

S. No. 3416
H. No. 5208

Republic of the Philippines
Congress of the Philippines

Metro Manila
Fourteenth Congress
Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-seventh day of July, two thousand nine.

[REPUBLIC ACT NO. 10055]

AN ACT PROVIDING THE FRAMEWORK AND SUPPORT SYSTEM FOR THE OWNERSHIP, MANAGEMENT, USE, AND COMMERCIALIZATION OF INTELLECTUAL PROPERTY GENERATED FROM RESEARCH AND DEVELOPMENT FUNDED BY GOVERNMENT AND FOR OTHER PURPOSES.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled

ARTICLE 1

TITLE, DECLARATION OF POLICY AND OBJECTIVE, SCOPE AND OTHER GENERAL PROVISIONS

SECTION 1. *Short Title.* – This Act shall be known as the "Philippine Technology Transfer Act of 2009".

SEC. 2. *Declaration of Policies and Principles.* – The State fully recognizes that science, technology and innovation are essential for national development and progress. It shall, therefore, give priority to research and development, invention, innovation and their utilization. It shall also encourage the widest and most systematic participation of all stakeholders in policy-making related to science and technology, and in the generation, transfer and utilization of intellectual property, especially for the benefit of the general public.

The State shall facilitate the transfer and promote the utilization of intellectual property for the national benefit and shall call upon all research and development institutes and/or institutions (RDIs) that perform government-funded research and development (R&D) to take on technology transfer as their strategic mission and to effectively translate results of government-funded R&D into useful products and services that will redound to the benefit of Filipinos, notwithstanding the income generated from intellectual property rights (IPRs) and technology transfer activities.

The State acknowledges that the successful transfer of government-funded R&D results depend on the proper management of intellectual property, development of capacity by RDIs to become self-sustaining and competitive, and on enhancing interaction and cooperation with the private sector, particularly small and medium enterprises through collaborative and contract research based on equitable, fair access, and mutual benefit for all involved partners.

The State shall establish the means to ensure greater public access to technologies and knowledge generated from government-funded R&D while enabling, where appropriate, the management and protection of related intellectual property.

SEC. 3. *Objective.* – This Act aims to promote and facilitate the transfer, dissemination, and effective use, management, and commercialization of intellectual property, technology and knowledge resulting from R&D funded by the government for the benefit of national economy and taxpayers.

SEC. 4. *Definition of Terms.* – For purposes of this Act:

(a) “Intellectual Property (IP)” is the term used to describe intangible assets resulting from the creative work of an individual or organization. IP also refers to creations of the mind, such as inventions, literary and artistic works, and symbols, names, images and designs used in commerce.

(b) “Intellectual Property Rights (IPRs)” refer to those rights recognized and protected in Republic Act No. 8293, otherwise known as the “Intellectual Property Code of the Philippines”.

(c) “Potential IPRs” refer to intellectual property, or the products of creation and research that form the subject matter of IPRs, but which are not yet protected by the statutory grant of IP rights.

(d) “Protection of IPs” refers to the statutory grant of rights upon which the basis of enforcing the right rests, such as issuance of patents; registration of utility models, industrial designs, and trademarks or availment of protection of undisclosed information and, other rights as may be provided by law. “Protected IPs”, therefore may refer to issued or pending patents; registered utility models, industrial designs and trademarks.

(e) “IP Code” Refers to Republic Act No. 8293, otherwise known as the “Intellectual Property Code of the Philippines”.

(f) “Intellectual Property Rights Management” refers to the principles, mechanisms and processes involved in the identification, assessment, protection, utilization and enjoyment of intellectual property rights.

(g) “Government Funding Agency (GFA)” refers to any government agency or instrumentality, or government-owned and/or -controlled corporation that provides research grants and other technical and material support, from government appropriations and resources and those sourced from government-managed Official Development Assistance (ODA) funds.

(h) “Parent Agency” refers to the Department or agency, which exercises the power of control or supervision over the GFAs, RDIs or RDI acting as the GFA itself. In general, where multiple GFAs are involved, the department or agency, which has the largest financial contribution, shall be deemed as the parent agency, except as may otherwise be specifically provided by this Act.

(i) “Research and Development Institute or Institution (RDI)” refers to a public or private organization, association, partnership, joint venture, higher education institution or corporation that performs R&D activities and is duly registered and / or licensed to do business in the Philippines, or otherwise with legal personality in the Philippines. In the case of private

RDI, they shall be owned solely by the citizens of the Philippines or corporations or associations at least sixty *per centum* (60%) of the capital of which is owned by such citizens. This does not include RDIs covered by international bilateral or multilateral agreements.

(j) “Research Funding Agreement” refers to a contract entered into by and among the GFA and other funding agencies and the RDI. It governs ownership of IP, duties and responsibilities of GFAs and RDIs, technology disclosure, exclusivity of the license, use for commercialization, establishment of spin-off firms, technologies for research use, and sharing of income and benefits from technology commercialization.

(k) “Research Agreement” refers to a contract entered into by RDIs and researchers, including the agreements between the RDI and collaborating RDIs.

(l) “Researcher” refers to a natural person who is engaged by the RDI by employment or other contract, to conduct research with or for the RDI.

(m) “Spin-off firm or company” refers to a juridical entity that is an independent business technology taker with a separate legal personality from the GFA, RDI and researcher created through the initiative of the researcher-employee who generated the technology.

(n) “Technology” refers to knowledge and know-how, skills, products, processes, and/or practices.

(o) “Technology transfer” refers to the process by which one party systematically transfers to another party the knowledge for the manufacture of a product, the application of a process, or rendering of a service, which may involve the transfer, assignment or licensing of IPRs.

(p) “Commercialization” refers to the process of deriving income or profit from a technology, such as the creation of a spin-off company, or through licensing, or the sale of the technology and/or IPRs.

(q) “Revenue” refers to all monetary and non-monetary benefits derived as a result of the development, production, transfer, use and/or commercialization of IPRs, including income from assignments and royalties from licenses.

(r) “Research and Development (R&D)” refers to creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and to use this stock of knowledge to devise new applications.

SEC. 5. *Coverage.* –

(a) All R&D activities carried out on behalf and for the interest of the Philippine government by RDIs receiving grants directly from the GFAs;

(b) All intellectual property rights derived from R&D activities funded by government;

(c) All government agencies that fund R&D activities as well as provide financial, technical or material support to such R&D activities; and

(d) All institutions that implement government funded R&D.

ARTICLE II

INTELLECTUAL PROPERTY OWNERSHIP

SEC. 6. *Ownership of Intellectual Property and Intellectual Property Rights.* – The ownership of IPs and IPRs shall be governed by the following:

(a) In recognition of the fact that RDIs are in a better position to identify the potential for economic utilization of IPs and IPRs subject to their possession of the right skills and management capability, the ownership of IPs and IPRs derived and generated from research funded by the GFA, whether such funding is in whole or in part, shall, in general, be vested in the RDI that actually performed the research, except in any of the following circumstances:

(1) When the RDI has entered into a public, written agreement sharing, limiting, waiving or assigning its ownership of the IPs or IPRs generated from its research in favor of the GFA: *Provided*, That the same may only be voluntarily executed by the RDI to protect public interest, and in particular involves national security, nutrition, health, or the development of other vital sectors;

(2) In case of failure of the RDI to disclose potential IPRs to the GFA, whereupon the GFA shall assume the rights to the potential IPR;

(3) In case of failure of the RDI to initiate the protection of potential IPRs within a reasonable time from confidential disclosure to the GFA, which shall in no case exceed three (3) months from public disclosure, whereupon the GFA shall assume the rights to the potential IPR; and

(4) In case the RDI ceases to become a Filipino corporation as defined in Article I, Section 4(i) of this Act.

(b) In case of collaborative research where two (2) or more RDIs conducted the research funded by the GFA, the RDIs shall own the IPRs jointly or as otherwise stipulated in the research agreement between them: *Provided*, That any research agreement between RDIs and other funding entities shall be made with the full knowledge of the GFA: *Provided, further*, That the agreement shall strictly be in accordance with the provisions of this Act.

(c) Noting in this Article shall modify, amend, derogate or prejudice IPs that will be owned by employees of the RDIs under the IP Code and other existing laws.

ARTICLE III

RIGHTS AND RESPONSIBILITIES OF THE GOVERNMENT FUNDING AGENCIES AND RESEARCH AND DEVELOPMENT INSTITUTES OR INSTITUTIONS

SEC. 7. Rights and Responsibilities of a Government Funding Agency.
– Under this Act, the GFA shall:

(a) Protect government interest in the IPs and IPRs generated from the R&D that it funded through suitable provisions in the research funding agreement. The GFA is authorized to withhold from public disclosure, for a reasonable time, any information relating to potential IPR of the RDI, to allow the RDI to pursue full protection of such IPR;

(b) Monitor efforts and effectiveness of the RDI in securing IP protection and pursuing IP commercialization, as well as provide alternative solutions and assistance in case of shortfall in the RDI's performance in protecting, utilizing and commercializing the IP;

(c) Ensure adequate freedom to use the IP for further research to expand the knowledge frontier and requirements for publication of information as appropriate in accordance with government policy or academic policy, or institutional mandate of the RDI; and

(d) Allow sharing of revenues from IP commercialization in a way that is not onerous to commercialization: *Provided*, That when the GFA assumes commercialization of the IPs, it shall, subject to existing laws requiring transparency and accountability, the Commission on Audit (COA) Rules and Regulations, and as required under Article IX, Section 20 of this Act, be allowed to directly negotiate agreements for the commercialization of IPs: *Provided, further*, That it shall obtain a written recommendation from the Secretary of the Department of Science and Technology (DOST) and secure a fairness opinion report from an independent third party body composed of experts from the public and private sectors as may be determined by the DOST.

The fairness opinion report shall contain a statement expressing the opinion of the body as to the fairness to the GFA of the proposed transaction, particularly its financial terms. The report shall include, but not be limited to, a review and analysis of the proposed transaction, financial statements, industry information, economic conditions and assumptions used therein and a comparison of similar transactions: *Provided, however*, That it shall not be precluded from resorting to other modes of commercialization as allowed by all applicable laws.

SEC. 8. *Rights and Responsibilities of the RDIs* – The following are the rights and responsibilities of the RDIs that availed of research funds from GFAs:

(a) Identify, protect, and manage the IPs generated from R&D funded by the GFA and pursue commercial exploitation diligently as a required performance stipulated in the research funding agreement and as allowed by this Act and other applicable laws.

In case of commercialization by public RDIs it shall, subject to existing laws requiring transparency and accountability, the COA Rules and Regulations and as required under Article IX, Section 20 of this Act, be allowed to directly negotiate agreements for the commercialization of IPs: *Provided*, That it shall obtain a written recommendation from the Secretary of the DOST and secure a fairness opinion report from an independent third party body composed of experts from the public and private sectors as may be determined by the DOST.

The fairness opinion report shall contain a statement expressing the opinion of the body as to the fairness to the RDI of the proposed transaction, particularly its financial terms. The report shall include, but must not be limited to, the provisions in Section 7(d), Paragraph 2: *Provided, however*, That it shall not be precluded from resorting to other modes of commercialization as allowed by all applicable laws.

