

**THE OPEN UNIVERSITY OF TANZANIA**



# **INTELLECTUAL PROPERTY RIGHTS POLICY**

**JULY, 2017**

**THE OPEN UNIVERSITY OF TANZANIA**



**INTELLECTUAL PROPERTY  
RIGHTS POLICY**

**JULY, 2017**

The Open University of Tanzania  
Kawawa Road,  
P. O. Box 23409,  
Dar es Salaam,  
TANZANIA

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## FOREWORD

Central to the vision and mission of The Open University of Tanzania (OUT) are teaching, research, and consultancy services. Primarily, research is undertaken to educate students, to stimulate the spirit of inquiry, to solve problems, and to discover new knowledge. Patentable inventions and other marketable forms of intellectual property may result from research conducted by OUT staff, students and other persons associated directly or indirectly with the University. Similarly, intellectual property may result from other University's activities. OUT believes that a university has an obligation to serve the public interest by insuring that such intellectual property is appropriately developed and exploited. This Policy is meant to lay down an environment that may encourage and enable technology development, its commercialisation and transfer for the benefit of the public. In the contemporary world, commercialization and licensing of research findings and results to industries and private users is common phenomenon which has attracted a substantial amount of revenue to many universities in the developed and emerging economies. It is high time that OUT strives to tap the immense potential resource which is available in this area by harnessing the potentials provided by the intellectual property assets embodied in research, publication and consultancy findings.



OUT believes that adequate recognition of, and incentive to potential inventors through the sharing of the financial benefits resulting from the development and transfer of patentable inventions and other marketable forms of intellectual property encourages the creation of intellectual property. At the same time, the University's share in the financial benefits provides funds for further research at the University. Accordingly, the principle of equitable distribution of financial benefits between the inventor and the University is of paramount importance in this Policy.

Prof. Elifas Tozo Bisanda  
Vice Chancellor

Dar es Salaam  
July, 2017

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In a particular way, I would like to thank all the participants of the 9<sup>th</sup> June 2017 Stakeholders Workshop held at the ODL Tower, Council Chambers. Their critical comments and feedback were useful in improving the earlier drafts of this Policy. While it is not possible to mention the names of each and every individual who participated in this workshop, I value their contributions.

Prof. Deus Ngaruko  
Deputy Vice-Chancellor (Academic)

Dar es Salaam  
July, 2017

## **ABBREVIATIONS**

|      |                                          |
|------|------------------------------------------|
| DRP  | Director of Research and Publication     |
| IP   | Intellectual Property                    |
| IPMO | Intellectual Property Management Officer |
| IPO  | Intellectual Property Officer            |
| IPRs | Intellectual Property Rights             |
| OUT  | Open University of Tanzania              |
| WIPO | World Intellectual Proper Organization   |

## **EXECUTIVE SUMMARY**

The Intellectual Property Rights Policy sets out the conditions, criteria and procedure for intellectual property generation and commercial exploitation at The Open University of Tanzania. The Policy has been developed as an intervention of the limitations that the University has suffered for several years. The Open University of Tanzania had no Intellectual Property Rights Policy since it was established in 1992. Protection of intellectual property has only been addressed in other policies such as those governing research and publication as well as study materials. Lack of appropriate policy in the field of intellectual property has denied The Open University of Tanzania an appropriate environment to advance in new frontiers of invention and innovations. In particular, there has been lack of certainties with regard to the ownership of intellectual property generated by employees in the course of employment, students in the course of their studies and involved third parties such as visiting scientists. Similarly, most of the results of research as well as inventions and innovations that have significant commercial value, have never been commercially exploited for lack of an appropriate policy on how such commercialisation could be done and how the benefits could be shared among the relevant parties who contributed to generate the intellectual property. Funding constraints to support research, inventions and innovations which are central to the creation of intellectual property have also been partly attributed to lack of an appropriate policy. Third party sponsors and industries have not been motivated to grant funds to the University largely due to the weak link between the University and the industries in terms of the needs of each side and benefits that each would derive from collaborations.

The Policy recognizes the central role and commercial value that intellectual property holds at The Open University of Tanzania. The purpose of this Policy is to create an environment that may encourage and support those who wish to create or exploit such products to do so. The expectation is that by acting as an incentive, implementation of the IPR Policy shall galvanise innovation and creativity among both staff and students for the public good, and when commercialised generate income for the innovator and the

University. Therefore, The Open University of Tanzania shall endeavour to foster the development of its inventions and discoveries through patenting and licensing to industry in particular and generally to the private sector.

