

INTELLECTUAL PROPERTY POLICY

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FOREWARD

KoTDA is a state agency mandated with planning and development of smart and sustainable infrastructure and to convene and catalyze a conducive environment for technology startup and enterprises in pursuit of the national development goals and vision 2030. KoTDA acknowledges that in the course of pursuing the said mandate new ideas, creations, innovations and inventions will emerge which will require Intellectual Property (IP) protection in order to maximize the value and benefits of the various stakeholders.

In its Strategic Plan 2021-2025, the Authority has committed to plan and develop smart and sustainable infrastructure and to convene, connect and catalyze a conducive environment for technology start-ups and enterprises to thrive and scale in partnership with other actors in the Innovation Ecosystem while delivering effective, responsible, and efficient smart services for enhanced quality of life.

KoTDA has developed this Intellectual Property Policy to: provide oversight in IP management; encourage and promote innovativeness; facilitate technology transfer; encourage collaboration; funding; and sponsorship. The Intellectual Property Policy will allow KoTDA, employees, visiting researchers, research sponsors, research collaborators, partners, or members of the public to interact within the KoTDA innovation ecosystem, to share in the economic potential of the ideas and creative works.

I therefore call for a concerted effort from all stakeholders, including inventors, Innovators and creators, to support KoTDA in the implementation of this Policy.

Dated 2/7/2024.....

Mr. John Okwiri

Chief Executive Officer

ABBREVIATIONS

IP: Intellectual Property

IPR: Intellectual Property Rights

IPMTO: Intellectual Property Management and Technology Transfer Office

IPC: Intellectual Property Committee

CE: Cultural Expressions

COC: Conflict of Commitment

COI: Conflict of Interest

GR: Genetic Resources

KoTDA: Konza Technopolis Development Authority

R&D: Research and Development

MTA: Material Transfer Agreement

TK: Traditional Knowledge

PIC: Prior Informed Consent

1 VISION, MISSION, AND CORE VALUES

The vision, mission, and core values of Konza Technopolis Development Authority.

Vision

A leading global Technopolis and innovation hub.

Mission

To develop a thriving sustainable smart city and vibrant innovating ecosystem contributing to Kenya's knowledge economy.

Core values

- Nurturing
- Innovation
- Collaboration
- Excellence

1.1 KoTDA Functions

KoTDA functions are as follows:

- 1) Plan and develop smart and Sustainable "World Class" infrastructure;
- 2) Attract, onboard and retain key investors and create a strong brand for the Technopolis;
- 3) Convene, Connect and Catalyze a conducive environment for technology start-ups and enterprises to thrive and scale in partnership with other actors in the Innovation Ecosystem;
- 4) Deliver effective, responsible, and efficient smart services for enhanced quality of life;
- 5) Ensure effective, efficient, and transparent city coordination, stewardship, and agile governance;
- 6) Develop adequate institutional capacity for efficiency, effectiveness, and sustainability; and
- 7) Develop and institutionalize KOTDA values, principles, and practices for the achievement of the Authority's vision.

2 POLICY STATEMENT ON IP

KoTDA is committed to ensuring that Intellectual Property (IP) emanating from its activities is used to support the KoTDA mandate as set out in Legal Notice No. 23 of 2012, and in accordance

with its legal obligations, for the benefit of KoTDA, Government of Kenya, innovators, inventors, creators, investors, partners and other stakeholders.

The following laws were relied upon in coming up with this policy:

- 1) The Constitution of Kenya, 2010
- 2) The Copyright Act, 2001
- 3) The Trademarks Act, 2001
- 4) The Industrial Property Act, 2001
- 5) The Anti-Counterfeit Act, 2008
- 6) The Competition Act, 2010
- 7) The Protection of Traditional Knowledge and Cultural Expressions Act, 2016
- 8) International Treaties and Agreements:
 - Kenya is a member of various international treaties and agreements that influence its IP Laws which we have considered in the drafting of this policy. They include:
 - 1) The Berne Convention for the Protection of Literary and Artistic Works
 - 2) The Paris Convention for the Protection of Industrial Property
 - 3) The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

3 PURPOSE OF THE IP POLICY

The purpose of this Policy is to provide guidance on IP management at KoTDA.

4 POLICY OBJECTIVES

The objectives are as follows:

- 1) to establish a framework to govern disclosure, ownership, protection and utilization of IP by internal and external stakeholders;
- 2) to promote commercialization and transfer of IP assets;
- 3) to enhance collaboration and partnerships;
- 4) to provide a framework for benefit sharing relating to IP's generated by internal and external stakeholders;
- 5) to promote IP management;
- 6) to provide an optimum environment and incentives for the creation of new knowledge and facilitation of transfer of technology; and
- 7) to create awareness on IP and encourage innovation and creativity.

5 DEFINITIONS OF KEY TERMINOLOGY

Without prejudice to any laws, in this Policy the definition set out below shall apply:

Assignment - means the execution of a written agreement by the creators, inventors or innovators transferring their rights, titles, and interests in an IP.

