Confidentiality agreement: What is it?

A confidentiality agreement (CA), also known as a non-disclosure agreement (NDA) is a legal contract between parties that wish to share certain information with each other for a particular purpose. In other words, a CA binds the recipient of the information against disclosure of such information to any other party or use of the information in a manner that would be detrimental to the disclosing party or to both parties.

Usually, a CA requires the recipient to maintain the information in confidence when the disclosing party has directly provided that information. A CA may therefore contain clauses that protect the recipient to the extent that if they lawfully obtained the information through other sources, they would not be obligated to keep the information secret.

Some important features of CA include:

- Identification of the parties, including other third parties that may also be party to the agreement, for example related or affiliated organizations.
- Definition of what is deemed to be confidential, for example is it any information? or information marked as “confidential”? oral information?
- The scope of the confidentiality obligation by the receiving party or both parties. For example, the recipient may be required to take necessary measures to ensure restricted access to the information. The dos and don'ts, for example with regard to poaching of employees.
- The exclusion from the confidentiality treatment, for example with regard to information already known to the recipient or in public domain or independently developed by the recipient.
- The term of the agreement, including how long the NDA should last.

Why are **confidentiality agreements** necessary?



A CA is an important tool for safeguarding any type of information that is not generally known to the public including:

- Information that has commercial value to an organization, information that is likely to damage an organisation's business or reputation.
- Inventions that have not been patented or published
- Trade secrets.
- Know-how (secret, technical information that is valuable, including results, experimental techniques, formulae, chemical structures, source code).

Research data compiled during research projects may also be protected as confidential information in which case research organizations have to execute confidentiality agreements with employees and researchers in order to inform them that the organization attributes the quality of confidence to the research data and research methods.

CAs are equally important for research organizations that undertake collaborative research and may therefore be required to share unpublished research findings, data, research materials and tools. CAs are therefore important in ensuring that research findings are shared in an environment of confidentiality that ensures that confidential material is not publicly disclosed without following the required protocols and procedures.

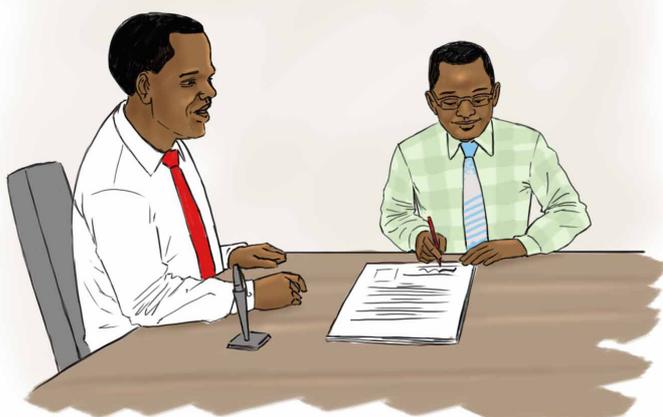
When to apply or use confidentiality agreements

A CA is commonly used when organizations or individuals are considering doing business or research that may lead to generation of commercially viable technologies and there is need to understand the processes used in each other's business or research for the purpose of evaluating potential business relationship.

Equally, employees can be required to sign NDAs with an employer in order to safeguard confidential information that is kept as trade secret of the employer. In

some cases, employment agreements may include clauses limiting employees use and distribution of the employer's confidential information.

Certainly, there will be situations where disclosure cannot be avoided and, in such cases, it is important to ensure that the person to whom the information is disclosed keeps it secret and does not use it improperly, for example in relation to a different project without seeking consent from the disclosing party.