This Policy therefore, addresses issues related to ownership, protection and commercialisation of intellectual property and innovations created by the staff, students and visiting scientists, including reward to intellectual property creators and innovators while protecting the University against unwarranted risks. The IPR Policy is in line with the relevant national laws that govern intellectual property namely the Copyrights and Neighbouring Rights Act, Cap. 218 R.E 2002, Patent (Registration) Act, Cap. 217 R.E 2002 and Trade and Service Marks Act, Cap. 326 R.E 2002. To this end, nothing in this Policy overrides provisions of prevailing national law on intellectual property.

## **1.0 Introduction**

The Open University of Tanzania recognizes the need for encouraging the practical application and economic use of the results of research carried out at the University for the benefit of the general public; therefore it adopted the following Policy on Intellectual Property Rights.

The present Policy relates to the ownership, protection and commercial exploitation of Intellectual Property created by Researchers in the course of their duties or activities at The Open University of Tanzania. The document sets out the rules of The Open University of Tanzania for cooperation with industrial and business organizations and provides guidelines on the sharing of the economic benefits arising from the commercialization of intellectual property.

## **2.0 Definitions**

*Assignment:* means a total transfer of Intellectual Property asset(s).

*Commercialization:* means any form of exploitation of the IP including assignment, licensing or the disposal of any other interests, whether in return for cash or payment in kind or any other form of value.

*Commissioned works:* means works produced under a commission arrangement where the inventor functions as an independent contractor in producing the work, as distinct from an employee relationship.

*Copyrighted works:* means literary, scientific and art works, including academic publications, scholarly books, articles, lectures, musical compositions, films, presentations and other materials or works other than software, which qualify for protection under the copyright law.

*Course materials:* means all materials produced in the course of or for use in teaching in any form (including digital, print, video and visual material) and all Intellectual Property in such materials and

will include lectures, lecture notes and material, study guides, images, multi-media presentations, web content and course software. *Creative commons*: means a non-profit organisation which is committed to facilitating the legal sharing of creative works through a range of licenses which allow creators to stipulate which rights they reserve, and which rights they waive for the benefit of other creators. Creative Commons licenses follow a “some rights reserved” model in contrast to traditional copyright which follows an “all rights reserved” model. Creative Commons therefore provides a continuum of rights between “all rights reserved” on the one end of the continuum and “no rights reserved” (public domain) on the other.

*Intellectual Property*: means all subject matter capable of being protected by patents, copyright, design, database rights, topography rights, trade mark, plant breeders rights know how and all other intellectual or industrial property rights in each case whether registered or unregistered.

*Intellectual Property Rights*: means ownership and associated rights relating to Intellectual Property.

*Inventor*: means the researcher who contributed to the creation of the Intellectual Property.

*License*: means permission to use an Intellectual Property right. It may be exclusive or non-exclusive.

*Open University of Tanzania resources*: means any form of funds, facilities or resources, including equipment, consumables and human resources provided by The Open University of Tanzania either in a direct or indirect way.

*Patent*: means giving exclusive rights to commercially exploit the invention for the life of the patent. This is given for a product or idea that can be manufactured. A patent is granted for any device, substance, method, or process which is new, inventive or useful.

*Public Domain:* means works that are not covered by intellectual property rights at all, either because the rights have expired or the rights have been forfeited; and as such are held by the public at large and are available for anybody to use freely and without reference to the original creator or permission from a third party.

*Research Agreement:* may refer to Research Service Agreement, Cooperative Research and Development Agreement, Material Transfer Agreement, Confidentiality Agreement, Consultancy Agreement and any other type of agreement concerning research pursued by researchers and/or Intellectual Property created at The Open University of Tanzania.

*Researcher* means:

- i) Persons employed by The Open University of Tanzania, including student employees and technical staff
- ii) Students, including graduate and postgraduate students of The Open University of Tanzania
- iii) Any persons, including visiting scientists who use The Open University of Tanzania resources and who perform any research task at The Open University of Tanzania or otherwise participate in any research project administered by The Open University of Tanzania, including those funded by external sponsors.

*Significant use:* means, in relation to the creation of Intellectual Property, a contribution of 35% or more.

*Spin-off:* means a company established for the purpose of exploiting Intellectual Property originating from The Open University of Tanzania.

*Trade and service mark:* means the distinctive mark of authenticity, through which the products of particular manufacturers or the vendible commodities of particular merchants may be distinguished from those of others.

*University:* means The Open University of Tanzania.

*Visiting Researcher*: means individuals having an association with The Open University of Tanzania without being either employees or students. Visiting Researchers include academic visitors, individuals with honorary appointments in The Open University of Tanzania and emeritus staff.

