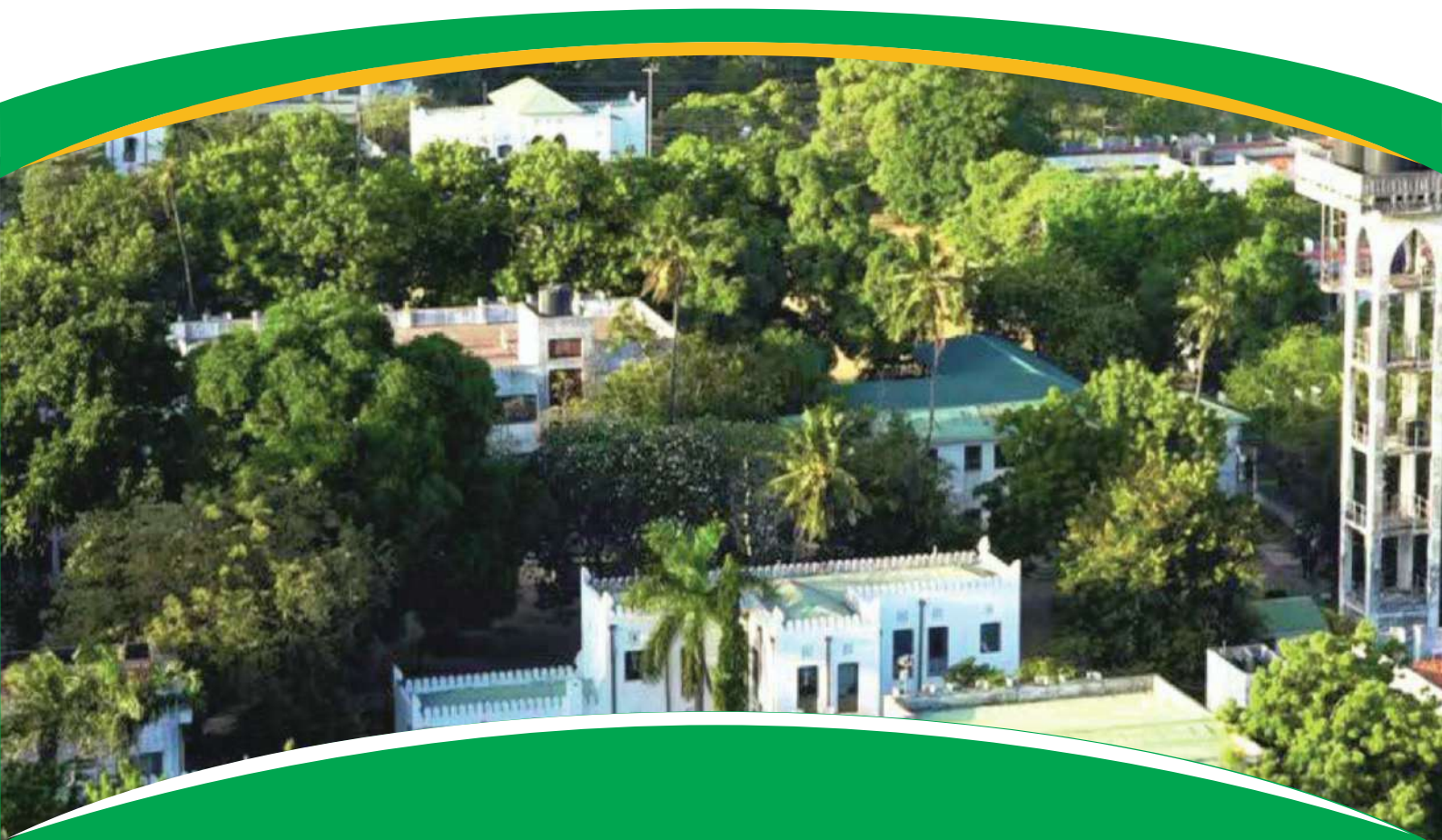




TECHNICAL UNIVERSITY OF MOMBASA

A Centre of excellence

WHISTLEBLOWING POLICY



TUM is ISO 9001:2015 Certified



TECHNICAL UNIVERSITY OF MOMBASA

WHISTLEBLOWING POLICY

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ACRONYMS

CPC	Corruption Prevention Committee
EACC	Ethics and Anti-Corruption Commission
HOD	Head of Department
TUM	Technical University of Mombasa
VC	Vice-Chancellor

DEFINITIONS

“Whistleblowing” is the disclosure based on one’s reasonable belief that any person has engaged, is engaging or preparing to engage in improper conduct.