The responsibility of the RDI to protect any potential IPRs shall also apply in the event that the RDI elects to recover ownership of the potential IPRs that have been vested in the GFA under Section 7 of this Act;

(b) Provide a means for addressing any shortfall of its performance in utilizing and commercializing the IP;

(c) Notify the GFA within a reasonable time of all IPR applications, licenses and assignments made. All applications for IP protection shall disclose any biodiversity and genetic resource, traditional knowledge, and indigenous knowledge, systems and practices as these terms are defined in Republic Act No. 8371 or the Indigenous Peoples Rights Act and Republic Act No. 9147 or The Wildlife Act;

(d) Report annually to the GFA on the progress of IP and/or IPR commercialization efforts and of all agreements entered and licenses granted;

(e) Keep account of revenues and payments to the GFA if required in the research funding agreement;

(f) Ensure that they have access to the skills and management capability to effectively perform their responsibilities of owning, managing, and exploiting the IP or IPRs. Smaller RDIs that may need external advice are encouraged to pool and share resources;

(g) Accord their staff with incentives consistent with existing laws to sustain efforts in identifying valuable IP and in pursuing IP commercialization;

(h) Be authorized, within a reasonable time, to keep confidential from the public any document or information relating to potential IPRs that are not yet fully protected by law;

(i) Make a confidential disclosure to the GFA, within a reasonable time, of any potential IPRs with possibilities for commercialization and/or technology transfer. In case of failure to disclose any such potential IPRs, Section 6 of this Act shall apply;

(j) Inform the GFA of any agreement pertaining to the research funded by the GFA and entered into by the RDI with any other entity or person. Failure to comply with the duty to inform shall render the agreement invalid as against the GFA, but in no case shall it prejudice any right of the GFA as provided in this Act; and

(k) When necessary, create and establish spin-off companies to pursue commercialization subject to their respective mandates as allowed by law.

ARTICLE IV

MANAGEMENT OF IP/S FROM R&D PERFORMED BY THE GOVERNMENT RDIs THROUGH THEIR OWN BUDGET

SEC. 9. *Responsibilities of RDIs Performing R&D with their Own Budget.* – All government RDIs performing R&D through an annual budget provided by the government shall submit intellectual property management reports annually to the national government agencies where they are attached. The report shall contain plans for securing protection on IPs with commercial promise, the technology transfer, approaches to be pursued, and the progress of ongoing commercialization of technologies derived from R&D funded from their own budget.

SEC. 10. *Responsibilities of the Concerned National, Government Agencies.* – Concerned government and/or parent agencies shall monitor efforts and effectiveness of their RDIs in securing IP protection and pursuing IP commercialization, based on the annual IP management reports submitted by the RDIs.

ARTICLE V

REVENUE SHARING

SEC. 11. *Revenue Sharing.* – All revenues from the commercialization of IPs and IPRs from R&D funded by GFAs shall accrue to the RDI, unless

there is a revenue sharing provision in the research funding agreement: *Provided*, That in no case will the total share of the GFAs be greater than the share of the RDI: *Provided, further*, That in case of joint funding, where research is funded by a GFA in part, and by other entity or entities in part, the RDI may enter into contractual agreements with the other entity or entities providing funding.

Sharing of revenues between RDI and researcher shall be governed by an employer-employee contract or other related agreements, without prejudice to the rights of researchers granted under Republic Act No. 8439 or the “Magna Carta for Scientists, Engineers, Researchers, and other S&T Personnel in the Government”.

ARTICLE VI

COMMERCIALIZATION BY THE RESEARCHER AND ESTABLISHMENT OF SPIN-OFF FIRMS

SEC. 12. *Commercialization by Researchers* – In meritorious cases and to help ensure successful commercialization, an RDI shall allow its researcher-employee to commercialize or pursue commercialization of the IP and/or IPRs generated from R&D funded by the GFA by creating, owning, controlling, or managing a company or spin-off firm undertaking commercialization, or accepting employment as an officer, employee, or consultant in a spin-off firm undertaking such commercialization: *Provided*, That the concerned researcher-employee takes a leave of absence, whenever applicable, for a period of one (1) year and renewable for another year, for a total period not exceeding two (2) years, from the time the researcher signifies in writing that he/she desires to create or participate in a spin-off company: *Provided, however*, That the researcher-employee may still be allowed access to the RDIs’ laboratory facilities, subject to reasonable fees and regulations which the RDIs may impose.

The leave of absence shall be included in computing the length of service for retirement but not for the commutation of leave credits earned in the public RDI. The researcher shall not earn leave credits in the public RDI during such period of leave of absence. Such leave of absence shall not likewise affect the researcher-employee’s security of tenure or result in the loss of one’s seniority rights.

SEC. 13. *Detail or Secondment to the Private Sector.* – In case where the researcher of a public RDI would be employed by an existing company,

which will pursue the commercialization, the applicable provision of Republic Act No. 8439 or the “Magna Carta for Scientists, Engineers, Researchers and other S&T Personnel in the Government” shall prevail.

SEC. 14. *Management of Conflict of Interest.* – The RDIs shall properly manage any possible conflict of interest by adopting appropriate guidelines for its researcher-employee. The guidelines for handling of such conflicts shall include, but are not limited to, the following:

(a) RDIs shall ensure that its researchers are made fully accountable for their research and that commercial objectives not divert them from carrying out the RDI's core research program;

(b) Heads of RDIs should ensure that where researchers have any direct or indirect financial interest in a spin-off company; they shall not act on behalf of the RDI in transactions with that company;

(c) Where researchers of RDI are nominated as non-executive directors to the Board of a spin-off company or existing company in which the same RDI holds an equity stake, they should have a clear duty to ensure that the RDI's interests are not compromised by their role; and

(d) RDIs should take steps to ensure that collaborative undertaking with a spin-off or existing company is governed by a formal written public agreement.

ARTICLE VII

USE BY GOVERNMENT, COMPULSORY LICENSING AND ASSUMPTION OF POTENTIAL IPRs

SEC. 15. *Use by Government or Third Person Authorized by Government and/or Compulsory Licensing.* – This Act shall adopt the grounds, terms and conditions for the use by government or third person authorized by government, and/ or compulsory licensing as stated in the IP Code of all IPRs generated under this Act.

SEC. 16. *Assumption of Ownership of Potential IPRs.* – The GFA and/or the parent agency may assume ownership of any potential IPRs in cases of national emergency or other circumstances of extreme urgency, or where the public interest requires, and in particular concerns for national

security, nutrition, health, or the development of other vital sectors of the national economy, as determined by the head of the parent agency. Such determination shall be made within thirty (30) days after the receipt of the recommendation of the Head of the GFA. Such recommendation shall be made within thirty (30) days upon the discovery of the potential IPR by the GFA or the disclosure of the same by the RDI pursuant to Section 8(c) of this Act, or upon written notice or petition by other government agencies, or other interested persons. In cases where the parent agency itself is acting as the GFA, the Head of the parent agency may make such determination *motu proprio*, or upon written notice or petition by other government agencies or other interested parties. The right to the potential IPR shall be assumed by the GFA upon written order, declaration or determination by the Department Secretary or Head of the parent agency. The department or the agency that has functional jurisdiction over the technology or IPRs shall be deemed as the parent agency.

The determination by the Secretary or the Head of the parent agency of cases falling under the first paragraph of the right to the potential IPR to be vested to the GFA and/or parent agency shall be subject to the following conditions:

(a) The determination must be accompanied by an analysis and justification of such reason(s);

(b) The RDI may file with the Secretary or Head of the parent agency an opposition to such determination within fifteen (15) calendar days from notice or publication of the written determination;

(c) The assumption of the rights to the potential IPR by the GFA shall carry with it the obligation to equitably share with the RDI or other funding agencies any profits generated from the IPR; and

(d) The rights to the potential IPR shall revert to the RDI upon the cessation of the existence of the cases under this section as determined by the Secretary or Head of the parent agency *motu proprio* or, by petition of the RDI.

SEC. 17. Except where otherwise provided by the IP Code, in all cases arising from the implementation of this article, no court, except the Supreme Court of the Philippines, shall issue any temporary restraining order or preliminary injunction or such other provisional remedies that will prevent its immediate execution.

ARTICLE VIII

USE OF INCOME AND ESTABLISHMENT AND MAINTENANCE OF REVOLVING FUND FOR R&D AND TECHNOLOGY TRANSFER

SEC. 18. *Use of Income and Revolving Fund.* – Public RDIs undertaking technology transfer shall be vested with the authority to use its share of the revenues derived from commercialization of IP generated from R&D funded by GFAs. All income generated from commercialization of IPs and/or IPRs from R&D funded by public funds shall be constituted as a revolving fund for use of the RDI under technology transfer, deposited in an authorized government depository bank subject to accounting and auditing rules and regulations: *Provided*, That said income shall be used, to defray intellectual property management costs and expenses and to fund R&D, science and technology capability building and technology transfer activities, including operation of technology licensing offices: *Provided, further*, That no amount of said income shall be used for payment of salaries and other allowances.

In case the income after payment of all costs and expenses for IPR management, including the payment of royalties to other parties, shall exceed ten percent (10%) of the annual budget of the RDI, a minimum of seventy percent (70%) of the excess income shall be remitted to the Bureau of Treasury: *Provided*, That this shall apply only if the GFA has solely funded the research: *Provided, finally*, That this paragraph shall not apply to state universities and colleges and government-owned and controlled corporations, which enjoy fiscal autonomy under their respective charters or other applicable laws.

ARTICLE IX

INSTITUTIONAL MECHANISM

SEC. 19. *Establishment of Technology Information Access Facility and Public Access Policy.* – The DOST shall establish a system for the cost effective sharing of and access to technologies and knowledge generated from government funded R&D by developing appropriate policies and procedures on public access which shall be made known to the public. These policies and procedures shall be aimed at promoting the advancement of R&D, boosting its quality and enabling cross disciplinary collaboration, and thereby, increasing the returns from public investment in R&D and

contribute to the betterment of society. The DOST shall call for a regular national conference of all GFAs and RDIs in order to: (a) promote multi-disciplinary, joint, and cross collaboration in R&D; (b) coordinate and rationalize the R&D agenda; and (c) harmonize all R&D agenda and priorities.

SEC. 20. Development of Internal IP Policies and Establishment of Technology Licensing Offices (TLOs) and/or Technology Business Development Offices. – All RDIs are encouraged to establish their own TLOs in whatever form and to adopt their own policies on IPR management and technology transfer, in accordance with this Act and other existing laws and in support of the policies of the Intellectual Property Office of the Philippines and the national policy and the mandate of their parent agency.

SEC. 21. Capacity Building and Guidelines on IP Commercialization. – The Department of Science and Technology (DOST), the Department of Trade and Industry (DTI) and the Intellectual Property Office (IPO), in consultation with the GFAs such as the Commission on Higher Education (CHED), the Department of Agriculture (DA), the Department of Health (DOH), the Department of Energy (DOE), the Department of Environment and Natural Resources (DENR), and the Department of National Defense (DND), shall undertake activities geared towards building the capacity of the GFAs and RDIs in commercializing IPs. The DOST as chair and convenor, together with the DTI and the IPO shall jointly issue the necessary guidelines on IP valuation, commercialization, and information sharing, which may include, but not be limited to, the following considerations: public benefit and national interest, market size, cost and income. These guidelines shall be issued within one hundred twenty (120) days from the date of effectivity of this Act.

ARTICLE X

DISPUTE RESOLUTION

SEC. 22. The administrative procedure for resolving any disputes on the determination for government ownership shall be provided by the Implementing Rules and Regulations (IRR) of this Act.

ARTICLE XI

MISCELLANEOUS, TRANSITORY AND FINAL PROVISIONS

SEC. 23. *Administrative, Criminal or Civil Liability.* – The failure of the GFA or RDI to fulfill its responsibilities under this Act, or the violation of any provision by any person, natural or juridical, shall subject the person involved to appropriate administrative, criminal, or civil liability, under applicable laws.