### **3.0 Rationale and Policy Issues**

In furtherance of its Vision and Mission, the University's employees, students, visiting scientists and researchers develop inventions, discoveries, copyrightable material and new knowledge that constitute the intellectual property. The University seeks to promote application of that knowledge for the benefit of society while enhancing the capacity of the University to conduct its vision and mission and protecting the interests of the University, its employees, students and visiting researchers. The Intellectual Property Right Policy helps achieve these goals by providing the framework that governs the ownership, disposition, use and commercial development of the University inventions, discoveries and creative endeavours.

OUT acknowledges the pivotal role research, innovation and other intellectual activities play in socio-economic development of any society. However, while intellectual property may be generated from numerous sources, research constitutes the major source of intellectual property creation. Research is meant to offer solutions to problems that face the public. The success in carrying out research depends on many things, including adequate research funding. OUT has been constrained by limited available research funds from the government to fulfil this function. Funds are more often set for small research grants whose impact to the society is very minimal.

Similarly, there has been a weak link between OUT and the industry. So far there are limited inventions and innovations that the University has made with the support of the industry or that have direct bearing to the industrial application. Mostly, the staff at The Open University of Tanzania, though highly qualified to conduct research and make new inventions and innovations, has focused on

teaching and writing scholarly publications. The latter are not even widely disseminated to the industry and the public generally.

Moreover, OUT has signed many collaboration agreements with other institutions within and outside Tanzania. Most of these collaborations are based on teaching aspect rather than conduct of scientific research and making new discoveries in terms of inventions and innovations. Similarly, the commercialisation of intellectual property in the few researches that have been conducted between OUT and other institutions is not well defined.

Generally, the lack of Intellectual Property Rights Policy at The Open University of Tanzania since its establishment in 1992 has clearly affected the innovations potential of the staff and students. Although a few innovations have been developed, there has been lack of management support to protect as well as move intellectual products to commercialization. This has led to lost opportunities.

Intellectual property is an area of very substantial importance in the academic environment of The Open University of Tanzania. The purpose of defining an IPR Policy is therefore to encourage the generation of intellectual property by staff, students, and other relevant parties and its subsequent commercialisation for the benefits of the inventors and The Open University of Tanzania.

#### **4.0 Objectives of the Policy**

The objectives of this Policy are:

- a) To set out the environment that would promote, encourage and aid scientific investigation and research of new knowledge by OUT staff, students and other relevant partners;
- b) To provide guideline for the recognition and identification of intellectual property within OUT and promote an entrepreneurial culture among researchers that fosters the development of potentially commercial intellectual property arising from their research;
- c) To provide criteria and guideline that may result into legal certainty in research activities and technology-based relationships with the third parties;

- d) To provide procedures on identification, ownership, protection and commercialization of intellectual property;
- e) To ensure the timely and efficient protection and management of Intellectual Property;
- f) To provide means for recording, monitoring and maintenance of the intellectual property portfolio;
- g) To provide a guidance in economic benefits sharing arising from the commercialization of intellectual property;
- h) To enhance the reputation of The Open University of Tanzania as an academic research institution as well as the reputation of the researchers through bringing the research results to public use and benefit.

## **5.0 Applicability of the Policy**

- 5.1 This Policy shall apply to all intellectual property created on or after 1 July 2017 and all IP Rights associated with them.
- 5.2 This Policy shall apply to all researchers who have established legal relationship with The Open University of Tanzania based on which the researcher is bound by this Policy. Such a legal relationship may arise pursuant to the provision of law, collective agreement or individual agreement.
- 5.3. This Policy shall apply to all categories of intellectual property as defined in part 4 of this Policy except where it is expressly provided otherwise in the other provisions of this Policy.
- 5.4. The present Policy shall not apply in cases in which the researcher entered into an explicit arrangement to the contrary with The Open University of Tanzania before the effective date of the Policy, or The Open University of Tanzania previously entered into an agreement with a third party concerning rights and obligations set out in this Policy.
- 5.5 This Policy shall not apply where the researcher has produced research results and/or created intellectual property outside the normal course of employment or where there has been insignificant use of The Open University of Tanzania resources.
- 5.6. The present Policy shall not apply on course materials as defined under section 4 of this Policy.

## **6.0 External Sponsorship, Research Collaboration with Third Parties**

The Open University of Tanzania recognises the contribution and role of external sponsors as well as collaboration arrangements with third parties in the support to generate and create intellectual property. Nonetheless, the link between the University and external sponsors as well as third parties has remained relatively weak for years. This is due to lack of a proper policy mechanism to guide such arrangements. The following principles shall therefore govern external sponsorship as well as collaboration with third parties.

