
INTELLECTUAL PROPERTY RIGHTS (IPR) HANDBOOK

Romblon State University

Intellectual Property Unit 2016



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Intellectual Property Rights Guidelines

1.0 PURPOSE and SCOPE

This document defines the procedure, responsibilities and governing rules and regulations for the protection of intellectual property rights. The Guidelines is based on Intellectual Property Code of the Republic of the Philippines (RA 8293). Since RSU faculty members are engaged in the publication of instructional materials/books and design/fabrication/construction of machineries/devices, these guidelines focused only on COPYRIGHT of published works and PATENTS of invented/designed devices.

Further, the University adopted the template on Intellectual Property Policy for Higher Education Institutions (HEIs) as part of these guidelines and in reference to RA 8293 and other provisions whichever deem appropriate for the University.

2.0 RESPONSIBILITIES

The offices of the Vice President for Research, Extension & Production and the Vice-President for Academic Affairs shall ensure the effective implementation of these guidelines. The University Research Center shall facilitate the application for copyright and patent while the office of the Vice-President for Administration and Finance shall assist in the Production and marketing of copyrighted and patented products.

3.0 DEFINITION OF TERMS

3.1 The intellectual property rights under the Intellectual Property Code of the Philippines (Sec.4, RA8293) consist of:

- 1.1.1 Copyright and related rights;
- 1.1.2 Trademarks and service marks;
- 1.1.3 Geographic indications;
- 1.1.4 Industrial designs;
- 1.1.5 Patents;
- 1.1.6 Layout designs [topographies] of integrated circuits; and
- 1.1.7 Protection of undisclosed information.

3.2 Under RA 8293, the following are the definitions of patentable Inventions and published works:

Any technical solution of a problem in any field of human activity which is new, involves an inventive step and is industrially applicable shall be patentable. It may be, or may relate to, a product, of process, or an improvement of any of the foregoing. (Sec. 7, R.A No. 165a)

3.2.2 Sec. 171.7 Published Works

“Published Works” means works, which, with the consent of the authors, are made available to the public by wire or wireless means in such a way that members of the public may access these works from a place and time

individually chosen by them: Provided, that availability of such copies has been such, as to satisfy the reasonable requirements of the public, having regard to the nature of the work.

4.0 POLICIES, RULES AND REGULATIONS

4.1 Copyright

4.1.1 Ownership (Chapter VI, Sec. 178, EA 8293)

- a. Sec. 178.1. Subject to the provisions of this section, in the case of original literary and artistic works, copyright shall belong to the author of the work;
- b. Sec. 178.2. In 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, however, 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;
- c. Sec. 178.3. In the case of work created by an author during and in the course of his employment , the copy right shall belong to;
 - i. The employee, if the creation of the object of copyright is not a part of this regular duties even if the employee uses the time, facilities and materials of the employer.
 - ii. The employer, if the work is the result of the performance of his regularly-assigned duties, unless there is an agreement, expressed or implied, to the contrary.
- d. Sec. 178.4. In the case of work-commissioned by a person other than an employer of the author and who pays for it and the work is made in pursuance of the commission, the person who so commissioned the work shall have ownership of work, but the copyright thereto shall remain with the creator, unless there is a written stipulation to the contrary;
- e. Sec 178.5. In the case of audiovisual work, the copyright shall belong to the producer, the author of the scenario, the composer of the music, the film director, and the author of the work so adopted. However, subject to contrary or other stipulations among the creators, the procedures shall exercise the copyright to an extend required for the exhibition of the work in any manner, except for the right to collect performing license fees for the performance of musical compositions, with or without words, which are incorporated into the works; and
- f. Sec. 178.6. In respect of letters, the copyright shall belong to the writer subject to the provisions of Article 723 of Civil Code. (Sec. 6, P.D. No. 49a).