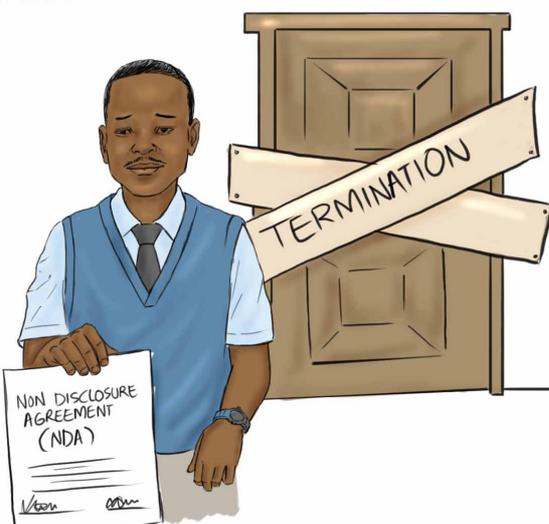
CA IS COMMONLY USED WHEN ORGANIZATIONS OR INDIVIDUALS ARE CONSIDERING DOING BUSINESS



NON DISCLOSURE AGREEMENT BETWEEN EMPLOYER AND EMPLOYEE



WHEN A THIRD PARTY IS INVOLVED



WHEN THERE IS TERMINATION OF CONTRACT OR END OF PROJECT

Typically, a CA may contain clauses that impose restrictions with regard to the disclosure or use of confidential information during or after the completion or termination of a project, contract, consultancy or employment.

By way of example, suppose a team of software developers working for company X have developed a new computer program.

The source code is confidential information and valuable asset belonging to company X. If a competitor was able to access the source code of the new computer program, they may be able to develop their own program that performs the same functions but using a different source. The company can protect the source code from disclosure to third parties through confidential agreement with the employees involved in its development.

Other examples of circumstances in which it is necessary to use an NDA include:

- Pitching an invention or business idea to a potential partner or investor.
- Presenting or testing a new technology or product to a prospective buyer
- To protect a company's trade secrets

Where has confidentiality agreements been applied? **A case study**

Box 3: The case⁷ of insecticide infused mosquito nets: Vestergaard Frandsen Vs. Bestnet Europe,

Intelligent Insect Control

Dr Ole Skovmand worked as a **consultant** to a Danish company Vestergaard (<https://www.vestergaard.com>) from 1998 to 2005, and he played a major role in developing techniques that enabled **Vestergaard** to manufacture and sell long-lasting insecticidal mosquito nets.

From 2000 to 2004, Mrs Trine Sig and Mr Torben Larsen were employed by Vestergaard. Their employment contracts contained provisions requiring them to respect the confidentiality of Vestergaard's trade secrets.

In 2004, Mrs Sig and Mr Larsen resigned from Vestergaard. They formed a Danish company,

Intection, which started to carry on a business in competition with Vestergaard by manufacturing and selling new insecticidal mosquito nets under the name **Netprotect**.

Dr Ole Skovmand agreed to assist Mrs Sig and Mr Larsen to manufacture **Netprotect**, and eventually tests were successful for **Intection** to arrange a launch for the new product.

Vestergaard filed a case in Denmark against **Intection** to stop the testing and future marketing of **Netprotect**. The day before proceedings were due to be heard, Mrs Sig resigned as a director of Intection, which thereafter ceased operation.

A new company, Bestnet Europe Ltd (**Bestnet**), was immediately formed in England, with Mrs. Sig as the sole director, and Dr Skovmand as one of the shareholders. Dr Skovmand worked for Bestnet in connection with the testing, development, and manufacturing and marketing of **Netprotect**.

Vestergaard brought proceedings in England against Bestnet, Mr Larsen, Dr Skovmand and Mrs Sig, seeking damages and other relief for misuse of Vestergaard's confidential information. The UK court found that the techniques constituted confidential information owned by Vestergaard, and that Dr Skovmand, Mr Larsen and Bestnet, were liable for breach of confidence to Vestergaard.

The claim against Mrs Sig was dismissed on appeal as it was found that she did not acquire the confidential information in question, and because Mrs Sig was unaware that Netprotect had been developed using Vestergaard's trade secrets/confidential information.

Bestnet was ordered by the Court to pay Vestergaard legal costs, which were about £4.5 million and additional payment of £1.5 million to Vestergaard as an interim payment, followed by a balance at a time to be determined by the Court.