CEO -means KoTDA Chief Executive Officer

Collaborative Research - means research that KoTDA undertakes with a third party;

Copyright - means Copyright as defined under the Copyright Act;

Creator - means any person who creates, conceives, reduces to practice, authors, or otherwise makes a substantive intellectual contribution to the creation of IP work ;

Direct Costs - means expenses associated with the protection, patenting, and commercialization of intellectual property. Such costs do not include the salaries or other overhead costs of KoTDA.

Disclosure - means written submission to Intellectual Property Management and Technology Transfer Office on standard invention/innovative Disclosure Forms, the description of any creation, innovation or invention that a Creator, Innovator or Inventor believes he/she has made.

Employee - means any person who receives salaries or wages from KoTDA or any person or corporate body who is contracted by KoTDA and is paid an allowance, commission, honoraria or fees, or any other form of remuneration.

Employer - means KoTDA.

Indigenous Knowledge and Resources - mean knowledge and resources that can be related to a particular community or locale, or group thereof, but that would not be considered to be in the public domain at an international level.

Industrial Design - means the Industrial Design as defined in the Industrial Property Act, 2001

Innovation - means utility models, Tec novation models, and industrial designs and any other non-patentable creations or improvements that may be deemed as deserving specified intellectual property rights;

Innovator - Creator or creators, breeder or breeders and is understood to mean the person or persons who devise an innovation or create a work or breeds a plant.

Inventor -means all persons whether staff and other persons employed by KoTDA whether full or part-time, visiting researchers, partners, collaborators, consultants, sponsors, volunteers, interns, attachees, fellows, visitors who invent.

Intellectual Property - means the creation of the human mind (intellect) and includes patents, utility models, industrial designs, trade marks, geographical indications, layout designs, trade secrets, copyright, know-how,, and plant breeder's rights.

Invention - means a solution to a specific problem in a field of technology which relates to a product or process.

IP Committee - means the body established under Section 7 of this Policy;

Konza Technopolis - Smart City under the implementing agency KoTDA.

Know-How - means the actual human technical skills derived from experience in working on a certain technology. It may or may not be part of a trade secret. Licensing of most new technologies works best when accompanied by the transfer of know-how either through training, manuals, or secondment of personnel to the licensor until the licensor's personnel can optimally utilize the invention.

License - means a contract under which the owner of a patent or other form of intellectual property authorizes/permits the use of rights in the intellectual property by another party.

Net Revenue - means the remaining proceeds after deducting all direct costs necessary for obtaining protection for, and commercializing , applicable intellectual property.

Net Royalties - means gross royalties less any and all costs incurred by KoTDA in the course of protection and maintenance of the intellectual property and technology transfer.

Patent - means a monopoly, granted to protect an innovation/ invention(s) for a specified period.

Reassignment - means the execution of a written agreement by KoTDA assigning all KoTDA's rights, title, and interest in and to innovation, invention or creation back to the innovators, inventors or creators who had originally assigned their right, title, and innovation, invention or creation to whoever KoTDA shall designate in writing.

Research - means any creative work undertaken on a systemic basis to increase knowledge or investigation undertaken to discover new facts and examine a problem to get additional information.

A trade or service mark - means a symbol, word, number, or design used by a goods or service provider to identify his or her goods or services and to distinguish them from the goods or services of others.

Stakeholders - includes any visiting researchers, partners, collaborators, consultants, sponsors, volunteers, interns, attachees, fellows, visitors and any other individuals participating in research sponsored or hosted by KoTDA or making substantial use of KoTDA's facilities, funds, or other resources.

Substantial use - means using funds, time, office, equipment, facilities, or other resources administered or belonging to KoTDA. However, KoTDA does not construe the routine use of the library as constituting substantial use of KoTDA's resources;

Sponsored Research - means any research undertaken by KoTDA being contracted by a private organization;

Scholarly Works- means all copyright works which are the outputs of research, creative works and academia by staff, Students or Visitors. Scholarly Works include books; chapters in books; articles; monographs; theses and dissertations;

Trade Secrets - Confidential information not publicly available that has commercial value because of its confidential nature and which the owner has taken reasonable efforts to keep secret.

Traditional Knowledge - means Traditional Knowledge as defined under the Protection of Traditional Knowledge and Cultural Expressions Act No. 33 of 2016;

Training - means to teach a particular skill.

Utility Model - means any form, configuration or disposition of element of some appliance, utensil, tool, electrical and electronic circuitry, instrument, handicraft mechanism or other object or any part of the same allowing a better or different functioning, use, or manufacture of the subject matter or that gives some utility, advantage, environmental benefit, saving or technical effect not available in Kenya before and includes micro-organisms or other self-replicable material, products of genetic resources, herbal as well as nutritional formulations which give new effects.

Visiting Researchers- Any person who is neither a Staff of KoTDA including visiting scientists and any other individuals participating in research, teaching, training or making significant use of KoTDA facilities, funds or other resources.

Visitors- Any person who is neither a Staff nor a Student and who engages in work at KoTDA, and who concludes an Appointment agreement with KoTDA.