“Whistle-blower” is a person who discloses information on improper conduct in accordance with this policy.

“Improper conduct” is any conduct which if proved, constitutes a breach of integrity.

“Appointed Officer” means the secretary to the Corruption Prevention Committee.

“Disciplinary Offence” means any action or omission which constitutes a breach as provided by law or the University’s code of conduct and ethics, policies or a contract of employment

“Confidential Information” includes:

- i) Information about the identity, occupation, residential address, work address or whereabouts of:
 - i. A whistle-blower; and
 - ii. A person against whom a whistle-blower has made disclosure of improper conduct
- ii) Information disclosed by a whistle-blower; and
- iii) Information that, if disclosed, may cause detriment to any person.

“Investigating Officer” means a person assigned to conduct an investigation of improper conduct.

“University Stakeholders” means students, staff and anyone with an interest in Technical University of Mombasa

“University” means Technical University of Mombasa.

PREFACE

Whistleblowing protection is growingly recognized as a key factor to promote a culture of public accountability and integrity. Whistleblowing processes – or processes for encouraging and protecting staff to speak up about wrongdoing concerns and integrity challenges – are vital to the integrity and good governance systems in organizations. At the present time, around the world, this importance is being recognized not only in new rules but new organizational policies – informed by a new vision of both the benefits and the responsibilities that accompany effective whistleblowing processes.

An increasing number of public and private institutions are enacting laws, to protect whistleblowers from both the private and public sector from occupational such as dismissal, suspension, demotion, forced or refused transfers, ostracism, reprisals, threats, or petty harassment. The Government of Kenya recognises the importance of whistleblowers in its war against craft.

Therefore, protection of whistleblowers is key in securing the conviction of corrupt individuals and hence, public institutions are required to set down policies to aid in their protection. TUM is committed to maintaining the highest standards of honesty openness and accountability. The University aspires to conduct its business with responsibility as expected of it by funding bodies and reflecting the highest standards in public life. This policy is a testament to TUM's desire to support the Government's war against Corruption as well as a motivation and protection strategy for would-be whistle-blowers.



Dr Robert Arunga

Chairman of Council

FOREWORD

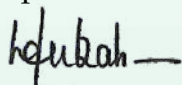
Economic fraud destroys stakeholders' confidence, threatens development plans of an institution, endangers employment opportunities and undermines good governance. Whistleblowing processes – or processes for encouraging and protecting staff to speak up about wrongdoing concerns and integrity challenges – are vital to the integrity and good governance systems in organizations as they help to stem craft.

At the present time, around the world, the significance of whistleblowers is being recognized not only in new rules but new organizational policies – informed by a new vision of both the benefits and the responsibilities that accompany effective whistleblowing processes. Nevertheless, this significance renders the whistleblower, vulnerable and weak needing protection against the pressures that confront them. Consequently, the need for the Whistle-blower's Policy goes beyond the statutory requirements.

The policy will ensure that the institution meets its public obligations as well as ensure that public resources are utilised accordingly. The implementation of the policy will lead to savings through the fight against corruption whose returns may be ploughed back in the development of physical and human resources.

TUM's Performance Contract lays emphasis on the eradication of institutional sleaze. The Ethics and Anti-Corruption Commission (EACC) on the other hand, demands that public institutions have a whistle-blower's policy at their respective workplaces.

As a University, our commitment is to act professionally, fairly and with integrity. TUM recognizes corruption as a risk that can occur. This policy, therefore, a measure taken by the University against the vice of corruption. I wish to commend the Corruption Prevention Committee in coming up with this policy.



Prof. Laila U. Abubakar

Vice-Chancellor

EXECUTIVE SUMMARY

Technical University of Mombasa recognises the importance of the war against corruption and has put in place a whistle-blower's policy to aid in this fight. The commitment to fight against corruption is a statutory commitment as well as Government policy that all public institutions must put in place.

This statement sets out the University's Policy and provides in some detail advice and guidance to both staff and students on the scope of the Policy. It explains that a member of TUM Community, who has a reasonable belief that serious malpractice relating to any of the protected matters specified in the Policy has occurred or is likely to occur, may raise a concern under the procedure agreed by the Council and which is described in this statement. There is also information about the rights of staff to raise the matter externally and the protection afforded to them if they choose to do this.