4.1.2 Royalty

- a. The royalty derived from the production and commercialization of copyrighted works shall be shared by the owner's copyright, subject to the following guidelines, unless there is an expressed agreement to the contrary.
 - i. For collaborative authorship of books/textbooks/manuals, a royalty of (70%) of the net income thereof on all copies of the work will constitute the authors' royalty, while the share of the University, the University Research Center (URC) and the Department /College where the authors belong will be fifteen percent (15%), ten percent (10%), and five percent (5%), respectively.
 - ii. For single authorship, fifty percent (50%) of the net income will go to the author, twenty percent (20%) each will constitute the share of the University and the University Research Center, respectively while ten percent (10%) will go to the Department/College.
- b. The share in the royalty of an external agency which is co owner of copyright pursuant to these rules shall be subject to the policies or both the University and the external agency concerned.
- c. Inventory of solid items and payments of royalties shall be done every year.

4.2 Patent

4.2.1 Right to a Patent (Chapter III, RA 8293)

- a. Sec. 28. Right to Patent
The right to a patent belongs to the inventor, his/heirs, or assigns. When two (2) or more persons have jointly made an invention, the right to a patent shall belong to them jointly. (Sec. 10, R.A. No. 165a)
- b. Sec. 29. First to File Rule
If two (2) or more persons have made the invention separately and independently of each other, the right to the patent shall belong to the person who filled an application for such invention, or where two or more applications are filled for the same invention, to the applicant who has the earliest filing date or, the earliest priority date. (3rd sentence, Sec. 10, R.A. No. 165a.)
- c. Sec. 30.1. The person who commissions the work shall own the patent, unless otherwise provided in the contract.
- d. Sec. 30.2. In case the employee made the invention in the course of his employment contract, the patent shall belong to:
 - i. The employee, if the inventive activity is not a part of his regular duties even if the employee uses the time, facilities and materials of the employer.

- ii. The employer, if the invention is the result of the performance of his regular-assigned duties, unless there is and agreement, expressed or implied, to the contrary. (n)
- e. Sec. 31. Right of Priority
An application for patent filed by any person who has previously applied for the same invention in another country which by treaty, convention, or law affords similar privileges to Filipino citizens, shall be considered as filed as of the date of filing the foreign application: Provided, That; (a) the local application expressly claims priority; (b) it is filed within twelve (12) months from the date the earliest foreign application was filed; and (c) a certified copy of the foreign application together with an English translation is filed within six (6) months from the date of filing in the Philippines. (Sec. 15, R.A. No. 165a)

5.0 PRODUCTION, DISTRIBUTION AND MARKETING

This document defines the procedure, responsibilities and governing rules and If the work in which copyright or patent subsist will be financed in full or in part for commercialization by the University the application for financial support shall be submitted to the office of the Vice President for Academic Affairs through the University Research Center. The University Research and Publication Committee will evaluate the worthiness of copyrighted work for publication. The same committee shall also be responsible for evaluating the technical and economic feasibility of the patented product for commercialization.

The University Research and Publication Committee shall coordinate with the Office of the Vice President for Finance and Enterprises (OVPAF) in determining the manner of production, marketing and utilization of work.

6.0 UTILIZATION OF ROYALTY SHARE

- 6.1 The royalty shared derived by the University from the commercialization of copyrighted/patented works shall be used to support the research and development program of the University. This shall also be used to assist the creator/s in the marketing of copyrighted/patented works.
- 6.2 The royalty share of the University Research Center shall be used to support instructional materials development and prototype fabrication of an invention or discovery. It shall also be used for all expenses related to patenting applications, including legal expenses.
- 6.3 The share of the Department/College shall be utilized to strengthen the research capability of the faculty members of the Department /College. The authors/inventors shall have the preferential use of such funds to finance her/his/their research undertaking and enhance research capability.