- 6.1 It is the responsibility of the researcher to ensure, that prior to commencing any research activity in collaboration with any third party, the terms and conditions of cooperation are set forth in a written agreement (hereinafter referred to as Research Agreement).
- 6.2 Researchers shall not have the right to enter into a research agreement with third parties on behalf of The Open University of Tanzania unless they are authorized to do so by an official representative of The Open University of Tanzania.
- 6.3 Persons acting for, and on behalf of, The Open University of Tanzania shall exercise all due diligence when negotiating agreements and signing contracts that may affect the University's IP Rights.
- 6.4 In certain cases it may be beneficial to The Open University of Tanzania to enter into research agreements that are exceptions to the provisions of this Policy with external sponsors of research and other third parties.
- 6.5. Depending on the relative intellectual and financial contributions of The Open University of Tanzania and the third party to the conception of the intellectual property, it may be appropriate for either cooperating party to obtain certain IP Rights and/or share in the revenue generated from its commercialization.
- 6.6 In the absence of such an agreement defined in Paragraph 6.1, it is the policy of The Open University of Tanzania that IP Rights shall be distributed among the cooperating parties in the proportion that reflects the proportions of contributing to the creation of the intellectual property.

- 6.7 In order to enable the cooperating parties to establish such proportions defined in paragraph 6.6 and to prevent subsequent disputes, it is expedient that the parties maintain regular, well-documented records of the research activities pursued, signed by all of them.
- 6.8 The agreement set forth in paragraph 6.1 shall include, inter alia, provisions with respect to the following:
- 6.8.1 IP and associated rights already existing at The Open University of Tanzania prior to entering into the agreement;
  - 6.8.2 IP and associated IP Rights arising from research activities set out in the agreement, after entering into it;
  - 6.8.3 Confidentiality requirements;
  - 6.8.4 Terms of public disclosure;
  - 6.8.5 Other relevant provisions.
- 6.9 Any confidentiality provision of a Research Agreement aiming at the delay of public disclosure for the purpose of protection should not usually have effect for longer than six (6) months from the time the concerned party is notified of the intent to publish.
- 6.10 Before signing, the full copy of the proposed agreements and other legal statements concerning The Open University of Tanzania's IP Rights shall be submitted to IPMO for advice.

## **7.0 Ownership of Intellectual Property**

The Open University of Tanzania recognises that teaching, research and innovation/invention involve complex relationships among several parties such as individual innovators/inventors, external research sponsors and various departments. This section of the Intellectual Property Rights Policy is aimed at clarifying the right to ownership among these parties and provides guidelines for determination of ownership of intellectual property.

### **7.1 Ownership by Employees**

- 7.1.1 All rights in intellectual property devised, made or created by an employee of The Open University of Tanzania in the course of his or her duties and activities of employment shall generally belong automatically to The Open University of Tanzania.

- 7.1.2 If an employee of the Open University of Tanzania creates intellectual property outside the normal course of his or her duties of employment, with the significant use of The Open University of Tanzania Resources he or she will be deemed to have agreed to transfer the IP Rights in such Intellectual Property to The Open University of Tanzania as consideration for the use of such resources.
- 7.1.3 Intellectual property as defined in Paragraph 7.1.1, created in the course of, or pursuant to a sponsored research or other type of agreement with a third party, shall initially belong to The Open University of Tanzania and then ownership shall be determined according to the terms of such agreements (in accordance with Paragraph 6).
- 7.1.4 Section 7.1 shall apply to student employees of The Open University of Tanzania.
- 7.1.5 Rights related to intellectual property that is created during an academic visit by the employee of The Open University of Tanzania to another university shall be governed by an agreement between the Open University of Tanzania and such other university (in accordance with Paragraph 6.4). If The Open University of Tanzania's IP Rights are not affected, the IP created during the visit shall belong to the other university unless otherwise provided in an agreement.
- 7.1.5 OUT will have no interest in any inventions or other IP created by its staff/employees entirely on their own time without the use of any OUT resources or if such use of resources does not amount to significant use as defined under section 2 of this Policy. The onus shall be on staff/employees asserting their rights under this paragraph to prove to the satisfaction of OUT that the relevant invention or IP was in fact created by them on their own time without the significant use of OUT resources.

## **7.2 Ownership by Non-employees**

- 7.3.1 Visiting researchers are required to transfer to The Open University of Tanzania any intellectual property they create in the course of their activities arising from their association with The Open University of Tanzania. Such individuals will be

treated as if they were The Open University of Tanzania employees for the purposes of this Policy.