This policy identifies the legislative and administrative framework in place concerning whistleblowing in the fight against corruption. It defines what constitutes whistleblowing and identifies the ways in which University stakeholders can undertake the same without fear. It provides the response mechanisms of whistle-blowing, apportions responsibilities to management as well as the university community, guides on how to prevent corruption and encourages whistle-blowing. It outlines the implementation and review process that this policy shall be subjected to.

1.0 INTRODUCTION

This Policy and procedure reflects the University's recognition that while it seeks the highest standards at all times, there may be events or circumstances where individuals feel the University does not meet these standards. Staff, students, and the general public are therefore encouraged to use this policy and procedure, in its proper context, to draw the University's attention to any perceived malpractice, impropriety or wrongdoing, and will be supported in so doing.

Indeed it is hoped that any inappropriate activities will be discouraged by the protection given to those who raise a matter of concern or disclose information when they have a reasonable belief that they are acting in the public interest. The University will take seriously any submissions made under this Policy. Its attitude will be one of accepting that the person expressing a concern genuinely believes a problem exists and that if an individual has bypassed a normal line management structure, that they may have had a good reason to do so.

No detrimental action will be taken against a person within the University raising a concern under this Policy, provided that it is done without malice and reasonably believing it to be true. The University will support those concerned and protect individuals from reprisals resulting from their raising a concern.

The following paragraphs set out how a concern or "public interest disclosure" should be raised and how each case will be handled. Members of staff are expected to use the Policy and procedure rather than air any concerns that they may have to bodies outside of the University, or on social media. This policy is guided by the following:

1.1 Vision

A Technical University of Global Excellence in Advancing Knowledge, Science and Technology

1.2 Mission

To advance knowledge and its practical application through teaching, research and innovation to serve both industry and the community

1.3 Core Values

The Council, Senate, Management, staff and students of TUM will endeavour to institutionalize and inculcate values fostering a strong corporate culture while promoting quality service delivery, cohesion in our diverse community and achieving the targeted goals. These will be realized by espousing the following values:

- i) *Excellence.* We strive for excellence in quality teaching, learning and research, and customer focus by continuously assessing ourselves, applying our own and international benchmarks.
- ii) *Integrity and Professionalism.* We expect high standards of integrity, ethics and respect from one another across the institution and honour collegiality and a climate of critical professionalism among staff and students.
- iii) *Equity.* We are committed to equity, diversity and fairness, and seek to nurture and build on our diverse cultural heritage
- iv) *Teamwork.* We place a high premium on teamwork and shared responsibility working with each other and with external groups in ways that are mutually beneficial.
- v) *Creativity, innovativeness and environmental sustainability.* We embrace innovative problem solving and promote creative value-based solutions. We cultivate a socially secure, responsive and sustainable green environment.

1.4 Motto

Jiddu Tajidu (Endeavour and Achieve)

2.0 POLICY STATEMENT, GUIDING PRINCIPLES AND OBJECTIVES

2.1 Policy Statement

TUM is committed to the maintenance of the highest standards. It seeks to conduct its affairs in a responsible manner, taking into account the requirements of the funding bodies and general guidance and legislation on standards in public life, particularly with regard to probity, openness and accountability.

The Constitution of Kenya gives legal protection to staff and students against being dismissed or penalized by employers as a result of disclosing information which, in the reasonable belief of that member of staff, is in the public interest and tends to show one or more specified types of malpractice, wrongdoing or dangers. This is commonly known as 'whistleblowing'.

It is a fundamental principle of employment that an employee will faithfully serve his or her employer and not disclose confidential information about the employer's affairs. However, where an individual discovers information which he or she reasonably believes tends to show one or more types of malpractice, wrongdoing or dangers as specified in this Policy within the organization junction with third parties who are external to the organization, such as suppliers or contractors, and they reasonably believe that this information should be disclosed in the public interest, then the disclosure should be made without fear of reprisal. This Whistleblowing Policy enables such disclosures within the University to be made independently of line management, if that is the preference of the individual who wishes to make the disclosure, in accordance with the following procedures.