SEC. 24. *Congressional Oversight Committee.* – For the effective implementation of this Act, there shall be a Congressional Oversight Committee, hereinafter referred to as the Technology Transfer Oversight Committee, to be composed of five (5) members from the Senate, which shall include the Chairpersons of the Senate Committees on Science and Technology, and Trade and Commerce, and five (5) members from the House of Representatives, which shall include the Chairpersons of the House Committees on Science and Technology and Trade and Industry. The Technology Transfer Oversight Committee shall be jointly chaired by the Chairpersons of the Senate and House of Representatives Committees on Science and Technology. The Vicechair of the Oversight Committee shall be jointly held by the Chairpersons of the Senate Committee on Trade and Commerce and the House of Representatives Committee on Trade and Industry.

SEC. 25. *Funding.* – The activities and operational expenses related to the implementation of this Act shall be funded from the budget appropriations and other incomes of GFAs and public RDIs. The Heads of the GFAs and public RDIs shall include in the agency's program the implementation of this Act.

The COA shall exercise its auditing authority over the funds of the GFAs and public RDIs order to ensure transparency and accountability.

SEC. 26. *Implementing Rules and Regulations.* – Except where otherwise medicated, the DOST and the IPO, with the participation of GFAs, RDIs, and other stakeholders, shall formulate the IRR for the effective implementation of this Act. The DOST Secretary shall chair the drafting committee. The IRR shall be issued within one hundred twenty (120) days after the effectivity of this Act. Copies of the IRR shall be submitted to the Committees on Science and Technology of both Houses of Congress within thirty (30) days after its promulgation, as well as to other appropriate agencies as may be required by law.

Nothing in the IRR shall derogate ownership of any copyright as conferred by the IP Code or other applicable laws. The IPO shall issue the necessary rules and regulations governing the ownership of copyrights as conferred by the IP Code or other applicable laws: *Provided*, That such IRR are consistent with the objectives of this Act. The IPO shall also issue the IRR to implement the disclosure requirements stated in Section 8.

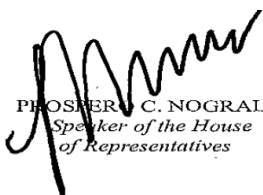
SEC. 27. *Applicability to Intellectual Property Created Under Existing Laws.* – The provisions of this Act shall likewise apply to intellectual property created under existing laws, including, among others, Republic Act No. 9168 or the "Philippine Plant Variety Protection Act of 2002".

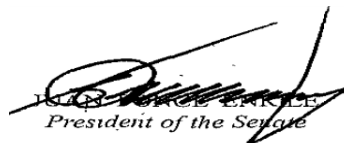
SEC. 28. *Repealing Clause.* – All laws, presidential decrees, executive orders, presidential proclamations, rules and regulations or part thereof which may be contrary to or inconsistent with this Act are hereby repealed or modified accordingly.

SEC. 29. *Separability Clause.* – If any provision of this Act is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.


SEC. 30. *Effectivity.* – This Act shall take effect fifteen (15) days after its complete publication in two (2) newspapers of general circulation.


Approved,


PROSPERO C. NOGRALES
*Speaker of the House
of Representatives*

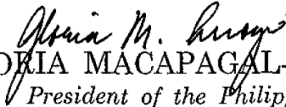

JUAN MIGUEL ENRIQUEZ
President of the Senate

This Act which is a consolidation of Senate Bill No. 3416 and House Bill No. 5208 was finally passed by the Senate and the House of Representatives on December 1, 2009 and December 15, 2009, respectively.


MARILYN B. BARUA YAP
Secretary General
House of Representatives


EMMA LIRIO-REYES
Secretary of the Senate

Approved, March 23, 2010


GLORIA MACAPAGAL-ARROYO
President of the Philippines

JOINT DOST-IPO ADMINISTRATIVE ORDER NO. 02-2010**THE IMPLEMENTING RULES AND REGULATIONS
OF REPUBLIC ACT NO. 10055**

WHEREAS, Republic Act No. 10055, otherwise known as the "*Philippine Technology Transfer Act of 2009*", became effective on May 8, 2010;

WHEREAS, the Department of Science and Technology and the Intellectual Property Office are mandated to issue and promulgate the rules and regulations to implement the provisions of Republic Act No. 10055;

NOW THEREFORE, the following Joint Administrative Order covering the Rules and Regulations implementing Republic Act No. 10055 are hereby promulgated, adopted and prescribed for the information and guidance of all concerned.

CHAPTER I**DECLARATION OF POLICY AND OBJECTIVE, SCOPE AND
OTHER GENERAL PROVISIONS**

RULE 1. *Declaration of Policies and Principles.* – The State fully recognizes that science, technology and innovation are essential for national development and progress. It shall, therefore, give priority to research and development, invention, innovation and their utilization. It shall also encourage the widest and most systematic participation of all stakeholders in policy-making related to science and technology, and in the generation, transfer and utilization of intellectual property, especially for the benefit of the general public.

The State shall facilitate the transfer and promote the utilization of intellectual property for the national benefit and shall call upon all research and development institutes and/or institutions (RDIs) that perform government-funded research and development (R&D) to take on technology transfer as their strategic mission and to effectively translate results of government-funded R&D into useful products and services that will redound to the benefit of Filipinos, notwithstanding the income generated from intellectual property rights (IPRs) and technology transfer activities.

The State acknowledges that the successful transfer of government-funded R&D results depend on the proper management of intellectual property, development of capacity by RDIs to become self-sustaining and competitive, and on enhancing interaction and cooperation with the private sector, particularly small and medium enterprises through collaborative and contract research based on equitable, fair access, and mutual benefit for all involved partners.

The State shall establish the means to ensure greater public access to technologies and knowledge generated from government-funded R&D while enabling, where appropriate, the management and protection of related intellectual property.

The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products.

RULE 2. *Objective.* – These Rules and Regulations are promulgated to implement the State policies and objectives under the Act which aims to promote and facilitate the transfer, dissemination, and effective use, management, and commercialization of intellectual property, technology and knowledge resulting from research and development funded by the government for the benefit of national economy and taxpayers.

RULE 3. *Definition of Terms.* – For purposes of these Implementing Rules and Regulations, the following terms are defined as follows:

- (a) “Act” refers to Republic Act No. No.10055.
- (b) “Author” refers to the natural person who has created the work.
- (c) “Biodiversity” refers to biological diversity which means the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.
- (d) "Commercialization" refers to the process of deriving income or profit from a technology, such as the creation of a spin-off company, or through licensing, or the sale of the technology and/or IPRs.

- (e) "Genetic Material" refers to any material of plant, animal, microbial or other origin containing functional units of heredity.
- (f) "Genetic Resources" refers to any genetic material of actual or potential value.
- (g) "Government Funding Agency (GFA)" refers to any government agency or instrumentality, or government owned and/or controlled corporation that provides research grants and other technical and material support, from government appropriations and resources and those sourced from government-managed Official Development Assistance (ODA) funds.
- (h) "Indigenous Knowledge Systems and Practices" refer to systems, institutions, mechanisms, and technologies comprising a unique body of knowledge evolved through time that embody patterns of relationships between and among peoples and between peoples, their lands and resource environment, including such spheres of relationships which may include social, political, cultural, economic, religious spheres, and which are the direct outcome of the indigenous peoples, responses to certain needs consisting of adaptive mechanisms which have allowed indigenous peoples to survive and thrive within their given socio-cultural and biophysical conditions.
- (i) "Intellectual Property (IP)" is the term used to describe intangible assets resulting from the creative work of an individual or organization. IP also refers to creations of the mind, such as inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. IP can also refer to future tangible and/or intangible assets that may be recognized as intellectual property.
- (j) "Intellectual Property Rights (IPRs)" refer to those rights recognized and protected in Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended. IPRs shall also include Plant Variety Protection as the term is defined under Title II, Sec 3(j) of Republic Act No. 9168.

- (k) "Intellectual Property Rights Management" refers to the principles, mechanisms and processes involved in the identification, assessment, protection, utilization and enjoyment of intellectual property rights.
- (l) "IP Code" refers to Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended.
- (m) "Official Development Assistance Fund" refers to: a) a loan; or, b) loan and grant; or, c) grant which follow all the criteria under the R.A. No. 8182, otherwise known as the "Official Development Assistance Act of 1996", and other existing laws.
- (n) "Parent Agency" refers to the Department or agency, which exercises the power of control or supervision over the GFAs, RDIs or RDI acting as the GFA itself. In general, where multiple GFAs are involved, the department or agency, which has the largest financial contribution, shall be deemed as the parent agency, except as may otherwise be specifically provided by the Act.
- (o) "Potential IPRs" refer to intellectual property, or the products of creation and research that form the subject matter of IPRs, but which are not yet protected by the statutory grant of IP rights.
- (p) "Protection of IPs" refers to the statutory grant of rights upon which the basis of enforcing the right rests, such as issuance of patents; registration of utility models, industrial designs, and trademarks or availment of protection of undisclosed information and other rights as may be provided by law. "Protected IPs", therefore may refer to issued or pending patents; registered utility models, industrial designs, and trademarks. In the case of pending patent applications that have already been published under Sec 44 of RA 8293 such pending patent application will still be considered as potential IPRs. In the same manner, pending applications for Plant variety protection that have also been published under Sec 42 of R.A. No. 9168 will still be considered as potential IPRs.
- (q) "RA" refers to Republic Act.

- (r) "Research and Development (R&D)" refers to creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and to use this stock of knowledge to devise new applications. The aforementioned creative work not only refers to work subject of copyright protection but also to all potential IPRs.
- (s) "Research and Development Institute or Institution (RDI)" refers to a public or private organization, association, partnership, joint venture, higher education institution or corporation that performs R&D activities and is duly registered and/or licensed to do business in the Philippines, or otherwise with legal personality in the Philippines. In the case of private RDIs, they shall be owned solely by the citizens of the Philippines or corporations or associations at least sixty per centum of the capital of which is owned by such citizens. This does not include RDIs covered by international bilateral or multilateral agreements.
- (t) "Research Agreement" refers to a contract entered into by RDIs and researchers, including the agreements between the RDI and collaborating RDIs.
- (u) "Research Funding Agreement" refers to a contract entered into by and among the GFA and other funding agencies and the RDI. It governs ownership of IP, duties and responsibilities of GFAs and RDIs, technology disclosure, exclusivity of the license, use for commercialization, establishment of spin-off firms, technologies for research use, and sharing of income and benefits from technology commercialization. The Research Funding Agreement may also include instances where private funds are involved together with government funds. The Research Funding Agreement shall also be referred to as RFA in these Rules. The term other funding agencies may include private entities.
- (v) "Researcher" refers to a natural person who is engaged by the RDI by employment or other contract, to conduct research with or for the RDI.
- (w) "Revenue" refers to all monetary and non-monetary benefits derived as a result of the development, production, transfer, use

and/or commercialization of IPRs, including income from assignments, and royalties from licenses.