7.0 RECORDS

- 7.1 Publishing Agreement
- 7.2 Technology Commercialization Agreement
- 7.3 Invention Disclosure
- 7.4 Certificate of Copyright/Patent



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Intellectual Property Policy

(Adopted from Template on Intellectual Property Policy for HEIs)

The University Intellectual Property (IP) Policy is hereby promulgated as follows:

ARTICLE 1 INTRODUCTION

General Statement

- 1.1 The University conducts research in the pursuit of knowledge for enriching the minds and lives of university faculty, staff and students, and for the benefit of society as a whole.
- 1.2 As the University becomes increasingly active in research, technology transfer, and as university faculty, staff and students actively participate in ensuing entrepreneurial activities, there is a need for the University to promulgate a “Policy on Intellectual Property, Technology Transfer and Research Collaboration”.
- 1.3 The University largely depends upon financial support primarily from the government and from local and international organizations for its research activities. Consistent with this premise, the University seeks to ensure that any resultant intellectual property is administered and protected in the public interest.
- 1.4 The IP Policy seeks to provide guidelines that can be consistently applied to facilitate the commercialization of research outputs and to arrive at equitable solution to possible IP issues relating to the conduct of research, technology transfer and commercialization.

ARTICLE 2 POLICY OBJECTIVES

- 2.1 Promote, preserve, encourage and aid scientific investigation and research;

- 2.2 Facilitate the transfer of technology from the University to industry and community in order that research conducted at the University results in applications that would benefit the general public;
- 2.3 Establish and maintain an innovation funds for research and innovation;
- 2.4 Enhance the prestige of the University as an academic research institution and as a member of society by pursuing the highest ideals of scholarship and teaching and by conferring the benefits of that scholarship and teaching on the University community and society;
- 2.5 In its broad discretion and consistent with its overall mission, encourage, assist and provide mutually beneficial rewards to the University and members of the University community who transfer University intellectual property to the public through commercial channels under this IP Policy;
- 2.6 Establish standards for determining the rights and obligations of the university and creators of intellectual property;
- 2.7 Ensure compliance with applicable laws and regulations and enable the University to secure sponsored research funding at all levels of research; and
- 2.8 Generally ensure filing of protection for the IP prior to any publication.

ARTICLE 3 Coverage

- 3.1 Personnel Covered. This IP Policy applies to all University personnel i.e academic and research staff, staff members, students who participate in research project at the University's college and campuses unless the University specifies other arrangements in such person's letter of appointment with the University.
- 3.2 IP Rights Covered. This IP Policy shall cover all types of intellectual property rights under relevant IP Laws of the country, such as:
 - Copyright and Related Rights;
 - Trademarks and Services Marks;
 - Geographic Indications;
 - Industrial Designs;
 - Patents;
 - Utility Models;

- Lay-out Designs (Topographies of Integrated Circuits); and
- Undisclosed Information; and
- New plant varieties, as provided in Republic Act No. 9168.

ARTICLE 4

Definition of Terms or Expressions

- 4.1 **“Academic & Research Staff”** include all faculty, academic staff, visiting faculty, emeritus faculty while at the university and affiliate and adjunct staff members, fellows and other researches carrying out research at the University, whether part-time or full-time.
- 4.2 **“Breeder”** means the University personnel or student who bred, or discovered and developed a new plant variety; or the person who is the employer of the aforementioned person or who has commissioned the work; or the successors-in-interest of the foregoing persons as the case may be; or the holder of the Certificate of Plant Variety Protection.
- 4.3 **“Confidential Information”** means any information or data of a confidential nature, including all oral and visual information or data, and all information or data recorded in writing or in any other medium or by any other method , and all information and data which the University is under an obligation, whether contractual or otherwise, not to divulge.
- 4.4 **“Copyright”** is the legal protection extended to the owner of the rights in an original artistic or literary work.
- 4.5 **“Creator”** means the University personnel or student who is considered the legal owner of literary, scholarly, scientific and artistic works or has made creative or authorship contributions.
- 4.6 **“Geographical Indication (GI)”** is a name or sign used on certain products which corresponds to a specific geographical location or origin (e.g. a town, region or country). The use of a GI may act as a certification that the product possesses certain qualities, or enjoys a certain reputation, due to its geographical origin.
- 4.7 **“IP Code”** means Republic Act 8293 or the Intellectual Property Code of the Philippines and its amendments.