⁷ Source:

(a) <https://www.pressport.com/uk/news/pressreleases/bestnet-executives-foundliable-in-trade-secrets-theft-7427>

(b) <https://www.supremecourt.uk/cases/docs/uksc-2011-0144-press-summary.pdf>

(c) <https://www.cipit.org/index.php/blog/resources/case-laws/1409-case-reference-bynd-to-the-tribunal-06-09-2011>

(d) <http://afro-ip.blogspot.com/2011/10/pre-grant-entitlement-actions-in-kenya.html>

Box 4: Legal action in other countries

Vestergaard also brought legal action in a number of countries around the world including:

- (a) **Denmark** - In November 2005, Vestergaard obtained an injunction against Intection prohibiting it from developing, manufacturing and trading insecticide treated nets. In 2006 **Vestergaard** obtained a judgment which decided that Intection had violated Vestergaard copyright. In 2007 a Danish Court decided that Torben Holm Larsen was in breach of contract concerning a non-compete clause in his employment agreement and that he was ordered to pay DKK 400,000 to Vestergaard.
- (b) In **England**, Dr Ole Skovmand was found to have misled the Danish Court in his statement to the Danish Court that the final recipe of NetProtect incorporated a different insecticide to that used by Vestergaard Frandsen.
- (c) **India** - In May 2007, Vestergaard Frandsen obtained a preliminary injunction from the High Court in Delhi, prohibiting **Bestnet** from manufacturing or marketing **NetProtect** until further orders. In October 2008 Vestergaard also obtained a further preliminary injunction from the High Court in Delhi restraining the manufacture, offer for sale, sale, distribution, advertising, marketing, export and/or import of long-lasting insecticidal mosquito nets using its confidential information including but not limited to such nets sold under the brand name **IconLife**.
- (d) **France** - In 2007, Vestergaard commenced proceedings against Ole Skovmand and his company, **Intelligent Insect Control** (<http://www.insectcontrol.net>) and obtained a Search and Seizure Order against him.
- (e) **Kenya** – in 2010, Vestergaard SA, Vestergaard group SA and vestergaard (East Africa) Ltd filed proceedings in Kenya against **Dr Ole Skovmand** and **Intelligent Insect Control (SARL)** disputing the ownership of a patent application filed in Kenya by Intelligent Insect Control in 2008.

Parting shot

A CA⁸ is a part and parcel of an overall intellectual property protection strategy. It is therefore important to consider other forms of intellectual property protection to ensure that an organization obtains the best possible protection.

⁸ Like any other legal document, ought to be drafted by a skilled and experienced person.

Annex 1: A Sample Employee – Employer Agreement

AGREEMENT

In consideration of the compensation and other benefits of my employment and continued employment by Dala Enterprises Limited (DEL) or one of its subsidiaries, and of other valuable consideration, I agree with Dala Enterprises Ltd as follows:

EMPLOYMENT BY DALA ENTERPRISES LTD

As used herein, “Dala Enterprises” means Dala Enterprises Ltd or one of its subsidiaries, whichever is my employer. The term “Subsidiary” means any company, joint venture or other business organization in which Dala Enterprises Limited now or hereafter, directly or indirectly, owns or controls more than a fifty percent equity interest.

During my Dala Enterprises employment I shall devote my working time and best effort to the service of Dala Enterprises and shall comply with the policies and procedures of Dala Enterprises, including those relating to security and employee conduct, and shall not engage in any planning or other business or technical activity, competitive with or in conflict with the business interests of Dala Enterprises Limited or any of its subsidiaries.

CONFIDENTIAL INFORMATION

As used herein, “Confidential Information” means all technical and business information of Dala Enterprises Limited and its subsidiaries, whether patentable or not, which is of a confidential, trade secret and/or proprietary character and which is either developed by me (alone or with others) or to which I have had access during my employment. “Confidential Information” shall also include confidential evaluations of, and the confidential use or non-use by Dala Enterprises Limited or subsidiary of, technical or business information in the public domain.