KoTDA'S Resources shall include:

- 1) National Data Centre Resources;
- 2) Workspace, office, equipment, and research material;
- 3) Computer hardware, software, support, and internet time;
- 4) Supplies and utilities of KoTDA;
- 5) Funding for Research & Innovation by KoTDA;
- 6) KoTDA's Official working time;
- 7) KoTDA's logo;
- 8) KoTDA Staff; and
- 9) Any other resource that the Authority may acquire from time to time.

6 SCOPE OF THE POLICY

This Policy applies to all IP generated at KoTDA, by KoTDA staff and other stakeholders including but not limited to visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees, fellows and visitors.

Rights and obligations under the Policy shall survive any termination of employment, appointment or engagement, partnership or understanding at KoTDA unless otherwise agreed in a written agreement.

This Policy constitutes an understanding that is binding on the KoTDA staff and other stakeholders including but not limited visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees, fellows and visitors. Once this Policy is approved by the Board of Directors:

- i. KoTDA shall ensure that the employment contracts with its employees are amended to include a provision placing the employee under the scope of this Policy.
- ii. KoTDA shall ensure that all agreements signed with its stakeholders including but not limited to visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees, fellows and visitors incorporates the provisions of this Policy.
- iii. The Policy shall be available on the Authority's website and information materials produced by KoTDA targeting visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees, fellows and visitors. The information material produced shall be in sufficient detail to enable the full text of the Policy to be easily accessed and ensure prior informed consent.
- iv. KoTDA shall ensure that upon commencing employment, appointment or engagement with KoTDA staff and other stakeholders including visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees, fellows and visitors they must

declare any background IP and indicate whether they wish to exclude from the application of this Policy.

- v. All Background IP shall be declared by all parties prior to employment, appointment or engagement with KoTDA. Background IP of the external party (ies) belongs to such party. Each Party shall, on request, grant the other(s) a license on fair and reasonable terms, to use any Background IP that is required for the exploitation of the Foreground IP.
- vi. KoTDA shall ensure that students participating in a Research Project sign an agreement before commencing the project, to the effect that they have read and will comply with the provisions of this Policy.
- vii. KoTDA shall ensure that visitors, visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees and fellows sign an appointment agreement before commencing any activity at KoTDA. Such agreement shall place the visitor, visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees and fellows under the scope of this Policy and shall make reference to this Policy, a copy of which will be made available to the visitor, visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees and fellows.

7 ADMINISTRATION AND IMPLEMENTATION

7.1 Establishment of Intellectual Property Management and Technology Transfer Office (IPMTTO) and Intellectual Property Committee (IPC)

For effective implementation of this Policy, KoTDA shall:

- i. Establish an IPMTTO within the Knowledge Economy and Innovation division.
- ii. Establish an IPC as an advisory committee in the determination of IP management within the framework of this Policy and consistent with applicable laws and regulations.

7.1.1 Functions of IPMTTO

The IPMTTO shall perform the following functions:

- i. Create awareness and provide IP support to KoTDA staff and other stakeholders regarding IP management through continuous education and sensitization programs;
- ii. Assess intellectual assets for potential IP;
- iii. Evaluate the commercial potential of intellectual assets;
- iv. Promote technology management and transfer;
- v. IP contract negotiations and management;
- vi. Undertake continuous IP audit;

- vii. Liaise with IP offices, partners and other stakeholders for the purposes of effective IP management;
- viii. The head of the IPMTTO will be the secretary to the IPC on matters pertaining to IP management;
- ix. Perform the day-to-day functions relating to all matters of IP including administration matters and keeping records;
- x. Advice on amendment of this Policy and all matters pertaining to intellectual property administration;
- xi. Advice on IP management Cost and revenue distribution; and
- xii. And any other IP related function.

7.1.2 Intellectual Property Committee (IPC)

Composition and Functions of IPC

KoTDA shall establish an IPC to oversee the implementation of this Policy and provide strategic guidance to the IPMTTO.

7.1.2.1 Composition of IPC

The IPC shall consist of 5 members who shall be senior management and appointed by the Chief Executive Officer (CEO) from the following departments/divisions:

- i. Business Development and Innovation;
- ii. Research, Strategy & Policy;
- iii. Corporation Secretary & Legal Services;
- iv. ICT & Smart City Solutions;
- v. Finance & Accounts ; and
- vi. IPMTTO (Secretary to IPC).

The Chairperson of the IPC shall be appointed by the CEO.

Where the IPC is meeting for discussion on matters pertaining to a particular IP, it may invite persons with interest relating to the IP in discussion.

The IPC may co-opt an expert(s) during its meetings.

7.1.2.2 The functions of Intellectual Property Committee (IPC) shall include:

- i. Developing and reviewing standard operating procedures (SOP) and any other issues related to IP management, including but not limited to disclosures, licensing, agreements, and IP audit.
- ii. Make recommendations on IP management and commercialization strategy for all intellectual assets.
- iii. To hear and determine disputes arising from implementation of the Policy;
- iv. Make recommendations on the review and amendments of this Policy;

8 OWNERSHIP OF INTELLECTUAL PROPERTY AND RIGHTS OF USE

This section provides guidelines for determination of IP ownership.