- 4.8 **“IP Policy”** means the University’s “Policy on Intellectual Property, Technology Transfer and Research Collaboration” as may be amended from time to time.
- 4.9 **“Intellectual Property” or “IP”** means any patentable invention, utility model, industrial design, undisclosed information or know-how, copyright, layout design of integrated circuits, tangible research property, rights relating to computer software, trade mark and any other industrial or intellectual property rights, registered or otherwise, including tangible research property.
- 4.10 **“Inventor”** means the University personnel or student (covered under Article 3.1 of this IP policy) who is considered the legal inventor of the work under relevant IP laws.
- 4.11 **“Industrial Design”** is any composition of lines or colors or any three-dimensional form, whether or not associated with lines or colors; Provided, that such composition or form gives a special appearance to and can serve as pattern for an industrial product or handicraft.
- 4.12 **“Know-how”** means any methods, techniques, processes, discoveries, inventions, innovations, non-patentable processes, specifications, recipes, formulae, designs, plans, documentation, drawings, data and other technical information .
- 4.13 **“Layout Design of Integrated Circuits”** is an original topography (picture of a place) of elements, at least one of which is an active element, and of source or all interconnections of an integrated circuits intended for manufacture.\
- 4.14 **“Mark”** means any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods.
- 4.15 **“Patentable Invention”** means any technical solution of a problem in any field of human activity which is new, involves inventive step and is industrially applicable. Non-patentable inventions are those enumerated under Section 22 of the IP Code.
- 4.16 **“Plant”** includes terrestrial and aquatic flora.
- 4.17 **“Staff member”** includes all administrative staff, non-researchers or any other persons employed by the university participating in research projects, whether part-time or full-time
- 4.18 **“Students”** means all matriculated undergraduates, student employees and higher degree students i.e. graduate students, candidates for masteral and doctoral degrees, post doctoral fellows at the University.

- 4.19 **“Tangible Research Property”** shall mean research results that are in a tangible form and that include items such as materials, drawings, integrated circuits chips, computer software, computer and other databases, processes, prototypes and circuit diagrams.
- 4.20 **“Utility Model”** means any technical solution of a problem in any field of human activity which is new and is industrially applicable. A utility model does not involve an inventive step.
- 4.21 **“University Personnel”** means all academic and research staff as well as staff members covered by this IP Policy under Article 3.1.
- 4.22 **“University resources”** are defined as all tangible resources provided by the University to inventors, including:
- i Facilities such as office, lab and studio space and equipment
 - ii Computer hardware and software;
 - iii Support and secretarial services;
 - iv Research teaching, and lab assistants;
 - v Supplies;
 - vi Utilities;
 - vii Funding and reimbursement for research and teaching activities, including travel.

University resources do not include salary, insurance or retirement plan contributions paid to or for benefit of Creators.

- 4.23 **“Undisclosed information or trade secrets”** shall mean information which is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question; has commercial value because it is secret; and has been subject to reasonable steps under the circumstances to keep it secret, by the person lawfully in control of the information.
- 4.24 **“Works”** are original intellectual creations in the literary and artistic domain protected from the moment of their creation and shall include in particular:
- i. Manuscripts, educational course materials and academic papers;
 - ii. Books, pamphlets, articles & other writings;
 - iii. Periodicals & newspapers;
 - iv. Lectures, sermons, addresses, dissertations prepared for oral delivery, whether or not reduced in writing or other material form;
 - v. Letters;
 - vi. Dramatic or dramatic-musical compositions, choreographic works or entertainment in dumb shows;