I shall use my best efforts and diligence both during and after my Dala Enterprises employment to protect the confidential, trade secret and/or proprietary character of all Confidential Information. I shall not, directly or indirectly, use (for myself or another) or discloses any Confidential Information, for so long as it shall remain proprietary or protectable as confidential, trade secret information, except as may be necessary for the performance of my Dala Enterprises duties.

I shall deliver promptly to Dala Enterprises, at the termination of my employment, or at any other time at Dala Enterprises’ request, without retaining any copies, all documents and other material in my possession relating, directly or indirectly, to any Confidential Information.

Each of my obligations in this section shall also apply to the confidential, trade secret and proprietary information learned or acquired by me during my employment from others with whom Dala Enterprises Limited or any of its subsidiaries has a business relationship.

I understand that I am not to disclose to Dala Enterprises Limited or any subsidiary, or use for its benefit, any of the confidential, trade secret or proprietary information of others, including any of my former employers.

COMPETITIVE ACTIVITIES

I shall not, directly or indirectly (whether as owner, partner, consultant, employee or otherwise), at any time during the period of two years following termination for any reason of my final employment with Dala Enterprises Limited or any subsidiary, engage in or contribute my knowledge to any work or activity that involves a product, process, apparatus, service or development on which

I worked or with respect to which I had access to Confidential Information while at Dala Enterprises Limited or any subsidiary at any time during the period of five years immediately prior to such termination ("competitive work").

However, I shall be permitted to engage in such proposed work or activity, and Dala Enterprises shall furnish me with a written consent to that effect signed by an officer, if I shall have furnished to Dala Enterprises clear and convincing written evidence, including assurances from me and my new employer, that the fulfilment of my duties in such proposed work or activity would not likely cause me to disclose, base judgements upon, or use any Confidential Information. Following the expiration of the said two-year period, I shall continue to be obligated under the "Confidential Information" section of this Agreement not to use or to disclose Confidential Information so long as it shall remain proprietary or protectible as confidential or trade secret information.

During my employment by Dala Enterprises and a for period of two years thereafter, I shall not, directly or indirectly, induce or attempt to induce a salaried employee of Dala Enterprises Limited or any of its Subsidiaries to accept employment or affiliation involving Competitive Work with another firm or company of which I am an employee, owner, partner or consultant.

IDEAS OR INVENTIONS

I shall promptly disclose to Dala Enterprises all ideas or inventions, whether or not patentable, which I may conceive or make, alone or with others, during my employment, whether or not during working hours, and which directly or indirectly

- (a) relate to matters within the scope of my duties or responsibility during my employment by Dala Enterprises or its subsidiaries; or
- (b) are based on my knowledge or anticipated business or interest of Dala Enterprises Limited or its subsidiaries; or
- (c) are aided by the use of time, material,

facilities or information of Dala Enterprises Limited or its subsidiaries.

I hereby assign to Dala Enterprises Limited or one of its subsidiaries (whichever was my employer at the time the invention was conceived or made), without further compensation, all my right, title and interest in all such ideas, inventions in all countries of the world.

Without further compensation but at Dala Enterprises' expense, I shall give all testimony and execute all patent applications, rights of priority, assignments and other documents and in general do all lawful things requested of me by Dala Enterprises to enable Dala Enterprises to obtain, maintain, and enforce protection of such ideas and inventions for and in the name of Dala Enterprises Limited or one of its Subsidiaries (as the case may be), or its nominee, in all countries of the world.

However, should I render any of this service following termination of my employment, I shall be compensated at a rate per hour equal to the basic salary I received from Dala Enterprises at the time of termination and shall be reimbursed for reasonable out-of-pocket expenses incurred in rendering the services.

I recognise that ideas or inventions of the type described above conceived or made by me, alone or with others, within one year after termination of my employment are likely to have been conceived in significant part while employed by Dala Enterprises. Accordingly, I agree that such ideas or inventions shall be presumed to have been conceived during my Dala Enterprises employment unless and until I have established the contrary by clear and convincing evidence.

MISCELLANEOUS

This Agreement shall be construed under the laws of THE COUNTRY and shall be binding upon and enforceable against my heirs and legal representatives and the assignees of any idea, or invention conceived or made by me.