### **7.3 Ownership by Students**

- 7.3.1 Students who are not employed by The Open University of Tanzania shall own all intellectual property and associated IP Rights they create in the normal course of their studies. However, the following exceptions shall apply:
- 7.3.1.1 If a student is offered a studentship sponsored by a third party under a separate agreement, under which the third party has a claim on intellectual property arising from the studentship, the student must agree that the intellectual property shall initially belong to The Open University of Tanzania and ownership will then be determined in accordance with the terms of the agreement concluded with the third party.
- 7.3.1.2 Intellectual property created by students in the course of, or pursuant to, a sponsored research or other agreement with a third party shall initially belong to The Open University of Tanzania and ownership will then be determined in accordance with the terms of the agreement concluded with the third party.
- 7.3.1.3 If a student creates intellectual property with the significant use of The Open University of Tanzania resources in connection with his or her research activity, he or she will be deemed to have agreed to transfer the IP Rights in such intellectual property to The Open University of Tanzania as consideration for the use of such resources.
- 7.3.1.4 The Open University of Tanzania shall claim ownership of all intellectual property created in the course of postgraduate (doctorate) students' research activity.
- 7.3.2. Students shall be given the option to assign IP Rights to The Open University of Tanzania and shall then be granted the same rights as any employee inventor as set out in this Policy. In such cases students should follow the procedures set out in this Policy.

## **7.4 Special Provisions on Patents**

The area of scientific and technological inventions and discoveries presents, in an especially acute form, many of the difficulties that arise in connection with creative works of all kinds produced by researchers of OUT. The disproportionate expenditure of common University resources on the research leading to inventions and discoveries, the potential for their significant commercial exploitation, and the frequent involvement of outside governmental and private sponsors who wish to impose conditions to safeguard their own interests, are such that the University has an important interest, academic as well as economic, in coordinating the activities of faculty members and other employees in this area. In recognition of this interest, and of the interests of those conducting scientific research as well as of those who are their departmental colleagues, the University, and every person to whom this policy applies, agrees that the ownership rights to inventions and discoveries shall be dealt with in the manner described below.

### **7.4.1 Ownership Rights**

The University undertakes to exercise its ownership over any patent on an invention or discovery which it acquires under this policy, for the good of the public, the University and the inventor or inventors. To this end, every invention or discovery or part thereof that is made by an employee within the scope of his or her employment, or by a covered student or a visiting researcher with the scope of his or her activities as such, or by any other person who is aided by University facilities or staff, or by funds administered by the University, or is working at the University by virtue of a grant from, or a contract with, an outside body, whether governmental or private shall be the property of the University.

### **7.4.2 Commercialisation of Patents**

The Open University of Tanzania shall make, or shall cause to be made, efforts which in its sole opinion are reasonable in order to promote the commercial development and utilization of every invention or discovery which enjoys commercially significant patent protection in the United Republic of Tanzania, and the University may make such arrangements for the licensing or sale of any

invention or discovery patented in the United Republic of Tanzania or elsewhere as, in the sole opinion of the University, will reasonably serve the interests of the public, the University, and the inventor or inventors. The University, in the exercise of its sole discretion, may take such action as it deems appropriate in order to enforce or defend any patent on an invention or discovery which it acquired under this policy, and any such action, including the conduct and any settlement thereof, shall be subject to the University's exclusive control.

### **7.4.3 Distribution of Revenues**

The inventor or inventors shall participate in the net patent revenues (i.e., net revenues including royalties from licensing, proceeds from sale, and/or recoveries from enforcement) actually realized by the University from the sale, licensing and/or enforcement of his, her or their patented invention or discovery, such participation to be at a total level, in the aggregate for all inventors and all patents associated with a particular patented invention or discovery and any improvements therein, as follows:

Division of income derived from patents inventions or discoveries shall be as follows:

| <b>Level of IP income</b>        | <b>Inventor(s)</b> | <b>DRP</b> | <b>Inventor's Department</b> |
|----------------------------------|--------------------|------------|------------------------------|
| First USD 20,000 of IP royalties | 60%                | 20%        | 20%                          |
| Over USD 20,000 of IP royalties  | 50%                | 25%        | 25%                          |

### **7.5 General Provisions**

7.5.1 All rights in copyrighted works are owned by their creators regardless of the use of The Open University of Tanzania resources. Copyrighted works specifically commissioned by The Open University of Tanzania or developed in the performance of a sponsored research or other third party agreement shall constitute an exception where the provisions of such agreements shall be taken into account.