2.2 Guiding Principles

- i) Everyone should be aware of the importance of preventing and eliminating wrongdoing in the University. Individuals should be alert for illegal or

- ii) unethical conduct and report anything of that nature that they become aware of.
- iii) Any matter raised under this policy will be investigated thoroughly and promptly in accordance with the investigation procedures below and an appropriate response will be provided to the individual who raised the issue.
- iv) Maliciously making a false allegation is a disciplinary offence.
- v) An instruction to cover up wrongdoing is itself a disciplinary offence. If told not to raise or pursue any concern, even by a person in authority such as a manager, individuals should not agree to remain silent. They should report the matter further to their senior manager.
- vi) An individual may make a qualifying disclosure without fear of reprisals providing they reasonably believe that the information disclosed, and any allegation contained in it, are substantially true and it is reasonable for them to make the disclosure.
- vii) No individual will be victimized for raising a legitimate concern under this procedure. This means that the continued employment and opportunities for future promotion, further study, placements and the integrity of assessments, of the individual, will not be prejudiced because they have raised a legitimate concern.

2.3 Policy Objectives

The objectives of the Whistleblowing Policy are to:

- i) To encourage members of the TUM community to report suspected wrongdoing as soon as possible, in the knowledge that their concerns will be taken seriously and investigated as appropriate;
- ii) To provide members of TUM fraternity with guidance as to how to raise those concerns;
- iii) To reassure those covered by the policy that they are able to raise genuine concerns in good faith without fear of reprisals, even if they turn out to be mistaken (a disclosure motivated by dishonesty, malice, or a predominant

- iv) ulterior motive unrelated to the policy objectives, will not be a disclosure made in good faith);
- v) To enable individuals to raise concerns within the institution without fear of reprisals/victimisation;
- vi) To provide a process for concerns to be raised, investigated and where appropriate acted upon;
- vii) To act as a deterrent to potential perpetrators of misconduct; and
- viii) To strengthen the confidence of all interested parties (funding bodies, students, members of staff, etc.) that the University maintains the highest standards of conduct.

2.4 Legislative and Administrative Requirements

2.4.1 Legislative Requirements

This policy has been developed in the context of the following legislation:

- i) The Constitution of Kenya, 2010;
- ii) The Witness Protection (Amendment) Act 2010;
- iii) The Leadership and Integrity Act, 2012;
- iv) The Ethics and Anti-corruption Commission Act, 2011;
- v) The Anti-corruption and Economic Crimes Act, 2016;
- vi) The Public Officer Ethics Act, 2003;
- vii) Technical University of Mombasa Charter 2013;
- viii) Technical University of Mombasa Statutes 2019;
- ix) Technical University of Mombasa Code of Conduct and Ethics 2017.

2.4.2 Responsibility

- i) The Vice-Chancellor shall be accountable for ensuring the effective implementation of this Policy throughout TUM and representing TUM's interests/concerns in the event of publicity or litigation resulting from a whistleblowing allegation.

- ii) Respective DVCs and Registrars shall be responsible for ensuring that the principles of this policy are communicated and understood throughout their teams. They shall also be responsible for putting the policy into practice by:
 - a) Ensuring that all concerns raised by workers are taken seriously where appropriate;
 - b) Ensuring that concerns are investigated properly, objectively and in a timely manner;
 - c) Ensuring that the worker is kept informed of progress; and
 - d) Ensuring that action is taken to resolve the concern.
- iii) The HR Department shall be responsible for providing coaching, advice and guidance to respective DVCs and Registrars on the implementation and use of the policy.

2.5 Scope/Applicability

- i) This Whistleblowing Policy provides guidance to TUM staff, students, members of Council and other members of the University on the procedure for the disclosure of information which, in that person's reasonable belief, is in the public interest and tends to show one or more types of malpractice, impropriety or dangers as specified in the Policy.
- ii) Although a disclosure made under the Whistleblowing Policy may (at least initially) be investigated under the procedure detailed in the Policy, such investigation may subsequently lead to the invocation of other policies and procedures as deemed necessary or more appropriate.
- iii) The policy is designed to enable Members of the University Community to raise concerns at a high level and/or disclose information which the individual believes to show serious malpractice and/or impropriety within the organisation. The disclosure should be in the 'public interest'; therefore the policy cannot be used to raise purely private matters (e.g. relating to a member's individual contract) or in relation to a grievance which seeks to redress a wrong done to oneself.