8.1 IP Created by Staff

8.1.1 Institution Ownership

Except or otherwise as provided by the law or this Policy, any intellectual assets which result from research work carried out by, or under the direction of KoTDA, or from funds under the control of, or administered by KoTDA, or which come as a result of any employee's duties with KoTDA, or which have been developed in whole or part by the utilization of KoTDA's resources or facilities, shall belong to KoTDA.

8.1.2 Staff Ownership

Staff will own or co-own the IP they have created when:

- a) Such IP is outside the course and scope of their employment and without Substantial Use of KoTDA's resources; or
- b) Such IP vests in Scholarly Works; or
- c) Other IPRs, as required by law for which KoTDA cannot or does not wish to claim ownership and has communicated such in writing.

8.1.3 IP Emanating from Research Contracts

In the absence of provisions to the contrary in any law or this Policy, the terms of the Contract will regulate ownership of IP created by staff in the course of a project that forms part of a contract.

8.1.4 Appointment of Staff at another Institution

It is the responsibility of each Staff that holds an honorary or other academic or research appointment at another institution (Host Institution) to bring to the attention of the Host Institution, including its IPMTO, his/her obligations in terms of this Policy, prior to the tenure at the Host Institution. To the extent that the Host Institution's IP Policy makes a claim on IP created by the Staff pursuant to such appointment, the Staff shall ensure that the Host Institution negotiates a suitable IP arrangement with KoTDA.

8.1.5 IP Generated by Students, Interns and Attachees

Student, Interns and Attachees ownership:

- a) Students, Interns and Attachees shall own any IP (including theses, dissertations and other Scholarly Works) that they invent, innovate or create in the course of their research unless the named individuals have:
 - i. received financial support from KoTDA in the form of stipends or grant funds for the research in which case the ownership shall be negotiable;
 - ii. made substantial use of KoTDA resources in connection with the research;
 - iii. been funded by a sponsor under a grant or sponsored research agreement, or is subject to a Materials Transfer Agreement (MTA), confidential disclosure agreement or other legal obligation that restricts ownership of the intellectual property.
- b) IPMTO may, upon agreement with the students, interns, attachees, provide commercialization services for their IP. In this event, students, interns, attachees will be required to assign their IP to KoTDA and will be afforded the same rights and obligations as Staff under this Policy.

8.1.6 Theses or Dissertations

A student must submit a copy of his/her final thesis or dissertation to the KoTDA library.

8.2 IP Emanating from Research Contracts

The terms of the Research Contract shall regulate the ownership of IP created by a student in the course of such Research Contract.

8.2.1 Institution Ownership

IP emanating from a Student's Research Project shall be owned by KoTDA if the IP is created by making Substantial Use of the KoTDA's resources and if the research carried out by the student forms part of KoTDA's directed or funded research work.

8.2.2 Institution ownership responsibilities

If KoTDA is the owner of IP created by a Student under a Research Project or Research Contract, respectively, KoTDA shall:

- a) provide the student with an explanation of the reasons for the assignment of IP rights to KoTDA;
- b) advise the student to seek independent advice regarding the assignment;
- c) obtain a deed of assignment from the Student for all IP rights emanating from the Student's Research Contract or Research Project, where relevant, in return for revenue sharing as provided for in this Policy.

8.3 IP Created by visiting researchers, partners, consultants, volunteers and collaborators.

Ownership of IP generated by all above-named individuals will be subject to the terms of their appointment agreement / contract with KoTDA prior to their tenure.

8.3.1 Ownership under a Collaborative Research

When KoTDA is involved in collaborative research with institution(s) or business entity, the IP shall be co-owned and the distribution of royalties will be governed by a written contractual agreement between the parties prior to the commencement of the collaboration. Both institutions shall contribute equally towards expenses related to acquiring IP Rights and commercialization, including Licensing.

8.4 Moral Rights

Recognition: KoTDA undertakes to respect and protect the moral rights which copyright law confers on Authors of copyright works.

Rights granted: KoTDA acknowledges that moral rights vest in Authors of copyright works irrespective of the copyright ownership thereof and include:

- a) the right of attribution of authorship in respect of the copyright works;
- b) the right not to have authorship of the copyright works falsely attributed; and

- c) the right of integrity of authorship in respect of the copyright works.

No waiver: KoTDA will not require staff and other stakeholders including visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees, fellows and visitors to waive their moral rights as a condition of employment, appointment or engagement or funding.

8.5 Public Domain

Public Domain: KoTDA IP forms part of the Public Domain in the following circumstances:

- a) if a Research Contract provides that the research results be placed into the Public Domain; or
- b) if staff and other stakeholders including visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees, fellows and visitors made use of open educational resources (OERs) or resources licensed through Open Source or Creative Commons Licenses and the licensing conditions require release of derivatives into the Public Domain.