7.5.2 If The Open University of Tanzania cannot, or decides not to, exploit any Intellectual Property to which it lays claim, it shall forthwith notify the Inventor(s). The notification shall be made

at least one month prior to any act or any intentional omission liable to prevent the obtainment of protection. In such cases the inventor(s) shall have the option to acquire related IP Rights.

- 7.5.3 Requests for any transfer of rights from The Open University of Tanzania to the Inventors(s) or any other third party should be made in the first instance to the person or department designated by The Open University of Tanzania.

## **8.0 Conflict of Interest and Confidentiality**

The Open University of Tanzania recognises that efforts made by its employees in partnering with third parties in the course of scientific invention and innovations as well as research. However, there has been no policy mechanism in place that balances the interests of the University, employees and third parties. This Policy provides:

- 8.1 A researcher's primary commitment of time and intellectual contributions as an employee of The Open University of Tanzania should be to the education, research and academic programmes of The Open University of Tanzania.
- 8.2 It is the responsibility of each researcher to ensure that their agreements with third parties do not conflict with their obligations to The Open University of Tanzania or this Policy. This provision shall apply in particular to private consultancy and other research service agreements concluded with third parties. Each researcher should make his or her obligations to The Open University of Tanzania clear to those with whom such agreements may be made, and should ensure that they are provided with a copy of this Policy.
- 8.3 Researchers shall keep The Open University of Tanzania's business secret in confidence. In terms of this Policy, *inter alia*, every fact, information, solution or data related to the research carried out at The Open University of Tanzania, whose public disclosure, or its acquisition or exploitation by unauthorized persons could damage or endanger the Open University of Tanzania's lawful financial, economic or market interests shall qualify as business secret. Researchers shall, when communicating with third parties, exercise all due diligence regarding confidentiality provisions.

- 8.4 Should any doubt arise concerning conflict of interest or confidentiality issues researchers are advised to consult with the IPMO.
- 8.5 Researchers shall promptly report all potential and existing conflict of interest to the IPMO in order to reach solution satisfactory to each concerned party.

## **9.0 Commercialization of Intellectual Property**

For quite some time, research results, inventions and innovations by staff, students and visiting researchers at OUT, potential of large scale commercial exploitation have been shelved in OUT Library. The commercialisation of intellectual property is not well defined at the moment in any of OUT policies. Accordingly the University and researchers have not benefited out of their efforts as a result, researchers have been demoralised to carry out research and/or inventions and innovations. The University has also been incapacitated to fund research, invention and innovations. To this end:

- 9.1 The Open University of Tanzania encourages its researchers to identify research results with potential commercialization value and which may enhance the reputation of The Open University of Tanzania through bringing them to public use and benefit.
- 9.2 The IPMO is responsible for the protection and commercialization of The Open University of Tanzania's intellectual property. The inventor(s) however, shall be consulted in each phase of the procedure.
- 9.3 Researchers shall be required to present in writing the draft publications containing scientific results to the IPMO before publishing them, and shall state in writing that, to the best of their knowledge such works do not contain any results for which protection may be obtained or which can be exploited in any way.
- 9.4 Researchers, including employees, students and visiting researchers are obliged to disclose all intellectual property falling within the scope of Paragraph 6 to the IPMO.
- 9.5 Copyrighted Works shall be excluded from the disclosing obligation set out in Paragraph 8.3, except for those which

were developed in the performance of as sponsored research or other third party agreement.

- 9.6 Since protection and successful commercialization of intellectual property might depend on prompt and efficient administration, inventors are required to disclose all potentially exploitable intellectual property as soon as they become aware of them. The disclosure must be made in writing by completing the Intellectual Property Disclosure Form available from the IPMO.
- 9.7. Inventors shall fully disclose all research activities and results relevant to the intellectual property and provide information about themselves, in particular the percentage of their contribution to the creation of the intellectual property and the circumstances under which it was created. The detailed description of the intellectual property shall be presented in such a manner that the inventive activity involved and its novelty as well as its susceptibility of industrial application become explicit and clear-cut for a person skilled in the art.
- 9.8. In case of incomplete disclosure, the form may be sent back to the inventor(s) requesting for additional information.
- 9.9. If an Inventor is in any doubt whether an intellectual property falls within the scope of Paragraph 6 or it is potentially commercially exploitable, then the inventor should submit a disclosure to the IPMO for consideration prior to making public disclosure of the intellectual property.
- 9.10. Premature disclosure may compromise the protection and commercialization of intellectual property. To avoid any loss of potential benefits, Researchers are required to make reasonable efforts to identify intellectual property early in the development process and consider the consequent impacts of any public disclosure.
- 9.11. After full disclosure of all relevant information the IPMO shall record the intellectual property in its register.
- 9.12. The IPMO shall determine whether any agreements provide for the sharing of IP Rights or other obligations overriding those set out in this Policy. Provisions of related Research Agreements may require the assignment of certain IP rights in full or in part. In case of assignment, the procedure for

protection and commercialization shall be governed by a separate agreement concluded between The Open University of Tanzania and other concerned parties. In all other cases the procedure set out in this Policy shall apply.