- (x) "Rules" refers to these Implementing Rules and Regulations for RA No. 10055.
- (y) "Spin-off firm or company" refers to a juridical entity that is an independent business technology taker with a separate legal personality from the GFA, RDI and researcher created through the initiative of the researcher-employee who generated the technology.
- (z) "Technology" refers to knowledge and know-how, skills, products, processes, practices, inventions and/or innovations.
- (aa) "Technology Licensing Officer / Office and/or Technology Business Development Office" refers to a person or persons or an office that is mandated by the RDI to manage technology transfer and/or intellectual property commercialization activities.
- (bb) "Technology Transfer" refers to the process by which one party systematically transfers to another party the knowledge for the manufacture of a product, the application of a process, or rendering of a service, which may involve the transfer, assignment or licensing of IPRs.
- (cc) "Technology Transfer Protocol" refers to policies, strategies and processes or procedures, which RDIs adopt to identify, protect, manage and commercialize IPs and/or IPRs and undertake technology transfer activities. These include, but are not limited to, the following:
 - i. Policies and procedures governing incentives to researchers to produce and to disclose IP derived and generated from publicly funded research and development to the RDI including the sharing of revenues between the RDI and its researchers as provided under these Rules;
 - ii. Policies and procedures for evaluating and processing invention and other IP disclosures in order to determine (1) who shall be recognized as the inventor(s),

- author(s), creator(s) of the IP and who will therefore be entitled to a share in revenues as provided under the Act and these Rules including mechanisms for resolving disputes on inventorship, authorship and creatorship and revenue sharing; (2) patentability/registrability; (3) commercial potential of IP; and (4) the most efficient mode for protecting and commercializing or transferring the IP;
- iii. Policies and procedures for determining meritorious cases in which a researcher-employee can commercialize or pursue commercialization or participate in spin-off companies;
 - iv. Appropriate guidelines for the management of conflict of interest between the RDIs and the researcher-employee;
 - v. Policies and procedures governing trade secrets and other similar confidential information pursuant to the objectives of these Rules; and
 - vi. The employer-employee contract and all other related agreements shall contain, but shall not be limited to, the following: duties and responsibilities of the parties, membership of the research team, degree of involvement of the researchers and the support staff, ownership of IP, sharing of monetary and non-monetary benefits, technology disclosure and management of conflict of interest.
- (dd) “Traditional Knowledge” refers to knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity.
- (ee) “Work”, “Works”, “works” or “work” refer to original intellectual creations in the literary or artistic domain protected from the moment of their creation and shall include, among others: (1) books, pamphlets, articles and other writings; (2) lectures, sermons, addresses, dissertations for oral delivery; (3) works of drawing, painting, architecture, sculpture and engraving; (4) original ornamental designs or models for

articles of manufacture; (5) illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture and science; (6) drawings or plastic works of scientific or technical character; (7) photographic works including works produced by a process analogous to photography; (8) audiovisual works and cinematographic works and works produced by a process analogous to cinematography or any process for making audiovisual recordings; (8) computer programs; and (9) other literary, scholarly, scientific, and artistic works. Derivative works which are protected under Sec. 173 of the Intellectual Property Code are also included.

RULE 4. *Coverage.* – The following are covered by these Rules:

- (a) All R&D activities carried out on behalf and for the interest of the Philippine Government by RDIs receiving grants directly from GFAs;
- (b) All intellectual property rights derived from R&D activities funded by government;
- (c) All government agencies that fund R&D activities as well as provide financial, technical or material support to such R&D activities; and
- (d) All institutions that implement government funded R&D.

CHAPTER II

INTELLECTUAL PROPERTY OWNERSHIP

RULE 5. *Ownership of Intellectual Property and Intellectual Property Rights.* – The ownership of IPs and IPRs shall be governed by the following:

- (a) In recognition of the fact that RDIs are in a better position to identify the potential for economic utilization of IPs and IPRs subject to their possession of the right skills and management capability, the ownership of IP and IPRs derived and generated from research funded by GFA, whether such funding is in whole or in part, shall, in general, be vested in the RDI that actually

performed the research, except in any of the following circumstances:

- i. When the RDI has entered into a public, written agreement sharing, limiting, waiving or assigning its ownership of the IPs or IPRs generated from its research in favor of the GFA; *Provided*, the same may only be voluntarily executed by the RDI to protect public interest, and in particular involves national security, nutrition, health, or the development of other vital sectors;
- ii. In case of failure of the RDI to disclose potential IPRs to the GFA, whereupon the GFA shall assume the rights to the potential IPR;
- iii. In case of failure of the RDI to initiate the protection of potential IPRs within a reasonable time from confidential disclosure to the GFA, which shall in no case exceed three (3) months from public disclosure, whereupon the GFA shall assume the rights to the potential IPR. An RDI is deemed to have initiated protection of potential IPRs upon the filing of an application for IP protection with the duly authorized local or international government agency or entity in charge of the statutory grant of IPRs. Public disclosure shall mean that the IP was disclosed by the researcher to any third person or entity and such disclosure was made in a manner sufficiently clear and complete for it to be carried out by a person skilled in the art;
- iv. In case the RDI ceases to become a Filipino corporation as defined in Article I, Section 4 (i) of the Act and these Rules, the GFA shall assume rights to the potential IPRs. This nationality requirement shall also apply to RDIs that are organized as associations, partnerships, joint ventures, higher education institutions or other analogous and similar organizations; and
- v. In case the funding is sourced from ODA loan or loan and grant or grant, the terms and conditions thereof should be respected.

- (b) In case of collaborative research where two (2) or more RDIs conducted the research funded by the GFA, the RDIs shall own the IPRs jointly or as otherwise stipulated in the Research Agreement between them; *Provided*, That any Research Agreement between RDIs and other funding entities shall be made with the full knowledge of the GFA; *Provided, further*, That the agreement shall strictly be in accordance with the provisions of the Act. There is full knowledge of the GFA when the RDI submits a complete and executed copy of the written agreement between the RDIs and other funding agencies.

RULE 6. *Copyright Ownership.* – Ownership of copyright shall be governed as follows:

Section 1. *RDI Ownership of Copyright Produced Through Public Funds* – The ownership of copyright over any work derived and generated from publicly funded research, whether the funding is in whole or in part, shall be vested in the RDI whose researcher(s) actually authored the work pursuant to the RFA. It shall therefore be the duty of the RDI to include a provision in the Research Agreement requiring the author/s of a work produced through public funds to assign copyright over said work to the RDI, and to adopt such other appropriate policies and procedures in order to comply with its obligations under the RFA. Since the government is not precluded from receiving and holding copyrights transferred to it by assignment, bequest or otherwise, public RDIs must require such assignment to be made in its favor in order to achieve the objectives of these Rules. This rule shall not apply in the following instances:

- (a) *No Copyright in Works of Government* – No copyright shall subsist in any work of the Government of the Philippines. The term “work of the Government of the Philippines” is a work created by an officer or employee of the Philippine Government or any of its subdivisions and instrumentalities, including government-owned or controlled corporations as part of his regularly prescribed official duties. For the purpose of this provision, and consistent with the objectives of these Rules, employees or officers of Government granted special authority to conduct research and development for a limited period are not deemed performing regularly prescribed official duties. As such, copyright exists in works created by said employees or officers. However, prior approval by the public RDI whose researcher(s) actually authored the work pursuant to the RFA shall be necessary for the commercial or for-profit use of works derived and

generated from such publicly funded research. Such public RDI may, among others, impose as a condition the payment of royalties. No prior approval or conditions shall be required for the use for any purpose of statutes, rules and regulations, and speeches, lectures, sermons, addresses, and dissertations, pronounced, read or rendered in courts of justice, before administrative agencies, in deliberative assemblies and in meetings of public character. The author of speeches, lectures, sermons, addresses and dissertations mentioned above shall have the exclusive right of making a collection of his works.

- (b) A GFA may receive and hold copyrights by way of assignment under any of the following circumstances:
- i. When the RDI to which the researcher/s have assigned copyright under Section 1 above, subsequently executes a public, written agreement sharing, limiting, waiving or assigning its copyright ownership over the work in favor of the GFA in order to protect public interest, such as when it involves national security, nutrition, health, or the development of other vital sectors;
 - ii. When the RDI fails to disclose the work to the GFA within a reasonable period of time as provided in the RFA or in the absence of such provision as provided in these Rules, in which case the GFA shall assume the copyright over the work through a written assignment to be executed by the RDI or by the latter's researcher/s who authored the work in case no appropriate assignment has been made to the RDI under Section 1 above. It shall be the duty of the RDI to include a specific provision in the Research Agreement requiring the researcher(s) to assign copyright over their work to the GFA under this circumstance; and
 - iii. When the RDI ceases to become a Filipino corporation, in which case, the GFA shall assume the copyright over the work through a written assignment to be executed by the RDI or by the latter's researcher/s who authored the work in case no appropriate assignment has been made to the RDI under Section 1 above. It shall be the duty of the RDI to include a specific provision in the Research Agreement requiring the researcher(s) to

assign copyright over their work to the GFA under the circumstances mentioned in (ii) and (iii) above.

Section 2. Joint Ownership of Copyright. – In case of collaborative research where two (2) or more RDIs conducted the research funded by the GFA, the RDIs shall own the copyright jointly or as otherwise stipulated in the Research Agreement between them; *Provided,* That any Research Agreement between the RDIs and other funding entities shall be made with the full knowledge of the GFA. In the case of works of joint authorship, the co-authors shall be the original owners of the copyright, and, in the absence of agreement, their rights shall be governed by the rules on co-ownership. If a work of joint authorship consists of parts that can be used separately and the author of each part can be identified, the author of each part shall be the original owner of the copyright in the part that he has created.

Section 3. Copyright Over Works Not Derived and Generated from Publicly Funded Research –

- (a) Works that are not derived and generated from publicly funded research shall be excluded from the coverage of these Rules, except by the following:
 - i. The ownership of copyright over works produced pursuant to the regular duties of an employee or researcher of a private RDI shall vest in the private RDI, unless there is an agreement, express or implied, to the contrary;
 - ii. The ownership of copyright over works produced not pursuant to the regular duties of an employee or researcher of an RDI, whether public or private, shall belong to the employee or researcher who actually authored the work, even if the employee or researcher uses the time, facilities and materials of the public or private RDI where they are employed; and
- (b) When the work is produced pursuant to a commissioned contract, the copyright belongs to the person who created the work, unless otherwise indicated in the contract.

RULE 7. Existing Laws. – Nothing in this Chapter shall modify, amend, derogate or prejudice IPs that will be owned by employees of the RDIs under the IP Code and other existing laws.

RULE 8. *Recovery of Ownership.* – In cases where the RDI wants to recover the ownership of the IPs and/or potential IPRs, the procedure stated in Rule 12 shall apply, *mutatis mutandis*.

CHAPTER III

RIGHTS AND RESPONSIBILITIES OF THE GOVERNMENT FUNDING AGENCIES AND RESEARCH AND DEVELOPMENT INSTITUTES OR INSTITUTIONS

RULE 9. *Rights and Responsibilities of a Government Funding Agency.* – Under these Rules, the GFA shall:

- (a) Protect government interest in the IP and IPRs generated from the R&D that it funded through suitable provisions in the RFA. The GFA is authorized to withhold from public disclosure, for a reasonable time, any information relating to potential IPR of the RDI, to allow the RDI to pursue full protection of such IPR. Reasonable time shall be determined by the parties in the RFA. Where the GFA finds it necessary to make a public disclosure of information pertaining to a potential IPR because of a legal or statutory obligation, it shall issue a written notice informing the RDI of such disclosure. Such written notice must be given by the GFA to the RDI in a timely manner before the public disclosure in order to enable the RDI to contest such disclosure or to take such other appropriate steps in order to protect its rights and/or to comply with its obligations under the provisions of non-disclosure, confidentiality, materials transfer or other similar agreements. If the public disclosure by the GFA is to be made before the RDI has filed, where applicable, a national or an international application for IP protection, the GFA shall ensure that the public disclosure contains only so much information or elements about the subject matter contained in the potential IPR that a person would not be able to practice it by using the information or elements contained in the said disclosure;
- (b) The GFA shall assume the rights to the potential IPRs in case the RDI fails to disclose the potential IPRs to the GFA within the period stipulated in the RFA, or, in the absence of such stipulation, within three (3) months from the submission of the report of the potential IPRs. The GFA shall notify in writing the RDI that it is assuming the rights to the potential IPRs;

- (c) Monitor efforts and effectiveness of the RDI in securing IP protection and pursuing IP commercialization, as well as provide alternative solutions and assistance in case of shortfall in RDI's performance in protecting, utilizing and commercializing the IP. Each GFA shall issue its respective monitoring mechanisms by way of an administrative order or issuance. The monitoring mechanisms may include time-bound performance milestones that include the following: i) preparation of IP management report template; ii) semi-annual monitoring of IP development from GFA funded projects; iii) annual monitoring of IP development from RDI funded projects; and, iv) execution and implementation of pertinent forms such as, but not be limited to, nondisclosure agreements. With respect to providing alternative solutions, such solutions may include, but not be limited to, additional funding support for filing of IP applications, technical assistance in the preparation of the applications and other documents, provision of experts whether in-house or outsourced;
- (d) Ensure adequate freedom to use the IP for further research to expand the knowledge frontier and requirements for publication of information as appropriate in accordance with government policy or academic policy, or institutional mandate of the RDI;
- (e) Allow sharing of revenues from IP commercialization in a way that is not onerous to commercialization; and
- (f) If the GFA assumes commercialization of the IPs, it shall be subject to the provisions of Rule 11 of these Rules.