- iv) The policy is not designed to provide an avenue for Members of the University Community to question financial or business decisions taken by the University and it cannot be used as an avenue to reconsider matters which should or have already been addressed under other associated policies

3.0 TYPES OF MALPRACTICES AND DISCLOSURE

3.1 Types of Malpractices and Impropriety

It is not possible to provide an exhaustive list of the types of disclosures which are likely to fall within these categories and so be covered by this Policy, but all concerns raised under this Policy will be treated fairly and properly, and with respect. However, it is ultimately the responsibility of the University (rather than the individual making the disclosure) to decide if, or how, a formal investigation should then be conducted, and for determining the nature of any actions which may follow as a result. To be dealt with under this Policy the disclosure of information should, in the reasonable belief of the person making it, be in the public interest and tend to show one or more of the following types of malpractice, impropriety or dangers:

- i) a criminal offence;
- ii) a failure to comply with a legal obligation;
- iii) a miscarriage of justice;
- iv) an act creating a risk to health and safety;
- v) an act causing damage to the environment;
- vi) Unethical conduct; or
- vii) The deliberate concealment of any of the above.

3.2 Disclosure

It should also be emphasized that the Whistleblowing Policy is not designed to permit or encourage the questioning of legitimate financial or business decisions properly taken by the University. Similarly, it may not be used to bring about the consideration (or reconsideration) of any matters of private interest to the individual concerned, which may be properly and appropriately addressed under other University procedures, such as those referred to in 3.1.

3.2.1 Protected Disclosure

The University is committed to the highest standards of ethics, openness, probity and accountability. It seeks to conduct its affairs in a responsible manner taking into account the requirements of the funding bodies and the standards in public life. It requires all employees and other members of the University Community to conduct themselves in a manner consistent with these values.

In Kenya, there is legal protection to employees against being unfairly dismissed; penalized by their employer, or harassed by their colleagues if they make a disclosure (that is in the public interest) about wrongdoing/malpractice in their organization. All Members of the University Community shall be **protected** from unfair dismissal or being penalized or harassed as a Whistle Blower if they:

- i) Reasonably believe that malpractice (Section 3.1) in the workplace is happening, has happened in the past or is likely to happen in the future;
- ii) Are making the disclosure in the public interest;
- iii) Follow the whistleblowing procedure (Section 3.3)

3.2.2 Qualifying Disclosure

A 'qualifying disclosure' means any disclosure of information where the member of the University Community reasonably believes (and it is in the public interest to report it) that one or more of the following matters is either happening, has taken place or is likely to happen in the future:

- i) A criminal offence;
- ii) The breach of a legal obligation;
- iii) A miscarriage of justice;
- iv) A danger to the health and safety of any individual (includes risks to the general public as well as other employees or students of the University);
- v) Damage to the environment;
- vi) Deliberate attempt to conceal any of the above.

3.3 Whistle Blowing Procedure

It is important that individuals disclose information in accordance with this Policy at the earliest opportunity and, for the avoidance of doubt, it should be clearly stated by the individual that the disclosure is, in fact, being made under the Whistleblowing Policy. Where two or more individuals are aware that they have knowledge of the same information that is covered by this Policy, they should each make a separate and individual disclosure to the University and they should not discuss the matter further between themselves. Submission of joint disclosures may lead to counter-allegations of collusion or of 'manufactured' information.

The disclosure shall contain:

- i) Description of the people or parties that are involved in the improper conduct;
- ii) Details of the improper conduct, including the relevant dates of the occurrence;
- iii) Particulars of witnesses if any;
- iv) Particulars or production of documentary evidence, if any; and
- v) Locations or events.

3.4. Disclosure

Disclosures or 'blowing the whistle' on malpractice shall be made as specified below:

- i) Where Members of the University Community are able to do so, they shall make the disclosure in writing to the Vice-Chancellor (as the designated officer);
- ii) If the disclosure is about the DVC or Registrar, it should be made directly to the Vice-Chancellor;
- iii) Disclosure against a member of the University Management Board shall be printed, enclosed in an envelope marked "private and confidential" and

addressed to the “Human Resources and Appointment Committee” of the TUM Council;