To the extent this Agreement is legally enforceable, it shall supersede all previous agreements covering this subject matter between me and Dala Enterprises Limited

or its Subsidiaries, but shall not relieve me or such other party from any obligations incurred under any such agreements while in force.

If any provision of this Agreement is held invalid in any respect, it shall not affect the validity of any other provision of this Agreement. If any provision of this Agreement is held to be unreasonable as to time or scope or otherwise, it shall be construed by limiting and reducing it so as to be enforceable under then applicable law.

If I am transferred from the company which was my employer at the time I signed this Agreement to the employment of another company that is a Subsidiary of Dala Enterprises or is Dala Enterprises Limited itself, and I have not entered into a superseding agreement with my new employer covering the subject matter of this Agreement, then this Agreement

shall continue in effect and my new employer shall be termed "Dala Enterprises" for all purposes hereunder I shall have the rights to enforce this Agreement as my employer. In the event of any subsequent transfer, my new employer shall succeed to all rights under this Agreement so long as such employer shall be Dala Enterprises or one of its Subsidiaries so long as this Agreement has not been superseded. Dala Enterprises and I shall each have a right to terminate my employment by giving at least thirty days' prior written notice to the other part; provided, however, that no advance notice of termination shall be required if the business unit to which I am assigned is sold and I accept a comparable position with the purchaser of such business unit. Dala Enterprises, at its option, may elect to pay me my salary for the notice period instead of continuing my active employment during that period.

This Agreement is signed in duplicate, as of the ____ day of _____ 20 ____

Dala Enterprises Limited

By _____

Signature of Employee

Title _____

Typed Name of Employee

OR

Name of Subsidiary

Employment location

By _____

Title _____

Annex 2: Sample Non-Disclosure Agreement

NON-DISCLOSURE AGREEMENT

BETWEEN

AND

THIS AGREEMENT (the "Agreement") is entered into by _____, (the " Disclosing Party"), and _____ located at _____ with address of _____ (the "Recipient" or the "Receiving Party").

The Recipient hereto desires to participate in research regarding

_____.
During this research, Disclosing Party may share certain proprietary information with the Recipient. Therefore, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Definition of Confidential Information

- (a) For purposes of this Agreement, "Confidential Information" means any data or information that is proprietary to the Disclosing Party and not generally known to the public, whether in tangible or intangible form, whenever and however disclosed, including, but not limited to: (i) any research information (ii) any scientific or technical information, invention, process, procedure, improvement, technology or method; (iv) any concepts, reports, data, know-how, works-in-progress, development tools, and (v) any other information that should reasonably be recognized as confidential information of the Disclosing Party. Confidential Information need not be novel, patentable, copyrightable or constitute a trade secret in order to be designated Confidential Information. The Receiving Party acknowledges that the Confidential Information is proprietary to the Disclosing Party, has been developed and obtained through great efforts by the Disclosing Party and that Disclosing Party regards all of its Confidential Information as trade secrets
- (b) Notwithstanding anything in the foregoing to the contrary, Confidential Information shall not include information which: (i) was known by the Receiving Party prior to receiving the Confidential Information from the Disclosing Party; (b) becomes rightfully known to the Receiving Party from a third-party source not known (after diligent inquiry) by the Receiving Party to be under an obligation to Disclosing Party to maintain confidentiality; (c) is or becomes publicly available through no fault of or failure to act by the Receiving Party in breach of this Agreement; (d) is required to be disclosed in a judicial or administrative proceeding, or is otherwise requested or required to be disclosed by law or regulation, although the requirements of paragraph 4 hereof shall apply prior to any disclosure being made; and (e) is or has been independently developed by employees, consultants or agents of the Receiving Party without violation of the terms of this Agreement or reference or access to any Confidential Information.