RULE 10. *Rights and Responsibilities of the RDIs.* – The following are the rights and responsibilities of the RDIs that availed of research funds from GFAs:

- (a) Identify, protect, and manage the IPs generated from R&D funded by GFA and pursue commercial exploitation diligently as a required performance stipulated in the RFA and as allowed by the Act, these Rules and other applicable laws;
- (b) Establish and strengthen its Technical Review Committee or IP Management Committee. Towards this end, all RDIs shall craft, develop and implement their respective Technology Transfer Protocols;

- (c) In case of commercialization or commercial exploitation by public RDIs, it shall be subject to the provisions of Rule 11 of these Rules;
- (d) The responsibility of the RDI to protect any potential IPRs shall also apply in the event that the RDI elects to recover ownership of the potential IPRs that have been vested in the GFA under these Rules;
- (e) Provide a means for addressing any shortfall of its performance in utilizing and commercializing the IP;
- (f) Notify the GFA within a reasonable time of all IPR applications, licenses and assignments made. All applications for IP protection shall disclose any biodiversity and genetic resource, traditional knowledge, and indigenous knowledge, systems and practices as these terms are defined in RA No. 8371 or the Indigenous Peoples Rights Act and RA No. 9147 or The Wildlife Act and these Rules;
- (g) Report annually to the GFA on the progress of IP and/or IPR commercialization efforts and of all agreements entered and licenses granted;
- (h) Keep account of revenues and payments to the GFA if required in the RFA;
- (i) Ensure that they have access to the skills and management capability to effectively perform their responsibilities of owning, managing, and exploiting the IP or IPRs. Smaller RDIs that may need external advice are encouraged to pool and share resources;
- (j) Accord their staff with incentives consistent with existing laws to sustain efforts in identifying valuable IP and in pursuing IP commercialization. The RDI should clearly identify the composition of the research team and execute the corresponding Research Agreement with its researchers and staff;
- (k) Be authorized, within a reasonable time, to keep confidential from the public any document or information relating to potential IPRs that are not yet fully protected by law;
- (l) Make a confidential disclosure to the GFA, within a reasonable time, of any potential IPRs derived from the research with

possibilities for commercialization and/or technology transfer. In case of failure to disclose any such potential IPRs, the applicable provisions of Chapter II of these Rules shall apply. The confidential disclosure herein shall be made within the period stipulated in the RFA, or, in the absence of such stipulation, within three (3) months from the confidential disclosure made by the inventor, author, or creator of the IP to the RDI as provided in the Technology Transfer Protocol. The confidential disclosure shall be made in writing and shall contain the following: (i) an identification of the RFA under which the potential IPRs were made; (ii) an explanation on the possibility of commercializing, licensing or transferring the potential IPR; (iii) the names of the inventors/creators/authors; and (iv) the technical details that convey a clear understanding of the characteristics of the potential IPRs. Confidential disclosure of undisclosed information or trade secrets shall be governed by Rule 12;

- (m) Inform the GFA of any agreement pertaining to the research funded by the GFA and entered into by the RDI with any other entity or person. Failure to comply with the duty to inform shall render the agreement invalid as against the GFA, but in no case shall it prejudice any right of the GFA as provided in these Rules; and
- (n) When necessary, create and establish spin-off companies to pursue commercialization subject to their respective mandates as allowed by law.

RULE 11. *Fairness Opinion Report* –

Section 1. *Commercialization by the GFA.* – When the GFA assumes commercialization of the IPs, it shall, subject to existing laws requiring transparency and accountability, the Commission on Audit (COA) Rules and Regulations and as required under Article IX, Section 20 of the Act, be allowed to directly negotiate agreements for the commercialization of IPs: *Provided, further,* That it shall obtain a written recommendation from the Secretary of the Department of Science and Technology (DOST) and secure a fairness opinion report from an independent third party body composed of experts from the public and private sectors as may be determined by the DOST.

The fairness opinion report shall contain a statement expressing the opinion of the body as to the fairness to the GFA of the proposed transaction,

particularly its financial terms. The report shall include, but not be limited to, a review and analysis of the proposed transaction, financial statements, industry information, economic conditions and assumptions used therein and a comparison of similar transactions; *Provided, however*, That it shall not be precluded from resorting to other modes of commercialization as allowed by all applicable laws.

Section 2. *Commercialization by Public RDIs.* – In case of commercialization or commercial exploitation by public RDIs, it shall, subject to existing laws requiring transparency and accountability, the Commission on Audit (COA) Rules and Regulations and as required under Article IX, Section 20 of the Act, be allowed to directly negotiate agreements for the commercialization of IPs; *Provided*, That it shall obtain a written recommendation from the Secretary of the DOST and secure a fairness opinion report from an independent third party body composed of experts from the public and private sectors as may be determined by the DOST.

The fairness opinion report shall contain a statement expressing the opinion of the body as to the fairness to the RDI of the proposed transaction, particularly its financial terms. The report shall include, but must not be limited to, the provisions in Section 7(d), Paragraph 2 of the Act; *Provided, however*, That it shall not be precluded from resorting to other modes of commercialization as allowed by all applicable laws.

Section 3. *When GFA may require Fairness Opinion Report from Private RDI.* – In case the GFA has a share in the revenue to be derived from the commercialization of the IPs and/or IPRs directly negotiated by the private RDI, then the GFA may require said private RDI to secure a fairness opinion report.

Section 4. *Fairness Opinion Report in cases of Spin-offs.* – In case of a spin-off, the RDI shall secure a Fairness Opinion Report consistent with the policies and principles of these Rules. The Fairness Opinion Report required herein should be issued prior to the creation and/or incorporation of a spin-off company.

Section 5. *Fairness Opinion Board.* – The Fairness Opinion Report shall be issued by a Fairness Opinion Board that will be constituted in the following manner:

- (a) The RDI or the GFA, in the case the latter has assumed ownership over the IP, is allowed to transfer or commercialize IP through the

various modes allowed by and subject to the limitations provided by law such as public bidding, direct negotiation, build operate transfer schemes, and such other similar and/or analogous modes. A favorable recommendation from the Secretary of the Department and Science and Technology and a fairness opinion report is required only in cases where the GFA or the public RDI, as the case may be, decides to directly negotiate IP commercialization agreements. The GFAs or RDIs that want a fairness opinion report issued on the proposed IP commercialization transaction shall make a written request to the Secretary of the DOST. The written request shall, at the minimum, include all relevant documents, such as, but not limited, to the proposed transaction, valuation report, due diligence report on the parties to the transaction, such other background documents regarding the prospective transferee and list of potential recommendees for membership in the Fairness Opinion Board. Without prejudice to existing laws and regulations, the written request shall be kept confidential;

- (b) The Secretary shall constitute the Fairness Opinion Board not later than thirty (30) days from receipt of the written request. The Secretary may have the option to appoint the members of the Board from the list enumerated in the written request. In selecting the members of the Board, the Secretary shall at all times give due regard to the person's neutrality, impartiality and expertise;
- (c) A Fairness Opinion Board shall be constituted on a per written request basis. It shall be composed of three (3) members with at least one (1) member coming from the private sector;
- (d) The Technology Application and Promotion Institute ("TAPI") shall serve as the secretariat to the Board. The Secretariat shall be headed by the Director of TAPI;
- (e) At its discretion, the Board may request for the presence of the representatives of the GFA and/or RDI as resource persons;
- (f) All costs and expenses of the Board shall be shouldered by the GFA and the RDI in the proportion as determined in the RFA. In the absence of such a provision, the costs and expenses shall be shouldered by the requesting party;

- (g) At all times, the members of the Board shall disclose and avoid any conflict of interest with respect to all matters pending before them;
- (h) The Board shall review relevant documents such as, but not limited to, the proposed transaction, valuation report, due diligence report on the parties to the transaction and other background documents regarding the prospective transferee. The Board may also obtain and consider other independent information;
- (i) The Board shall determine the dates, venue, frequency and other administrative requirements and details;
- (j) The Board shall complete and submit to the DOST Secretary the fairness opinion report no more than 60 calendar days upon constitution; and
- (k) The Secretariat and the Board shall maintain or ensure confidentiality of all information submitted, without prejudice to the requirements of existing laws and regulations.

Section 6. *Contents of the Fairness Opinion Report.* – The Fairness Opinion Report, shall at the minimum, contain the following information:

- (a) A statement expressing the opinion of the body as to the fairness to the GFA or RDI of the proposed transaction, particularly its financial terms;
- (b) Recommendations, if any, regarding the revision of certain provisions in the proposed transaction;
- (c) All citations, references and all supporting documents; and
- (d) A certification and verification signed by all members of the Board.

RULE 12. *Common Provisions.* – The following provisions shall apply, where applicable, to Rules 9, 10 and 11.

Section 1. *Research Funding Agreement.* – The GFA and other funding agencies and the RDI are free to stipulate such terms and conditions in the RFA provided these provisions are not contrary to law and public policy.

Notwithstanding the foregoing, the RFA should include the following provisions:

- (a) That subject to the exceptions provided under the Act and these Rules, the IP and IPR ownership shall belong to the RDI; further, the RDI shall also undertake to include a provision in the Research Agreement requiring the author(s) in general to assign copyright to the RDI except in the cases mentioned in Rule 6 which provides that copyright shall be assigned by the author(s) to the GFA;
- (b) The revenue sharing scheme between the parties to the RFA subject to the provisions of Rule 15. (*n*) In case the GFA has a share in the revenue derived from the commercialization of the IPs and/or IPRs negotiated by the private RDI, then the GFA may require the said private RDI to secure a fairness opinion report as provided under Rule 11;
- (c) That the RDI shall adopt and implement the appropriate Technology Transfer Protocol as defined under these Rules (*n*) Provisions for patent pooling and encouraging the use of patent search and information and other similar activities may also be provided for;
- (d) The period and procedure for the confidential disclosure by the RDI to the GFA of the potential IP as provided under the rules on disclosure. The GFA shall take into account the resources and capacity of the RDI in determining the period within which the RDI shall be required to make such disclosure;
- (e) That the GFA and RDI shall be authorized to withhold from public disclosure, for a reasonable time as agreed by the parties in the RFA, any information relating to potential IPR to allow the RDI to pursue full protection of such IPR and for this purpose to include confidentiality provisions in the RFA and in other related agreements and to make use of non-disclosure, materials transfer and other similar agreements provided that:
 - i. Within a reasonable period of time as agreed by the parties in the RFA and/or the Research Agreement, the GFA and RDI shall allow the researchers to publish their findings or results covered by the RFA subject to the requirement that the same will not constitute a

prejudicial disclosure nor include the disclosure of confidential information as agreed upon by the parties. In case of conflict between the provisions of the RFA and the Research Agreement with respect to the determination of the reasonable time stated herein, the provisions of the RFA shall prevail; and

- ii. The GFA shall allow the RDI to reserve for itself and for other persons the right to use the IP for educational, scholarly or other similar non-commercial research purposes.
- (f) That the RDI shall file for IPR application three (3) months after public disclosure otherwise the GFA will assume ownership over the potential IP; subject to the provisions of Rule 12, Section 2 on the protection of undisclosed information; and
- (g) That the parties are required to resolve disputes pertaining to the determination of government ownership through the procedure provided under these Rules.