Release into the public domain: KoTDA may release IP into the Public Domain in the following circumstances:

- a) where it is deemed to be in the public interest;
- b) if the IP has low commercial or other development potential and low prospects of fostering the development of new products or services; or
- c) if deemed necessary by KoTDA.

9 PUBLICATION, NON-DISCLOSURE, AND TRADE SECRETS

Right of publication: KoTDA encourages and supports the right of Creators to decide if and when to publish their Research results. However, publication which may disclose any possible KoTDA IP shall first be cleared by IPMTTO.

Non-disclosure for IP protection: In conjunction with the right of publication, Creators, Inventors, Innovators and Owners should be aware that premature Public Disclosure may result in loss of IP protection rights. Therefore, they are strongly encouraged to make all reasonable efforts to identify any protectable IP as early as possible, and shall consult IPMTTO before making any Public Disclosure of potential KoTDA IP.

Trade Secrets: KoTDA may designate certain confidential information as a Trade Secret, owned by KoTDA. In that event, all Creators, Innovators, or Inventors will be obligated to maintain

secrecy of the Trade Secret and to follow the directions for management of the Trade Secret as prescribed by IPMTTO.

10 RESEARCH CONTRACTS/AGREEMENTS

KoTDA staff and other stakeholders including visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees, fellows and visitors shall not have the right to enter into a research contract with external parties on behalf of KoTDA unless they are authorized to do so by the CEO.

For effective implementation of this IP Policy KoTDA shall make sure that all stakeholders involved with IP, adhere to all research regulations, agreements and procedures as follows: -

Authority: KoTDA staff and other stakeholders including but not limited to visiting researchers, partners, consultants, sponsors, volunteers, interns, attachees, fellows and visitors shall not have the right to enter into a Research Contract or Agreement with external parties on behalf of KoTDA unless they are authorized to do so by the CEO in writing.

Research Contracts / Agreements: All Research Contracts, Agreements and potential IP must be executed and performed in compliance with this IP Policy and other existing KoTDA policies and Agreements.

Due diligence: Persons acting for and on behalf KoTDA shall exercise due diligence and consult IPMTTO when negotiating and signing Research Contracts, and any other Agreements that may affect KoTDA's IPRs.

Ownership and rights to use: Subject to any provisions in law to the contrary, ownership and rights to use shall be agreed upon with the external entity, in accordance with the Research Contract / the Agreement.

Governing Legislations: Research Contracts / Agreements shall comply with any applicable laws and Regulations.

Approval: Proposed Research Contracts / Agreements and other legal statements concerning KoTDA's IPRs shall comply with the provisions of this Policy. Any variance from this Policy must be approved by the relevant authority.

Basic Principles: The IP clauses in all Research Contracts and Agreements shall be governed by the following basic principles:

1. **Concluded from the outset:** A Research Contract or Agreement must be executed in writing and signed by KoTDA and the external parties prior to the commencement of

any Project and, as appropriate and without limitation, must contain terms relating to ownership, management, cost-sharing and use of IP arising from the Project as well as any Background IP.

2. **Background IP:** All KoTDA Background IP must be properly recorded and declared prior to the commencement of a Research Contract or Agreement and belongs to KoTDA. Similarly, Background IP of the external parties belongs to such party. Use of such Background IP requires express written permission.
3. **Foreground IP (IP arising from a Research Contract or Agreement):** IP generated pursuant to a Research Contract by KoTDA staff and other stakeholders including visiting researchers, researchers, partners, consultants, volunteers, interns, attachees and fellows shall be governed by this Policy, any executed Agreement in relation to the specific project, and the Research Policy.
4. **Co-owned Foreground IP:**
 - a. **Terms for co-ownership:** Co-ownership of IP generated pursuant to a Research Contract or Agreement shall be in accordance with national legislative provisions, the provisions of this Policy and as may be mutually agreed by the collaborating parties.
 - b. **Costs for protecting and maintaining co-owned IP:** The costs for protecting and maintaining any IPRs shall be shared between KoTDA and the external parties in accordance with national legislative provisions, the provisions of this Policy and as may be mutually agreed by the collaborating parties.
 - c. **Serendipitous IP:** Any IP created during the course of the Research Contract or Agreement which falls outside the scope of the Research Contract or Agreement shall be owned by KoTDA or the external parties which developed such IP, unless agreed contractually otherwise in the Research Contract or Agreement.
5. **Right of first refusal to the IP:** The Research Contract or Agreement may include provisions giving the external parties, a right of first refusal to commercialize the IP emanating from the Research Contract or Agreement, through a license or joint venture arrangement or assignment.
6. **Publication delay:** KoTDA allows creators, innovators, inventors, students and researchers the freedom to publish their work. However, KoTDA acknowledges that delays in publication for the purpose of initiating statutory protection of the IP are often

necessary. In this regard, KoTDA will agree, on a case-by-case basis, to a contractual delay in publication. Such delay will not exceed ninety days from the date the IPMTTO is notified of the intent to publish, unless otherwise authorized by the relevant authority.