2. Disclosure of Confidential Information

From time to time, the Disclosing Party may disclose Confidential Information to the Receiving Party. The Receiving Party will: (a) limit disclosure of any Confidential Information to its researchers, employees, or representatives (collectively “Representatives”) who have a need to know such Confidential Information in connection with the current or contemplated research relationship between the parties to which this Agreement relates, and only for that purpose; (b) advise its researchers of the proprietary nature of the Confidential Information and of the obligations set forth in this Agreement and require such Representatives to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties (except as otherwise provided for herein). Each party shall be responsible for any breach of this Agreement by any of their respective Representatives.

3. Use of Confidential Information

The Receiving Party agrees to use the Confidential Information solely in connection with the current or contemplated research relationship between the parties and not for any purpose other than as authorized by this Agreement without the prior written consent of an authorized representative of the Disclosing Party. No other right or license, whether expressed or implied, in the Confidential Information is granted to the Receiving Party hereunder. Title to the Confidential Information will remain solely in the Disclosing Party. All use of Confidential Information by the Receiving Party shall be for the benefit of the Disclosing Party and any modifications and improvements thereof by the Receiving Party shall be the sole property of the Disclosing Party.

4. Compelled Disclosure of Confidential Information

Notwithstanding anything in the foregoing to the contrary, the Receiving Party may disclose Confidential Information pursuant to any governmental, judicial, or administrative order, regulatory request or similar method, provided that the Receiving Party promptly notifies, to the extent practicable, the Disclosing Party in writing of such demand for disclosure so that the Disclosing Party, at its sole expense, may seek to make such disclosure subject to a protective order or other appropriate remedy to preserve the confidentiality of the Confidential Information; provided in the case of a broad regulatory request with respect to the Receiving Party’s research (not targeted at Disclosing Party), the Receiving Party may promptly comply with such request provided the Receiving Party give (if permitted by such regulator) the Disclosing Party prompt notice of such disclosure. The Receiving Party agrees that it shall not oppose and shall cooperate with efforts by, to the extent practicable, the Disclosing Party with respect to any such request for a protective order or other relief. Notwithstanding the foregoing, if the Disclosing Party is unable to obtain or does not seek a protective order and the Receiving Party is legally requested or required to disclose such Confidential Information, disclosure of such Confidential Information may be made without liability.

5. Term

This Agreement shall remain in effect for a two-year term? (subject to a one-year extension if the parties are still collaborating in research and considering the Transaction at the end of the second year). Notwithstanding the foregoing, the parties’ duty to hold in confidence Confidential Information that was disclosed during term shall remain in effect indefinitely.

6. Remedies

Both parties acknowledge that the Confidential Information to be disclosed hereunder is of a unique and valuable character, and that the unauthorized dissemination of the Confidential Information would destroy or diminish the value of such information. The damages to Disclosing

Party that would result from the unauthorized dissemination of the Confidential Information would be impossible to calculate. Therefore, both parties hereby agree that the Disclosing Party shall be entitled to injunctive relief preventing the dissemination of any Confidential Information in violation of the terms hereof. Such injunctive relief shall be in addition to any other remedies available hereunder, whether at law or in equity. Disclosing Party shall be entitled to recover its costs and fees, including reasonable attorneys' fees, incurred in obtaining any such relief. Further, in the event of litigation relating to this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and expenses.

7. Return of Confidential Information

Receiving Party shall immediately return and redeliver to the other all tangible material embodying the Confidential Information provided hereunder and all summaries, drawings, manuals, records, excerpts or derivative information deriving there from and all other documents or materials ("Notes") (and all copies of any of the foregoing, including "copies" that have been converted to computerized media in the form of image, data or word processing files either manually or by image capture) based on or including any Confidential Information, in whatever form of storage or retrieval, upon the earlier of (i) the completion or termination of the dealings between the parties contemplated hereunder; (ii) the termination of this Agreement; or (iii) at such time as the Disclosing Party may so request; provided however that the Receiving Party may retain such of its documents as is necessary to enable it to comply with its document retention policies. Alternatively, the Receiving Party, with the written consent of the Disclosing Party may (or in the case of Notes, at the Receiving Party's option) immediately destroy any of the foregoing embodying Confidential Information (or the reasonably non-recoverable data erasure of computerized data) and, upon request, certify in writing such destruction by an authorized officer of the Receiving Party supervising the destruction).