Section 2. *Protection of Undisclosed Information.* – Protection of Undisclosed Information or Trade Secrets is one of the IPRs recognized under the IP Code and international treaties. The GFA and RDIs both recognize the importance of the protection of undisclosed information but this should be consistent with the policies and principles of the Act. The protection of undisclosed information shall be governed by the following provisions:

- (a) Protection of undisclosed information should be at the institutional level. RDIs are directed to develop mechanisms to handle such protection;
- (b) If the RDI in its judgment believes that any IP should be protected solely as undisclosed information, it should inform the GFA in writing and the GFA, after review, may recognize the same and may not obligate the RDI to file any application for IP protection; and
- (c) RDIs shall continue to submit regular reports on the IP protected as undisclosed information as required by the GFA.

Section 3. *Disclosures.* – Disclosure of potential IPRs and/or all biodiversity and genetic resource, traditional knowledge, and indigenous knowledge, systems and practices shall be governed by the following rules:

- (a) In order to ensure that any information pertaining to a potential IPR does not become part of prior art or prejudice the novelty of the national IPR application that the RDI may file with the Intellectual Property Office of the Philippines (IPO), or the Plant Variety Protection Board and/or the international application for IPR that the RDI may file in a foreign country or in such other IP authority, all disclosures of potential IPRs shall be covered by confidentiality agreements requiring the GFAs as well as their employees, consultants and agents to keep confidential from the public any document or information relating to the potential IPR until such time that the RDI has filed the appropriate national or international IPR application or when it gives notice to the GFA allowing public disclosure. The term “IPR application” shall mean an application for a patent for an invention, an application for a utility model, or an application for an industrial design or application for protection of plant variety, as the case may be;
- (b) Within three (3) months from the filing of the appropriate Philippine, foreign or PCT application, the RDI shall notify the GFA of the filing thereof, and shall report annually to the GFA on the progress of the said IPR application;
- (c) With respect to biodiversity, genetic resources or materials associated traditional knowledge, and indigenous knowledge, systems and practices, the following provisions shall govern:
 - i. The RDI shall provide the GFA with a written disclosure on the following: (1) any biodiversity, genetic resources or materials, associated traditional knowledge, and indigenous knowledge, systems and practices utilized in or which formed as basis in the development of the subject matter contained in the IPR application; (2) the primary source of any biodiversity, genetic resources or materials, associated traditional knowledge, and indigenous knowledge, systems and practices utilized in or which formed as basis in the subject matter contained in the IPR application; or (3) the secondary source, if no information about the primary source is available;

- ii. The disclosure requirement under this section shall apply when the subject matter contained in a national or international IPR application is directly based on any biodiversity, genetic resources or materials, traditional knowledge, and indigenous knowledge, systems and practices to which the RDI has had access to prior to the filing of the IPR application. The subject matter contained in the IPR application must depend on the specific properties of, or must be consciously derived from, such biodiversity and genetic resource or materials, traditional knowledge, and indigenous knowledge, systems and practices;
- iii. Where the RDI, for reasons beyond its control, does not have the necessary information to fulfil the disclosure requirement pertaining to any biodiversity, genetic resources or materials, traditional knowledge, and indigenous knowledge, systems and practices, such as, for instance, where a plant stored in a gene bank was collected decades ago and no information about its source exists, the RDI shall submit an affidavit from its researcher/s that the latter do not have the necessary information or that the source is unknown, and state the reasons thereof. The GFA shall review the affidavit to determine if this will constitute compliance with the disclosure requirement under this rule;
- iv. The GFA that provided the research funds shall be responsible for ensuring that the RDI provides accurate disclosure and complies with the requirements of this Section; and
- v. A national or international IPR application filed by the RDI before the appropriate IP office shall include in the abstract and/or description of said application the same disclosure on biodiversity, genetic resources or materials, associated traditional knowledge, and indigenous knowledge, systems and practices utilized in or which formed as basis in the development of the subject matter contained in the said application, notwithstanding that such disclosure may not be required for the grant or issuance of certificate of IPR registration.

- (d) Disclosure shall be made by the Researcher to the head of the RDI. The head of the RDI, consistent with the RDIs obligations, shall make the disclosure to the head of the GFA.

Section 4. *Recovery of Ownership of Potential IPRs by RDIs.* – If any of the grounds where the GFA has acquired ownership of the IPs, IPRs and/or potential IPRs under Chapter II have ceased, the GFA shall allow the RDIs to recover the ownership of the potential IP to enable the RDI to achieve the objective of the law to promote and facilitate the transfer, dissemination and effective use, management and commercialization of IP, technology and knowledge on the following and other similar circumstances:

- (a) A duly signed letter of intent from a prospective commercialization taker, provided that it shall not violate any contractual obligation that the GFA may have entered into with other parties;
- (b) If the IP or potential IPR is an integral part of a portfolio of technologies which is in the hands of the RDI; and
- (c) Any reacquisition of ownership should not prejudice existing contractual agreements or negotiations for commercialization.

CHAPTER IV

MANAGEMENT OF IPs FROM R&D PERFORMED BY GOVERNMENT RDIs THROUGH THEIR OWN BUDGET

RULE 13. *Responsibilities of RDIs Performing R&D with their Own Budget.* – All government RDIs performing R&D through an annual budget provided by the government shall submit intellectual property management reports annually to the national government agencies where they are attached. The report shall contain plans for securing protection on IPs with commercial promise, the technology transfer approaches to be pursued, and the progress of ongoing commercialization of technologies derived from R&D funded from their own budget.

RULE 14. *Responsibilities of the Concerned National Government Agencies.* – Concerned government and/or parent agencies shall monitor efforts and effectiveness of their RDIs in securing IP protection and pursuing IP commercialization, based on the annual IP management reports

submitted by the RDIs. National government agencies are encouraged to adopt their respective rules, mechanisms and procedures to effectively implement it's a fore stated responsibility.

CHAPTER V REVENUE SHARING

RULE 15. Revenue Sharing. – All revenues from the commercialization of IPs and IPRs from R&D funded by GFA(s) shall accrue to the RDI, unless there is a revenue sharing provision in the RFA; *Provided*, That in no case will the total share of the GFA(s) be greater than the share of the RDI; *Provided, further*, That in case of joint funding, where research is funded by a GFA in part, and by other entity or entities in part, the RDI may enter into contractual agreements with the other entity or entities providing funding.

Sharing of revenues between RDI and researcher shall be governed by an employer-employee contract or other related agreements, without prejudice to the rights of researchers granted under RA No. 8439 or the "*Magna Carta for Scientists, Engineers, Researchers, and other S&T Personnel in Government*".

Section 1. In case of joint funding, where research is funded by a GFA in part, and by other entity or entities in part, the RDI may enter into contractual agreements, including revenue sharing provisions, with the other entity or entities providing funding. The RDI shall submit a complete and executed copy of the written agreement between it and the other funding entity or entities.

Section 2. The term revenue shall be defined by the RDI in the employer-employee contract or other related agreements between the RDI and the researcher subject to the provisions of R.A. No. 8439.

Section 3. With respect to royalties, the same shall also be governed by an employer-employee contract or other related agreements without prejudice to the provisions of RA No. 8439.

Section 4. Monetary revenues shall include but not limited to royalty payments, proceeds from sale of IP or technology, upfront technology transfer fees and dividends or sale from shares of stocks.

Section 5. Where practicable, all non-monetary revenues shall be converted to cash value. The RDI shall have the discretion to determine the cash conversion value of the non-monetary benefits provided that the same is consistent with the Research Agreement, employer-employee contract and existing laws and regulations.

Section 6. In determining whether non-monetary grants shall form part of revenue, the provisions of the Technology Transfer Protocol of the RDI shall prevail.

CHAPTER VI

COMMERCIALIZATION BY THE RESEARCHER AND ESTABLISHMENT OF SPIN-OFF FIRMS

RULE 16. *Commercialization by Researchers.* – In meritorious cases and to help ensure successful commercialization, an RDI shall allow its researcher-employee to commercialize or pursue commercialization of the IP and/or IPRs generated from R&D funded by GFA by creating, owning, controlling, or managing a company or spin-off firm undertaking commercialization, or accepting employment as an officer, employee, or consultant in a spin-off firm undertaking such commercialization; *Provided*, That the concerned researcher-employee takes a leave of absence, whenever applicable, for a period of one year and renewable for another year, for a total period not exceeding two years, from the time the researcher signifies in writing that he/she desires to create or participate in a spin-off company; *Provided, however*, That the researcher-employee may still be allowed access to the RDIs' laboratory facilities, subject to reasonable fees and regulations which the RDIs may impose.

The leave of absence shall be included in computing the length of service for retirement but not for the commutation of leave credits earned in the public RDI. The researcher shall not earn leave credits in the public RDI during such period of leave of absence. Such leave of absence shall not likewise affect the researcher-employee's security of tenure or result in the loss of one's seniority rights.

Section 1. The Technology Transfer Protocol shall establish the grounds in determining the meritorious cases where an RDI shall allow its researcher-employee to commercialize or pursue commercialization or create, own, control, or manage a company or spin-off firm. The parties may also explore other options available for commercialization as allowed under these Rules.

Section 2. In case of a spin-off, the provisions of Rule 11 of these Rules shall also apply.

Section 3. Spin-offs established under the Act and these Rules shall be considered separate and distinct entities from the RDIs.

Section 4. The guidelines on spin-offs shall be included in the Technology Transfer Protocol.

RULE 17. *Detail or Secondment to the Private Sector.* – In case where the researcher of a public RDI would be employed by an existing company, which will pursue the commercialization, the applicable provisions of RA No. 8439 shall prevail.

RULE 18. *Management of Conflict of Interest.* – The RDIs shall properly manage any possible conflict of interest by adopting appropriate guidelines for its researcher employee. The guidelines for handling of such conflicts shall include, but are not limited, to the following:

- (a) RDIs shall ensure that its researchers are made fully accountable for their research and that commercial objectives do not divert them from carrying out the RDI's core research program;
- (b) Heads of RDI should ensure that where researchers have any direct or indirect financial interest in a spin-off company; they shall not act on behalf of the RDI in transactions with that company;
- (c) Where researchers of RDI are nominated as non-executive directors to the Board of a spin-off company or existing company in which the same RDI holds an equity stake, they should have a clear duty to ensure that the RDI's interests are not compromised by their role;
- (d) RDIs should take steps to ensure that collaborative undertaking with a spin-off or existing company is governed by a formal written public agreement; and
- (e) In case of Higher Educational Institutions acting as RDIs, it shall be the decision of the said institution to promulgate their rules governing the academic vis-à-vis the business responsibilities of the researcher involved in a spin-off company.