7. **Use of the IP for Research and teaching:** In instances, where KoTDA IP is licensed exclusively or assigned as part of the Research Contract or Agreement, all efforts should be made to secure a royalty-free license for use of the IP for on-going Research and teaching purposes.
8. **Exceptions to the Policy.** In certain cases, it may be necessary and/or beneficial to KoTDA to enter into a Research Contract or Agreement that contains exceptions to the provisions of this Policy. Any such exceptions require prior, written approval by the Chief Executive Officer.

11 DETERMINATIONS BY THE IPMTTO

11.1 Responsibility to Disclose IP;

Recording: Creators, Innovators or Inventors shall keep appropriate records of their Research in accordance with KoTDA's policy procedures and make reasonable efforts to ensure that only those individuals within KoTDA who have a need to have access to such records for the performance of their duties are granted such access.

IP Disclosure: Where a Creator, Innovator or Inventor identifies potential IP resulting from his/her Research or that of his/her team, he/she shall disclose such potential IP to IPMTTO promptly by means of an IP Disclosure Form.

Complete disclosure: Creators, Innovators or Inventors must provide the IPMTTO with complete and accurate information regarding the IP generated. The IPMTTO shall acknowledge the submission of the IP Disclosure Form and indicate the reference number and date of receipt.

Disclosure of IP related to Genetic Resources (GRs) and/or Traditional Knowledge(TK): When potential IP has been developed using GRs and/or TK, the IPMTTO shall require its Creators, Innovators or Inventors to disclose relevant information, in accordance with the law.

Creatorship/Inventorship/Innovation: Creators, Inventors or Innovators shall, upon request, sign the appropriate legal documents provided by IPMTTO that attest to creatorship, inventorship or innovation. Where there is more than one Creator, Innovator, or Inventor, and there is a dispute as to the contribution to creatorship, Inventorship, or Innovation, IPMTTO shall in consultation with the Creators, Innovators or Inventors, assist in the determination of the

percentage IP creatorship, inventorship or innovation, failing which it shall be assumed that there was an equal undivided contribution.

11.2 Determination as to IP Protection and Commercialization

Evaluation and recommendation: IPMTTO will analyze the information disclosed in the IP Disclosure Form and make appropriate recommendations.

Decision to protect/Commercialize: The IPMTTO will decide within 60 days, whether or not it wishes to protect and/or commercialize the IP.

KoTDA's obligation to notify Creators, Innovators or Inventors of its decision: Within not more than 60 days IPMTTO will notify the Creator(s), Inventor or Innovator of the decision of whether KoTDA will or will not pursue IP protection and Commercialization of their IP Disclosure.

11.2.1 KoTDA Elects not to Protect /Commercialize the IP

Written notification: If KoTDA is unable to or decides not to protect or commercialize the KoTDA IP, it shall notify the relevant Creator, Innovator or Inventor of its decision in writing.

No prejudice to IP protection: The Creator, Innovator or Inventor should receive the written notification in a timely manner that enables the relevant Creator, Innovator or Inventor to take any formal steps to ensure the protection of IP, should they so desire.

Assignment: If the Creator, Innovator or Inventor elects to take assignment of the IP, KoTDA shall ensure that a deed of assignment is executed without delay.

Terms and conditions: If KoTDA assigns IPRs to the Creator, Innovator or Inventor, the assignment may be subject to one or more of the following terms and conditions:

- a) that upon Commercialization, KoTDA be compensated for any expenditure it may have incurred in connection with the protection of such IP; and/or
- b) that KoTDA be granted a non-exclusive, royalty-free license to use the IP for Research and teaching purposes.

12 COMMERCIALIZATION OF IP

KoTDA supports efforts directed towards commercialization of its IP assets. KoTDA shall, as soon as reasonably practicable, make a decision on whether or not it wishes to protect and/or commercialize its disclosed IP and notify the relevant Creators, Innovators of its decision thereof.

- i. KoTDA reserves the right not to commercialize its IP if:
 - a. there is no reasonable prospect of commercial success;