- iv) If for any other reason the person making the disclosure feels that it is not appropriate to raise the matter with the VC, DVC, Registrar or any other member of the management, it shall be raised directly with the Chair of Council;
- v) Where that individual is the subject of the disclosure, it should be made to the Chair of the University Council;
- vi) Where Members of the University Community are unable or unwilling to make a disclosure to the designated officer, they shall make a disclosure through the University Whistle Blowing:
 - a) Mobile Hotline
 - b) Email
 - c) TUM website www.tum.ac.ke
- vii) Individuals making a disclosure via the Hotline can choose to remain completely anonymous, with only details concerning the alleged malpractice (not the individual’s identity) being passed back to the University designated officer for investigation;
- viii) Where Members of the University Community feel the University:
 - a) would cover up the alleged malpractice;
 - b) would treat them unfairly if they complained; or
 - c) if they have previously made the disclosure to their employer (including disclosure to the designated officer or, as appropriate to the VC or Council Chair and they have not acted upon it; they shall tell an independent prescribed person or body about the malpractice. It must be the correct prescribed person or body for the issue, in this case, shall be reported directly to EACC via the following channels:

- i. Anonymous Whistle-blowers System on the EACC website
www.eacc.go.ke ;
- ii. Email – report@integrtty.go.ke;
- iii. In-person to the EACC officers in Mombasa; or
- iv. Any other means convenient.

4.0 CONDUCT OF INVESTIGATION

- i) In respect of the disclosures made to the Appointed Officer, he or she shall assess the same to determine whether it is related to improper conduct or excluded from the scope of this policy. The Appointed Officer shall:
 - a) Within seven days from the date the disclosure was made,
 - b) Prepare an assessment report to the VC appraising him/her of the result of the assessment and recommend either to ignore the disclosure or to take further action. The VC may extend the time for the completion of the assessment report.
- ii) In respect of the disclosures made against the Appointed Officer or a member of the Council, the receiving party shall assess the same to determine whether it is related to improper conduct or excluded from the scope of this policy before deciding on the next course of action.
- iii) For the purpose of the clause (ii), the receiving party shall be the VC and the Chairperson of Council or appointing authority in the case of the appointed officer and the member of the Council respectively. Within seven days from the date when the assessment report is received, so far as is practicable, the VC or Chairperson of Council shall have the authority to make the final decision including but not limited to the following:
 - a) Rejection of the disclosures in part or in total if it falls outside the scope of this policy;
 - b) Directing the matter or any part thereof to be dealt with under other appropriate internal procedures;
 - c) Directing an investigation into the disclosures made on any persons involved or implicated;
 - d) Designating the appointed officer or any other persons from within or outside the University to conduct investigations or to take any other action pursuant to this policy;

- e) Obtaining any other assistance from other parties such as external auditors or obtaining legal advice whether from internal or external advocates; and
 - f) Referring the matter to an appropriate law enforcement agency in case further investigation is necessary.
- iv) Where the reporting is made to an outsourced function, the assessment report shall be made to the VC as soon as is reasonably practicable.
 - v) The Investigating Officer shall have free and unrestricted access to all records of the University and shall have authority to examine, obtain or make copies of all or any portion of the contents of documents, files, desks, cabinets, and other storage facilities of the University so far as it is necessary to assist in the investigation of the improper conduct.
 - vi) At the conclusion, of the investigation, the investigating officer will submit an investigation report of the findings to the VC, Chair of Council, and the appointing authority as the case may be.

4.1 Confidentiality

Reasonable steps shall be taken to maintain the confidentiality of the whistle-blowers' confidential information.

4.2 Protection of the Whistle-Blower

- i) Upon making a disclosure in good faith, based on reasonable grounds and in accordance with and in pursuance to this policy:
 - a) The Whistle-blower shall be protected from any reprisal within the University as a direct consequence of the disclosure; and
 - b) The Whistle-blowers' identity and such other confidential information of the Whistle-blower shall not be disclosed.
- ii) The protection against reprisal is extended to any person related to or associated with the Whistle-blower.

- iii) A Whistle-blower may lodge a complaint to the University of any reprisal committed against the Whistle-blower or any person related or associated with the Whistle-blower, by a member of staff of the University.
- iv) The Whistle-blower protection conferred under this policy is not limited or affected notwithstanding, that the disclosure of the improper conduct does not result in any disciplinary action of the person against whom the disclosure was made.

5.0 POLICY IMPLEMENTATION AND REVIEW

5.1 Policy Implementation

The Appointed Officer shall be responsible for implementing this Policy as delegated by the VC.

5.2 Policy Review

The Policy shall be reviewed after five years or when an urgent need arises.

**THIS WHISTLEBLOWERS POLICY IS EFFECTIVE FROM THIS 15TH DAY OF
APRIL 2019.**

SIGNED..........

COUNCIL CHAIRPERSON

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