CHAPTER VII

USE BY GOVERNMENT, COMPULSORY LICENSING AND ASSUMPTION OF POTENTIAL IPRs

RULE 19. *Use by Government or Third Person Authorized by Government and/or Compulsory Licensing.* – These Rules shall adopt the grounds and terms and conditions for the use by government or third person authorized by government, and/or compulsory licensing as stated in the IP Code of all IPRs generated under the Act and these Rules.

RULE 20. *Assumption of Ownership of Potential IPRs.* –The GFA and/or the Parent Agency may assume ownership of any potential IPRs in cases of national emergency or other circumstances of extreme urgency, or where the public interest requires, and in particular concerns for national security, nutrition, health, or the development of other vital sectors of the national economy, as determined by the head of the Parent Agency. Such determination shall be made within thirty (30) days after the receipt of the recommendation of the head of the GFA. Such recommendation shall be made within thirty (30) days upon the discovery of the potential IPR by the GFA or the disclosure of the same by the RDI pursuant to Section 8 (c) of the Act, or upon written notice or petition by other government agencies, or other interested persons. In cases where the Parent Agency itself is acting as the GFA, the head of the Parent Agency may make such determination *motu proprio*, or upon written notice or petition by other government agencies or other interested parties. The right to the potential IPR shall be assumed by the GFA upon written order, declaration or determination by the Department Secretary or Head of the Parent Agency. The department or the agency that has functional jurisdiction over the technology or IPRs shall be deemed as the Parent Agency.

The determination by the Secretary or the head of the Parent Agency of cases falling under the first paragraph .of the right to the potential IPR to be vested to the GFA and/or Parent Agency shall be subject to the following conditions:

- (a) The determination must be accompanied by an analysis and justification of such reason(s);
- (b) The RDI may file with the Secretary or Head of the Parent Agency an opposition to such determination within fifteen (15) calendar days from notice or publication of the written determination;

- (c) The assumption of the rights to the potential IPR by the GFA shall carry with it the obligation to equitably share with the RDI or other funding agencies any profits generated from the IPR; and
- (d) The rights to the potential IPR shall revert to the RDI upon the cessation of the existence of the cases under this Section as determined by the Secretary or Head of the Parent Agency *motu proprio* or by petition of the RDI.

Section 1. All recommendation for the assumption of ownership of potential IPRs made to the GFA shall be in writing and originally signed by the head of the GFA. The recommendation should be submitted to the head of the Parent Agency or to any other person authorized to receive on behalf of the said head of the Parent Agency.

Section 2. The written notice or petition for the assumption of ownership of potential IPRs by other government agencies or other interested parties should be originally signed and verified by the petitioner. The written notice or petition should contain the following: a) name and address of the petitioner; b) the description of the potential IPRs which is the subject of the written notice or petition; c) clear and detailed explanation for the use or utilization of the potential IPRs; d) supporting affidavits and other documents; and e) all other relevant documents.

Section 3. All interested persons should be citizens of the Philippines, in case of individuals; or if a private corporation, it should be duly registered or licensed to do business in the Philippines or otherwise with legal personality in the Philippines and owned and controlled solely by citizens of the Philippines or with at least 60% of the capital which is owned by such citizens. The interested person should also have the capacity and capability to utilize the potential IPRs for the grounds stated in this Chapter.

Section 4. During the period (hereinafter referred to as the “Assumption Period”) where the Parent Agency or GFA actually assumed and exercised management and control over the potential IPRs, the Research Agreement between the RDI and its researchers for the assumed potential IPRs and the corresponding RFA shall continue to be valid and in force.

Section 5. In cases where there is a pending application for IP protection of the potential IPRs during the Assumption Period, the Parent Agency or GFA shall notify in writing the IPO of such assumption in accordance with the rules and regulations of the IPO.

RULE 21. Except where otherwise provided by the IP Code, in all cases arising from the implementation of this Article, no court, except the Supreme Court of the Philippines, shall issue any temporary restraining order or preliminary injunction or such other provisional remedies that will prevent its immediate execution.

CHAPTER VIII

USE OF INCOME AND ESTABLISHMENT AND MAINTENANCE OF REVOLVING FUND FOR R&D AND TECHNOLOGY TRANSFER

RULE 22. *Use of Income and Revolving Fund.* – Public RDIs undertaking technology transfer shall be vested with the authority to use its share of the revenues derived from commercialization of IP generated from R&D funded by GFAs. All income generated from commercialization of IPs and/or IPRs from R&D funded by public funds shall be constituted as a revolving fund for use of the RDI undertaking technology transfer, deposited in an authorized government depository bank subject to accounting and auditing rules and regulations; *Provided,* That said income shall be used to defray intellectual property management costs and expenses and to fund research and development, science and technology capability building, and technology transfer activities, including operation of technology licensing offices; *Provided, further,* That no amount of said income shall be used for payment of salaries and other allowances.

In case the income after payment of all costs and expenses for IPR management, including the payment of royalties to other parties, shall exceed ten percent (10%) of the annual budget of the RDI, a minimum of seventy percent (70%) of the excess income shall be remitted to the Bureau of Treasury; *Provided,* That this shall apply only if the GFA has solely funded the research; *Provided, finally,* That this paragraph shall not apply to State Universities and Colleges and Government Owned and Controlled Corporations, which enjoy fiscal autonomy under their respective charters or other applicable laws. Professional fees shall be included in the computation of the IP management cost and expenses. For the avoidance of doubt, professional fees and/or services shall refer to payment for expert services as the term is defined by relevant government circulars. For the purposes of reckoning income and budget in this Chapter, current year shall be used.

CHAPTER IX

INSTITUTIONAL MECHANISM

RULE 23. *Establishment of Technology Information Access Facility and Public Access Policy.* – The DOST shall establish a system for the cost-effective sharing of and access to technologies and knowledge generated from government-funded R&D by developing appropriate policies and procedures on public access which shall be made known to the public. These policies and procedures shall be aimed at promoting the advancement of R&D, boosting its quality and enabling cross-disciplinary collaboration, and thereby, increasing the returns from public investment in R&D and contribute to the betterment of society. The DOST shall call for a regular national conference of all GFAs and RDIs in order to: (a) promote multi-disciplinary, joint, and cross collaboration in research and development; (b) coordinate and rationalize the research and development agenda; and (c) harmonize all research and development agenda and priorities. The DOST shall call for a regular national conference which should coincide and synchronize with the national budget cycle. In line with the foregoing provision, the DOST, in consultation with the stakeholders, shall establish a harmonized accessible format for technology and information access.

RULE 24. *Development of Internal IP Policies and Establishment of Technology Licensing Offices (TLOs) and/or Technology Business Development Offices.* – All RDIs are encouraged to establish their own TLOs in whatever form and to adopt their own policies on IPR management and technology transfer, in accordance with the Act and other existing laws and in support of the policies of the IPO and the national policy and the mandate of their parent agency. The DOST and IPO shall provide the templates, tools, kits and such other materials that may be needed for the establishment of the TLOs or to pursue IPR protection.

RULE 25. *Capacity Building and Guidelines on IP Commercialization.* – The DOST, Department of Trade and Industry (DTI) and IPO, in consultation with GFAs such as Commission on Higher Education (CHED), Department of Agriculture (DA), Department of Health (DOH), Department of Energy (DOE), Department of Environment and Natural Resources (DENR), and Department of National Defense (DND), shall undertake activities geared towards building the capacity of GFAs and RDIs in commercializing IPs. The DOST as chair and convener, together with DTI and IPO shall jointly issue the necessary guidelines on IP valuation, commercialization, and information sharing, which may include, but not be

limited to, the following considerations: public benefit and national interest, market size, cost and income.

CHAPTER X

DISPUTE RESOLUTION

RULE 26. – As a general rule, any dispute between the parties on the determination of government ownership should be resolved amicably.

If the matter cannot be resolved amicably by the parties, then the administrative procedure for resolving any disputes on the determination for government ownership shall be subject to the mediation and arbitration rules of the IPO.

CHAPTER XI

MISCELLANEOUS, TRANSITORY, AND FINAL PROVISIONS

RULE 27. *Administrative, Criminal or Civil Liability.* – The failure of the GFA or RDI to fulfil its responsibilities under the Act and these Rules, or the violation of any provision by any person, natural or juridical, shall subject the person involved to appropriate administrative, criminal, or civil liability, under applicable laws.

RULE 28. *Technology Transfer Act Coordinating Committee.* – To aid in the effective implementation of the provisions of the Act and these Rules and for the purpose of making the necessary reports and representations with the Congressional Oversight Committee on the Technology Transfer Act (“COCTTA”), a Technology Transfer Act Coordinating Committee (“TTACC”) is hereby constituted. The TTACC shall be chaired by the Secretary of the DOST or his representative and co-chaired by the DG of IPO or his representative. The members of the committee and the secretariat shall be named by the Chairman and co-chairman.

RULE 29. *Amendments to the Rules.* – The DOST and IPO, either jointly or individually, may initiate amendments to these Rules. Prior to the conduct of any public hearing for the proposed amendment, the initiating party shall first inform the other party of the same at least 30 days prior to the date of the first public consultation.


RULE 30. *Review of the Rules.* – The DOST and IPO shall jointly review these Rules two (2) years after its effectivity and every three years thereafter.

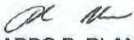
RULE 31. *Repealing Clause.* – All existing rules and regulations, or part thereof which may be contrary to or inconsistent with these rules and regulations are hereby repealed or modified accordingly.

RULE 32. *Separability Clause.* – If any provision of these Rules are declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions hereof.

RULE 33. *Effectivity.* – These Rules shall take effect fifteen (15) days after its publication in at least two (2) national papers of general circulation and upon filing at the UP Law Center in accordance with Law.

NOW THEREFORE, the parties have herein below affixed their signatures to the Joint DOST-IPO Administrative Order No. 02-2010 this 18th day of August 2010.


HON. MARIO G. MONTEJO
Secretary
Department of Science and Technology


HON. RICARDO R. BLANCAFLOR
Director General
Intellectual Property Office of the
Philippines

S. No. 6095
H. No. 2172

Republic of the Philippines
Congress of the Philippines
Metro Manila
Tenth Congress
Third Regular Session

Begun and held in Metro Manila, on Monday, the twenty-eight day of July, nineteen hundred and ninety-seven.

[REPUBLIC ACT NO. 8439]

**AN ACT PROVIDING A MAGNA CARTA FOR
SCIENTISTS, ENGINEERS, RESEARCHERS AND
OTHER SCIENCE AND TECHNOLOGY
PERSONNEL IN GOVERNMENT**

*Be it enacted by the Senate and House of Representatives of
the Philippines in Congress assembled:*

SECTION 1. Title. – This Act shall be known as the "*Magna Carta for Scientists, Engineers, Researchers and other S & T Personnel in the Government.*"

SEC. 2. *Declaration of Policy.* – The State recognizes science and technology as an essential element for the attainment of national

development and progress. To attain this objective, it is hereby declared the policy of the State to provide for a program of human resources development in science and technology to achieve and maintain the necessary reservoir of talent and manpower that will sustain its drive for total science and technology mastery. The State shall establish, promote and support programs leading to the realization of this objective, such as science and engineering scholarship programs, improvement of the quality of science and engineering education, popularization of science culture, and provision of incentives for pursuing careers in science and technology.

SEC. 3. *Definition of Terms.*

a) *Department* – refers to the Department of Science and Technology (DOST) created under Executive Order No. 128.

b) *Scientific and Technological Activities (STA)* – all systematic activities which are closely concerned with the generation, advancement, dissemination, and application of scientific and technical knowledge in all fields of natural science and technology.