- b. it is not deemed to be in the best interest of KoTDA; or
 - c. it is not deemed to be in the public interest.
- ii. In the event that KoTDA decides not to pursue commercialization, it will take steps to return/assign the Intellectual Property Rights (IPRs) to the Creators, Innovators or Inventor, under mutually agreed terms.
- iii. Where KoTDA decides to commercialize the IP, it shall determine, with input from the relevant Creators, Innovator or Inventor, the most appropriate commercialization strategy which may include but not limited to:
 - a. licensing, either exclusive, non-exclusive, sole or cross license;
 - b. assignment;
 - c. formation of a commercialization Entity to which the IP is licensed or assigned in terms of this Policy;
 - d. non-profit use;
 - e. joint ventures;
 - f. royalty free access on humanitarian or other grounds;
 - g. donation; and/or
 - h. various combinations of the above.
- iv. KoTDA may commission institutional or other agents to pursue commercialization of its IP in accordance with sub-paragraph (iii) above by researching the market for the technology, identifying third parties to commercialize it, entering into discussions with potential licensees, negotiating appropriate licenses or other agreements, monitoring progress, and distributing royalties to the inventors, creators, innovators, authors and other parties in accordance with this Policy.
- v. Creators, Innovators or Inventors of IP which have been selected for IP protection and commercialization by KoTDA must provide KoTDA with all reasonable support in the assessment, protection and commercialization of the IP. KoTDA will ensure that reasonable efforts are made to keep the Creators, Innovators or Inventors informed and, where appropriate, involved in the commercialization of the IP to which they contributed.
- vi. KoTDA may cover the necessary costs leading to licensing of creations, innovation or invention and such costs will be a prior charge against royalty income. KoTDA will recover all expenses incurred for the protection and licensing of each KoTDA creation/innovation/invention from its licensing proceeds before distributing the net proceeds remaining among the Creator, Innovator or Inventor and KoTDA.

vii. **Intellectual property donations:** If an individual or organization (donor) chooses to offer to KoTDA any form of IP in which KoTDA has no claim, KoTDA may accept ownership or control of the IP provided that:

- a. The donor makes the offer through KoTDA;
- b. The donor discusses provisions and makes an agreement (including distribution of income provisions) with KoTDA;
- c. The donor warrants that he or she owns all rights, titles and interests to the IP, and that to the best of his or her knowledge, the IP does not infringe upon any existing IP;
- d. KoTDA may accept charitable donations of IP from an individual, governmental or non-governmental organizations;
- e. Upon the transfer of title in the IP to KoTDA, the IP will be managed in accordance with this Policy; and
- f. KoTDA may through a relevant agreement donate IP upon a written request or on its own motion or volition.

12.1 Assistance to IPMTTO

Creators, Innovators or Inventors of IP which has been selected for IP protection and commercialization by KOTDA must provide IPMTTO with all reasonable support in the assessment, and protection (including preventing premature disclosure and execution of any documents including deeds of assignment and deeds attesting to creation, innovation or invention), and commercialization of the IP.

12.2 Sovereignty and Cooperation

KoTDA shall have the sole discretion regarding the commercialization of IP owned by it. Notwithstanding, KOTDA will ensure that reasonable efforts are made to keep the Creators, Innovators or Inventors informed and, where appropriate, involved in the commercialization of the IP to which they contributed.

12.3 Guiding Principles

Regardless of the mode of IP commercialization, the transaction will be executed in a contract that:

- i. Protects the interests of KoTDA and its stakeholders;
- ii. Reserves the right of KoTDA to use the IP for information and research purposes;
- iii. Assures that the IP will be utilized in a manner that will serve the greater public good; and

- iv. Assures that the IP will be developed and brought to the marketplace as useful goods and services, and prohibits the “shelving” or “mothballing” of the IP or its use in any illegal or unethical manner.

13 INCENTIVES AND DISTRIBUTION OF REVENUES

13.1 Equity Shares

- i. KoTDA may negotiate for equity shares either in full or partial in a partnership or joint venture with any entity that has sought to obtain a license to KoTDA's creation(s), innovation(s) or invention (s) in exchange for license fees and royalties.
- ii. KoTDA may also negotiate for equity interests in lieu of, or in addition to monetary consideration as part of an agreement with an external entity relating to applicable IP. In such situations, the Creator(s), Innovator(s) or Inventor(s) shall decide whether to take equity or royalty options.

13.2 Distribution of Revenue and Incentives

The section provides a framework for distribution of revenue and incentives from IP generated assets for purposes of promoting creativity and innovation at KoTDA. The distribution of revenue and incentives shall be guided by the following:

- i. Recognition of IP generation and commercialization during staff performance appraisals;
- ii. Opportunities for training;
- iii. Technical, financial and infrastructure support towards the innovation, creation and development of IP; and
- iv. Facilitate collaborative arrangements with industrial partners to secure funding for further research towards the creation and innovation of IP.

13.2.1 Distribution of Revenue

General principles

The following principles shall apply to the distribution of revenue realized after commercialization of an IP;

- i. Revenues received as a result of commercialization of an IP, shall be utilized to encourage and promote creativity and innovation.
- ii. The revenue distributable shall be net of all the expenses incurred by KoTDA including but not limited to applicable taxes, all costs incurred towards protecting and commercializing the IP and costs for defending or prosecuting infringement suits that might arise.

- iii. Where revenue is received by KoTDA from commercialization of an IP arising out of KoTDA activities, after sharing royalties with third parties, the net revenue shall be distributed as follows:
 - a. KoTDA Creator(s), Innovator (s) or /Inventor(s) -30%
 - b. Further Research - 10%
 - c. KoTDA- 60%
- iv. Where IP is generated through collaborative arrangements with third parties' revenue sharing formula shall be a subject matter of the specific agreements between KoTDA and the third parties and in accordance with the existing applicable laws.
- v. In the event of a dispute or uncertainty regarding the Creators', Innovator or Inventor share of the Net IP Revenue from a specific IP, the issue shall be brought for resolution to the IPC.
- vi. The distribution of Net Revenues shall be made on quarterly basis.
- vii. **Taxes:** All Payments shall be subject to applicable government taxes.