- 9.13. The IPMO shall notify the relevant head of department about all disclosures. The notification involves a short abstract of the intellectual property and the name of the inventor(s).
- 9.14. After the date of disclosure, the IPMO shall immediately commence the evaluation of the intellectual property. As a first step, a pre-evaluation shall be carried out to identify any major obstacles, which could hinder the protection and commercialization of the intellectual property. Based on the results of the pre-evaluation a recommendation on whether to protect and exploit the intellectual property shall be forwarded to the person or committee taking the final decision on behalf of The Open University of Tanzania. Such a recommendation shall be forwarded within 14 days from the date of disclosure. The final decision shall be taken within 14 days from the date of disclosure.
- 9.15. The inventor(s) shall be informed of the decision within 14 days from the date of decision in writing. If The Open University of Tanzania decides not to commercialize the disclosed intellectual property, then the provisions of Paragraph 6.6 shall apply.
- 9.16. The IPMO shall carry out a complete evaluation of the intellectual property with particular attention on possible methods of the protection of the intellectual property and its business opportunities.
- 9.17. The inventor(s) shall closely cooperate with the IPMO, or any other professional experts involved by The Open University of Tanzania. Inventor(s) are required to give reasonable assistance in protecting and commercially exploiting the intellectual property by providing information, attending meetings and advising on further development.
- 9.18. The IPMO shall, within reasonable time, commence the process for acquiring legal protection, if needed, and he/it shall proceed with all due diligence to obtain protection. Public disclosure of research results made before obtaining the right

of priority concerning a specific intellectual property application, highly jeopardize the proper protection of the related IP Rights. Therefore Inventor(s) are requested to avoid any public disclosure of research results prior to filing such applications. The Open University of Tanzania shall endeavour to avoid undue delays in publications.

- 9.19 The IPMO and the inventor(s) shall jointly determine an appropriate commercialization strategy as part of the evaluation process within 6 months from the date of The Open University of Tanzania's decision. The strategy will outline the tasks of each concerned party in the commercialization process and establish deadlines for the specific actions.
- 9.20 The IPMO shall be responsible to carry out the commercialization plan and it shall submit specific proposals, such as draft agreements or business plans, to the person or committee appointed by The Open University of Tanzania for decision.
- 9.21 Commercial decisions, such as the ones concerning the terms of an assignment/licensing agreement or establishment of a spin-off enterprise, shall be taken on a case-by-case basis by the technical committee designated by OUT, giving due consideration to all circumstances.
- 9.22 The Open University of Tanzania may decide not to apply for registered industrial property protection or may withdraw an unpublished application, if it is more appropriate for the purposes of commercialization to treat the intellectual property as a confidential know-how. In such cases inventor(s) shall be requested in writing to refrain from any public disclosure of the intellectual property. When choosing this option, however, The Open University of Tanzania shall take the Researchers' freedom to publish as well as public interest into account.
- 9.23 If the Open University of Tanzania decides to discontinue an application, to withdraw it, or not to maintain a granted or registered right, the provisions of Paragraph 6.6. shall apply. Such decisions shall be taken by the IPMO.
- 9.24 Intellectual property not falling within the scope of Paragraph 6 may also be disclosed to the Open University of Tanzania by Researchers under the terms of this Policy. In such cases The

Open University of Tanzania shall decide, within 14 days from the full disclosure of all relevant information, whether to exploit the intellectual property. If The Open University of Tanzania decides to undertake the protection and commercialization of the intellectual property, the rules set out in this Policy shall apply.

- 9.25 Expenses incurring in connection with the protection and commercialization of Intellectual Property shall be borne by The Open University of Tanzania.
- 9.26 During the evaluation and commercialization period the full description of the intellectual property shall be disclosed to third parties under a confidentiality agreement.

### **10.0 Management of Intellectual Property Rights Policy**

The Open University of Tanzania recognises that there has been poor management and coordination of intellectual property at the University. To this end, the University is committed to managing efficiently and effectively any intellectual property arising out of employees, students and visiting scientist work, and therefore, shall:

10.1 Establish an Intellectual Property Management Unit (IPMU) headed by an Intellectual Property Management Officer.

10.2 Establish an Intellectual Property Committee as a technical committee of the Board of Research and Publications to assist in the implementation of this policy.