8. Notice of Breach

Receiving Party shall notify the Disclosing Party immediately upon discovery of any unauthorized use or disclosure of Confidential Information by Receiving Party or its Representatives, or any other breach of this Agreement by Receiving Party or its Representatives, and will cooperate with efforts by the Disclosing Party to help the Disclosing Party regain possession of Confidential Information and prevent its further unauthorized use.

9. Warranty.

Each party warrants that it has the right to make the disclosures under this Agreement. NO WARRANTIES ARE MADE BY EITHER PARTY UNDER THIS AGREEMENT WHATSOEVER. The parties acknowledge that although they shall each endeavor to include in the Confidential Information all information that they each believe relevant for the purpose of the evaluation of a Transaction, the parties understand that no representation or warranty as to the accuracy or completeness of the Confidential Information is being made by either party as the Disclosing Party. Further, neither party is under any obligation under this Agreement to disclose any Confidential Information it chooses not to disclose. Neither Party hereto shall have any liability to the other party or to the other party's Representatives resulting from any use of the Confidential Information except with respect to disclosure of such Confidential Information in violation of this Agreement.

11. Miscellaneous

- (a) This Agreement constitutes the entire understanding between the parties and supersedes any and all prior or contemporaneous understandings and agreements, whether oral or written, between the parties, with respect to the subject matter hereof. This Agreement can only be modified by a written amendment signed by the party against whom enforcement of such modification is sought.

- (b) The validity, construction and performance of this Agreement shall be governed and construed in accordance with the laws of Kenya.
- (c) Any failure by either party to enforce the other party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.
- (d) Although the restrictions contained in this Agreement are considered by the parties to be reasonable for the purpose of protecting the Confidential Information, if any such restriction is found by a court of competent jurisdiction to be unenforceable, such provision will be modified, rewritten or interpreted to include as much of its nature and scope as will render it enforceable. If it cannot be so modified, rewritten or interpreted to be enforceable in any respect, it will not be given effect, and the remainder of the Agreement will be enforced as if such provision was not included.
- (e) Any notices or communications required or permitted to be given hereunder may be delivered by, deposited with a nationally recognized overnight carrier, electronic-mail, or mailed by certified mail, return receipt requested, postage prepaid, in each case, to the address of the other party first indicated above (or such other addressee as may be furnished by a party in accordance with this paragraph). All such notices or communications shall be deemed to have been given and received (a) in or electronic-mail, on the date of such delivery, (b) in the case of delivery by a nationally recognized overnight carrier, on the third business day following dispatch and (c) in the case of mailing, on the seventh business day following such mailing.
- (f) This Agreement is personal in nature, and neither party may directly or indirectly assign or transfer it by operation of law or otherwise without the prior written consent of the other party, which consent will not be unreasonably withheld. All obligations contained in this Agreement shall extend to and be binding upon the parties to this Agreement and their respective successors, assigns and designees.
- (g) The receipt of Confidential Information pursuant to this Agreement will not prevent or in any way limit either party from: (i) research developments that are or may be competitive with the products or processes of the other; or (ii) providing products or processes to others who compete with the other.
- (h) Paragraph headings used in this Agreement are for reference only and shall not be used or relied upon in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Disclosing Party:

Name: _____

Title: _____ Signature: _____ Date _____

Witnessed by:

Name: _____

Title: _____ Signature: _____ Date _____

Institution Representative

Name: _____

Title: _____ Signature: _____ Date _____

Receiving Party

Name: _____

Title: _____

Signature: _____ Date _____

Witnessed by:

Name: _____

Title: _____

Signature: _____ Date _____

Institution Representative

Name: _____

Title: _____

Signature _____ Date _____





The Scinnovent Centre

P.O. Box 52486 - 00100 | Nairobi, Kenya

 Email: info@scinnovent.org

 Website: www.scinnovent.org

 Youtube: [TheScinnoventCentre](https://www.youtube.com/TheScinnoventCentre)