STA may be classified into three broad groups, namely:

1) *Research and Experimental Development (R & D)* – Any systematic and creative work undertaken in the physical, natural, mathematical and applied sciences by using methods in order to increase the stock of knowledge, and the use of this knowledge in these fields to devise new applications;

2) *Scientific and Technological Services (STS)* – Activities in support of scientific research and development, dissemination and applications of scientific and technical knowledge (*i.e.* library, information and museum services; geological and hydrological surveys; meteorological and seismological observations; compilation of routine statistics; testing, standardization and quality control; counseling of clients; patenting and licensing; engineering and technical services); and

3) *Scientific and Technical Education and Training (STET)* – All activities comprising higher education and training leading to a university degree, post-graduate and further training, organized lifelong training for scientists and engineers, and specialized non-university higher education.

SEC. 4. *Science and Technology Career System.* – A career system for science and technology personnel in the service of the government which is

patterned after the Scientific Career System (SCS) shall be formulated by the DOST in coordination with the Civil Service Commission.

SEC. 5. *Classification of S & T Personnel.* – S & T personnel may be classified in the following categories:

(a) *S & T Managers, Supervisors, and Planners.* – Those who are graduate degree holders or have at least ten (10) years of managerial experience or are performing executive, planning and policy-making functions to effectively carry out STA related activities as defined in Section 3 of this Act;

(b) Members of the scientific career system;

(c) *Scientists, Engineers and Researchers.* – Those who are at least undergraduate degree holders in any of the natural science and engineering courses and are involved in research and development or other scientific and technological activities; and

(d) *DOST Technicians and Related S & T Personnel.* – Those who obtained at least twelve (12) units in science, engineering and other related courses or any appropriate training as determined by the Secretary of the Department and are providing support services to S & T personnel enumerated in the three (3) preceding sub-sections.

SEC. 6. *Salaries.* – The existing law on salary scales of government employees shall not apply in determining the salary scale of science and technology personnel as defined in Section 5 of this Act. A new salary scale shall be developed by the Department in consultation with the Department of Budget and Management and the Civil Service Commission, subject to the approval of the President.

SEC. 7. *Other Benefits.* – Notwithstanding Section 12 of Republic Act No. 6758, science and technology personnel defined under Section 5 of this Act shall receive the following:

(a) *Honorarium.* – S & T personnel who rendered services beyond the established irregular workload of scientists, technologists, researchers and technicians whose broad and superior knowledge, expertise or professional standing in a specific field contributes to productivity and innovativeness shall be entitled to receive honorarium subject to rules to be set by the Department;

(b) *Share in Royalties.* – S & T scientists, engineers, researchers and other S & T personnel shall be entitled to receive share in royalties subject to guidelines of the Department. The share in royalties shall be on a sixty – forty percent (60%-40%) basis in favor of the Government and the personnel involved in the technology/ activity which has been produced or undertaken during the regular performance of their functions. For the purpose of this Act, share in royalties shall be defined as a share in the proceeds of royalty payments arising from patents, copyrights and other intellectual property rights.

If the researcher works with a private company and the program of activities to be undertaken has been mutually agreed upon by the parties concerned, any royalty arising therefrom shall be divided according to the equity share in the research project;

(c) *Hazard Allowance.* – S & T personnel involved in hazardous undertakings or assigned in hazardous workplaces, shall be paid hazard allowances ranging from ten (10%) to thirty (30%) percent of their monthly basic salary depending on the nature and extent of the hazard involved. The following shall be considered hazardous workplaces:

- 1) Radiation-exposed laboratories and service workshops
- 2) Remote/depressed areas
- 3) Areas declared under a state of calamity or emergency
- 4) Strife-torn or embattled areas
- 5) Laboratories and other disease-infested areas

(d) *Subsistence Allowance.* – S & T personnel shall be entitled to full subsistence allowance equivalent to three (3) meals a day, which may be computed and implemented in accordance with the criteria to be provided in the implementing rules and regulations. Those assigned out of their regular work stations shall be entitled to per diem in place of the allowance;

(e) *Laundry Allowance.* – S & T personnel who are required to wear a prescribed uniform during office hours shall be entitled to a laundry allowance of not less than One Hundred Fifty Pesos (P150.00) a month;

(f) *Housing and Quarter Allowance.* – S & T personnel who are on duty in laboratories, research and development center's and other government facilities shall be entitled to free living quarters within the government facility where they are stationed: Provided, That the personnel have their residence outside of the fifty (50)-kilometre radius from such government facility;

(g) *Longevity Pay.* – A monthly longevity pay equivalent to five percent (5%) of the monthly basic salary shall be paid to S & T personnel for every five (5) years of continuous and meritorious service as determined by the Secretary of the Department; and

(h) *Medical Examination.* – During the tenure of their employment, S & T personnel shall be given a compulsory free medical examination once a year and immunization as the case may warrant. The medical examination shall include:

- 1) Complete physical examination
- 2) Routine laboratory, Chest X-ray and ECG
- 3) Psychometric examination
- 4) Dental examination
- 5) Other indicated examination

SEC. 8. *Non-DOST S & T Personnel.* – S & T personnel not employed by the Department, who, are involved in STA may avail of the benefits under this Act upon certification of the Secretary of the Department.

SEC. 9. *Scholarships and Grants.* – S & T personnel in public and private sectors shall be entitled to avail of scholarship benefits and grants for pursuing undergraduate, graduate, postgraduate or training courses in accordance with a Scholarship Program to be implemented by the Department. Grantees of the program may study within the Philippines or abroad provided that the Department shall provide strict measures to ensure their return to the country to render the service obligation.

Recipients of undergraduate scholarships shall, after graduation, be required to render service in the government for the equivalent number of years that they availed of their scholarships. However, in case where there

are no available positions in the government, they may be allowed to work in the private sector.

Scholarship privileges may be on a full-time or part-time basis and shall include tuition fee, book allowance, transportation allowance, monthly stipend, dissertation grants, insurance and the payment of regular salary and other benefits. For this purpose, the Human Resource Development Council created under Republic Act No. 8248 shall formulate the rules and regulations and implement the Scholarship Program provided in this Act.

SEC. 10. *Honorarium for Other Services.* – Scientists, engineers, researchers, technologists, technicians and other S & T personnel shall be allowed to render consultancy services to the private sector and shall be entitled to receive such honorarium that may be paid to them by the private entity concerned. Such payments shall be over and above their salary from the government during the period of the consultancy and shall not be considered as double compensation: *Provided*, That the consultancy work will not jeopardize or adversely affect the operations or activities of his originating office: *Provided, further*, That the Secretary of the Department approves such consultancy.

SEC. 11. *Detail to the Private Sector.* – Provisions of existing laws notwithstanding, scientists, engineers, researchers and other S & T related personnel who are employed on a regular basis in the government, whether or not they are conferred any rank under the Scientific Career System, shall hereby be allowed secondment to any private entity whenever such services are required: *Provided*, That the duration of such service with a private entity shall not exceed one (1) year: *Provided, further*, That the detail or secondment of said personnel will not hamper or adversely affect the operations or activities of his originating office: *Provided, finally*, That the head of the agency approves such detail or secondment. During the period of such secondment, payment of the seconded employee shall be borne by the seconding private entity covered by a contract. The period of secondment shall be used in computing the retirement benefits but not for the commutation of leave credits earned in the mother agency.

Such secondment shall not likewise affect his Security of tenure nor result in the loss of seniority rights subject to guideline on secondment in the IRR of this Act.

SEC. 12. *Exemption from the Attrition Law and Civil Service Rule on Nepotism.* – Appointment of S & T personnel to positions of research assistant and upwards shall not be covered by the Attrition Law and CSC

rule on nepotism in consideration of the highly technical nature of these positions.

SEC. 13. *Provision Against Double Benefits.* – S & T personnel already receiving the same benefits under any other law shall not be allowed to avail of the benefits under this Act unless they submit in writing their intention to withdraw the benefits already being received and opt for those provided hereunder.

SEC. 14. *Highest Basic Salary Upon Retirement.* – Upon retirement, the S & T personnel concerned shall automatically be granted one (1) salary grade higher than his/her basic salary and his/her retirement benefits shall be computed on the basis of his/her highest salary received.

SEC. 15. *Prohibition Against Diminution and/or Elimination.* – Nothing in this law shall be construed to eliminate or in any way diminish benefits being enjoyed by S & T personnel at the time of the effectivity of this Act.

SEC. 16. *Hiring of Retired Scientists and Technical Personnel.* – An employee retired under any existing law, who, in the judgment of the governing board or head of a research agency, possesses technical qualifications and the capability to undertake specific scientific research activities, may be rehired on contractual basis without refunding the unexpired portion of the gratuity and accumulated leave benefits received by him from the Government: *Provided,* That no qualified science and technology expert is available to undertake said scientific activities.

SEC. 17. *Government Scholars and Training Grantees.* – Graduates or grantees of government S & T scholarship programs or trainings shall be given temporary waiver of CSC eligibilities for at least two (2) years and preferential access to financial grants from any government agency authorized to extend grants and to loans with easy terms from government financing institutes, for science and technology projects which are viable and in line with the development thrust of the country.

SEC. 18. *Science and Technology Awards.* – There shall be established Science and Technology Awards Committee which shall confer annually the Science and Technology Awards for outstanding achievement/s and excellence or original contribution to science and technology. The Committee shall promulgate the guidelines in implementing this Section and shall specify the categories of awards to be given and the amount of financial reward for each category.

SEC. 19. *Congressional Commission on Science and Technology.* – There is hereby created a Congressional Commission on Science and Technology (S and T COM) to review and assess, among others, the state of the Philippine human resources development in S & T, the state of computerization and information technology in the Philippine economy and society, and the implementation of this Act. The Commission shall be composed of five (5) Members of the House of Representatives and five (5) Members of the Senate. It shall be co-chaired by the Chairpersons of the Committee on Science and Technology of both Houses of Congress. Such congressional review shall be undertaken at least once every five (5) years.

SEC. 20. *Funding.* – The amount necessary to fully implement this Act shall be provided in the General Appropriations Act (GAA) of the year following its enactment into law under the budgetary appropriations of the DOST and concerned agencies.

SEC. 21. *Annual Report.* – The Secretary of the Department shall submit to the Congressional Commission on Science and Technology, an annual report of the status of implementation of this Act.

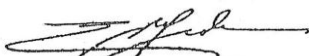
SEC. 22. *Implementing Rules and Regulations.* – The Department, in consultation with government and non-government agencies involved in STA, shall formulate the implementing rules and regulations to carry out the provisions of this Act.

SEC. 23. *Repealing Clause.* – All laws, decrees, orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Act are hereby amended or repealed accordingly.

SEC. 24. *Separability Clause.* – The provisions of this Act are hereby declared separable. In the event that any provision hereof is rendered unconstitutional, those that are not affected shall remain valid and effective.

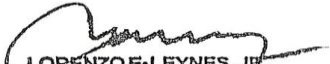
SEC. 25. *Effectivity.* – This Act shall take effect immediately after publication in two (2) newspapers of general circulation.

Approved,



ERNESTO M. MACEDA
President of the Senate


JOSE DE VENECIA, JR.
*Speaker of the House
of Representatives*

This Act which is a consolidation of House Bill No. 6095 and Senate Bill No. 2172 was finally passed by the House of Representatives and the Senate on December 16, 1997.




LORENZO E. LEYNES, JR.
Secretary of the Senate



ROBERT P. NAZARENO
*Secretary General
House of Representatives*

Approved: December 22, 1997



FIDEL V. RAMOS
President of the Philippines