14 CONFLICTS OF INTEREST AND COMMITMENT

This section provides for the declaration and management of conflict of interest (COI) and conflict of commitment (COC) in generation, protection, and utilization of Intellectual Assets.

Commitment to KoTDA: Staff primary commitment of resources and intellectual contributions should be in line with the core functions of KoTDA. KoTDA stakeholders including visiting researchers, partners, consultants, volunteers, interns, attachees and fellows' commitment of time and intellectual contributions will be subject to their terms of appointment or agreements with KoTDA.

Best Interests of KoTDA: Staff and KoTDA stakeholders including visiting researchers, partners, consultants, volunteers, interns, attachees and fellows' have a primary professional obligation to act in the best interests of KoTDA.

Agreements with External Parties: It is the responsibility of all staff and KoTDA stakeholders including visiting researchers, partners, consultants, volunteers, interns, attachees and fellows to ensure that their agreements with external parties do not conflict with the IP Policy of KoTDA.

Disclosure of COI and COC: KoTDA shall provide mechanisms for staff and KoTDA stakeholders including visiting researchers, partners, consultants, volunteers, interns, attachees and fellows to disclose all potential and existing COI or COC to KoTDA IPMTTO.

15 IP PORTFOLIO MAINTENANCE

15.1 Recording and Monitoring

IPMTTO shall maintain records of the KOTDA's IP in an appropriate form and provide sufficient details. It shall monitor the deadlines for the payment obligations related to the maintenance or annuity fees of protected IP, and shall, within a reasonable time, inform the person or department designated to make such payments.

15.2 Audits and Monitoring

IPMTTO shall Perform an IP management audit at least once every year. It shall also observe continuous monitoring of the implementation of this Policy.

15.3 Accounting

KoTDA shall maintain income/expense accounting records on each IP so that revenue-sharing allocations can be calculated.

15.4 Use of the Trade Mark, Name or Logo of KoTDA

No person, institution or organization shall use the name, trade or service mark or logo of KoTDA or any combination thereof for any application or process, advertising, marketing, or other promotional purposes without the express approval of KoTDA.

16 TRADITIONAL KNOWLEDGE, CULTURAL EXPRESSIONS AND GENETIC RESOURCES

This section provides guidelines on Access, Sustainable Utilization and Sharing of Benefits of IP derived from Traditional Knowledge (TK), Cultural Expression (CE) and associated Genetic Resources (GR). KoTDA shall recognize the holders/providers/owners of TK, CE and associated GR.

TK, CE and associated GR shall be accessed in accordance with the requirements of relevant laws.

KoTDA shall make provision in all Research Contracts concluded for the protection of any IP which may arise from the use of TK, CE and associated GR.

Where feasible, benefit sharing shall be guided by mutually agreed terms signed between KoTDA and holders/providers/owners. KoTDA shall provide for and endeavor to maintain in perpetuity the right to recognition to holders/providers/owners of any and all indigenous knowledge or genetic resource in any IP rights that it holds, transfers, or licenses. It shall be accessed through Prior Informed Consent (PIC) and mutually agreed terms on benefit sharing.

17 GOVERNING LAWS AND REGULATIONS

This Policy shall be interpreted in a manner consistent with all applicable laws and regulations pertaining to ownership of IP, confidentiality, conflict of interest policies and those regulating the use of human and animal subjects, as well as laws pertaining to equity and freedom of information requests and other policies.

18 DISPUTE RESOLUTION

Any internal disputes or questions of interpretation arising under this Policy must in the first instance be referred to IPMTTO for consideration and referral to IPC for resolution within 14 days.

Any party aggrieved by the decision of the IPC shall have a right of appeal to the CEO within 7 calendar days.

19 REVIEW AND AMENDMENTS

This Policy will be reviewed and where necessary amended after every three (3) years. In this case:

- a. all IP disclosed on or after the effective date of such amendment shall be governed by the Policy as amended; and
- b. all IP disclosed prior to the effective date of the amendment shall be governed by the Policy prior to such amendment, provided that the provisions of the Policy as amended shall apply to all IP licensed or otherwise commercialized on or after the effective date of any such amendment regardless of when the IP is disclosed.

20 POLICY IMPLEMENTATION RESPONSIBILITY

This Policy will be implemented by IPMTTO, IPC and staff members. If an existing agreement is renewed, revised, or amended after the Effective date of this Policy, reasonable attempts shall be made to conform such agreement to the requirements of this Policy as of the date on which it is renewed, revised, or amended.

Pre-existing agreements that are not revised by the time the Policy comes into effect shall continue to apply as it was before the Policy became effective, until the expiry of the same.

21 EFFECTIVE DATE

This Policy comes into effect on this 2 day of July 2024

Signed John Paul Okwiri

John Paul Okwiri, OGW

Chief Executive Officer