### **11.0 Intellectual Property Portfolio**

The policy recognizes the importance of a well streamlined procedure where all the research activities and innovations are documented. The policy, therefore, stipulates that the University shall:

11.1 Develop an inventory/database and/or portfolio of all research activities and innovations.

11.2 The Intellectual Property Management Officer shall maintain records of The Open University of Tanzania's intellectual property in an appropriate form and in sufficient detail. He/she shall monitor the deadlines for the payment obligations related to the maintenance of protected intellectual property.

11.3 The IPMO shall maintain accounting records on each intellectual property. He or she shall ensure that the intellectual property is recorded in the accounting records, that any costs incurred be paid in due course and that the revenues from exploitation be distributed.

**12.0 Distribution of Revenues**

The Open University of Tanzania acknowledges the contribution of researchers and therefore accepts the need to financially reward the researchers as a means of encouraging/ motivating further creativeness at OUT. To achieve this OUT shall therefore devise a system of benefit-sharing (except for patents) which shall be guided by the following principles:

12.1 The Open University of Tanzania provides an incentive to inventor(s) by distributing revenue generated from the commercialization of the intellectual property.

12.2 The expression ‘net income’ shall mean all license fees, royalties and any other monies received by The Open University of Tanzania, arising from the commercialization of intellectual property less all the expenses incurred in connection with the protection and commercialization of the intellectual property at The Open University of Tanzania.

12.3 Division of income derived from IP other than patents shall be as follows:

| <b>Level of IP income</b>       | <b>Inventor(s)</b> | <b>DRP</b> | <b>Inventor’s Department</b> |
|---------------------------------|--------------------|------------|------------------------------|
| First USD 5,000 of IP royalties | 60%                | 20%        | 20%                          |
| Over USD 5,000 of IP royalties  | 50%                | 25%        | 25%                          |

12.4. In cases where there is more than one inventor, the Inventor’s share is divided between the inventors in a proportion which reflects their respective contributions as provided in the signed Invention Disclosure Form.

12.5. In certain cases The Open University of Tanzania reserves its right to negotiate special terms concerning revenue distribution, in particular when income is generated through

sale of shares or payment of the dividend of shares in cases where shares have been allocated to The Open University of Tanzania in an entity to which the intellectual property is licensed or assigned but which is not a spin-off enterprise.

### **13.0 Dispute and Appeals**

The OUT recognises that in the course of generating, commercialising and sharing benefits arising from intellectual property, disputes are bound to occur among different stakeholders. An effective and efficient way of resolving intellectual property disputes that is not costly and time consuming and above all, which is flexible, need be put in place in order to further new inventions, innovations and research. To this end, the following principles shall apply in resolving disputes arising from the implementation of this Policy:

- 13.1. In the first instance, disputes shall be dealt with by the IPMO. A decision shall be taken within 45 days from the submission of the concern.
- 13.2 In the event the dispute remains unresolved, parties shall refer the matter to an arbitrator.
- 13.3 Any legal dispute arising in connection with the rules of this Policy shall be resolved based on the relevant provisions of this Policy as well as the relevant applicable Tanzanian laws.

### **14.0 Entry into Force of the Policy**

- 14.1. This Policy shall come into effect on 1 July 2017.
- 14.2. All agreements concluded by The Open University of Tanzania and the researcher(s) at an earlier time shall be governed by the provisions of the Policy in effect at the time of the signing of such contracts.

### **15.0 Miscellaneous**

#### **15.1 University Logo and Trade Marks**

No person, institution or organisation shall use the name, trade mark, service mark or logo of the University or any combination thereof for any application or process whatsoever except as provided in the OUT Charter and Rules 2007 or authorised by University's management.

## **15.2 Research and Equipment**

- 15.1 Research data shall be jointly owned by the University and researcher(s) or determined on a case by case basis. Either party shall have a right to use the data for its research purposes. Sponsors of research may own the data collected for the purposes of the research. This notwithstanding, the researcher and the University shall have unrestricted access to the data, even when a project has ended. Collaborators would also have unrestricted access to all data obtained or collected through collaborative research activities. In spite of these provisions, entitlement to the ownership of primary data, software, and other products of research may vary, depending on the circumstances under which the research is conducted. As such, ownership of data would be specified in the contract agreement to be signed by the two parties.
- 15.2 Equipment purchased on externally funded research contract shall remain the property of the University upon completion of the contract. The equipment will be under the custody of the department involved in research and innovation.

## **16.0 Appendices**

Forms and template of agreements for the implementation of this Policy shall be prescribed from time to time by the person or department designated by The Open University of Tanzania.