- vii. Musical compositions, with or without words;
- viii. Works of drawing, painting, architecture, sculpture, engraving, lithography or other works of art; models or designs for works of art;
- ix. Original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art;
- x. Illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science;
- xi. Drawings or plastic works of a scientific or technical character;
- xii. Photographic works including works produced by a process analogous to photography; lantern slides;
- xiii. Audiovisual works and cinematographic works produced by a process analogous to cinematography or any process for making audio visual recording;
- xiv. Pictorial illustrations and advertisements;
- xv. Computer programs; and
- xvi. Other literary, scholarly, scientific and artistic works

4.25 **“Variety”** means an plant grouping within a single botanical tax on of the lowest rank, that without regard to whether the conditions for plant variety protection are fully met, can be defined by the expression of the characteristics resulting from the given genotype or combination of genotypes, distinguished from any other plant groupings by the expression of at least one (1) characteristics and considered as a unit with regard to the suitability for being propagated unchanged. A variety may be represented by seed, transplants, plants, tissue culture plantlets and other forms.

ARTICLE 5 INTELLECTUAL PROPERTY OWNERSHIP

5.1. Copyright of Works

- (a) Copyright ownership of works by University Personnel or Students shall vest in the Creator, except under the following circumstances:
- (i) If the Work is created in the course of or pursuant to an agreement between the University and an external party, copyright ownership is subject to the terms on IP ownership set out in the relevant agreement; or
 - (ii) If the Work is created by a non-academic University Personnel or Student in the course of his or her employment with the University; or

- (iii) If the Work is commissioned by the University or is created at the direction of the University for a specific University purpose; or
 - (iv) If the Work is created using funds provided by or through the University for such purpose.
- (b) Copyright with respect to software is dealt with per other IP rights under Article 5.1 above.
- (c) The University shall also have the right to use, publish and reproduce such Works in whatever form, electronic or otherwise, for its teaching, research and academic purposes with appropriate notification to the owner.
- (d) If the owner of the copyright is other than the University, prior consent is required from the owner before any compilation, distribution and sale can be made.

5.2 IP Ownership by the University of Patent and other IP Rights

- (a) Right in IP made or created by the University personnel or students are owned by the University when either of the following applies:
- (i) The IP was developed in the course of or pursuant to University Research. University Research includes:
 - A. In the case of a University Personnel, all research conducted in the course of his/her employment with the University as part of his/her duties or in fulfilment of his/her contract of employment;
 - B. In the case of Students, all research for which the Student receives financial support in the form of wages, allowance, salary, stipend or grant from funds whether or not administered by or through the University; and
 - C. All research conducted pursuant to a research agreement between the University and an external party, subject to the terms on IP ownership set out in the relevant research agreement.
 - (ii) The IP was developed with substantial use of University's resources. The following shall be deemed to be substantial use of the University's resources:
 - A. Where University funds are used to specifically support the development of the IP;
 - B. Where there has been use of resources at the University that are not ordinarily available to most University personnel or Student. The use of office, library, computers and storage servers constitutes resources that are ordinarily available to University Personnel and Students and do not constitute substantial use of University's resources.
- (b) All IP developed by University Personnel or Students in their own personal time, which are neither connected to University Research nor developed with substantial use of University's resources, shall belong to such University Personnel or Students as Inventors.

5.3 Trademarks

The University shall be the sole owner of the University logo and shall have it registered with the Intellectual Property Office of the Philippines. Any use of the university logo shall require prior license or permission from the university.

5.4 Tangible Research Property (TRP) or research result as defined in Article 4.19 which cannot be the subject of any other kind of intellectual property protection are presumptively owned by the University. In no case shall biological material in any form be the subject of patents or any form of acquisition.

5.5 Student Thesis/Dissertation

- (a) A Student shall own the copyright of his/her thesis/dissertation subject to any agreement with the University or external parties. The Student shall grant to the University a royalty-free permission to reproduce, publish and publicly distribute copies of the thesis, in whatever form, electronic or otherwise.
- (b) If a thesis/dissertation contains information on an invention that may be patentable, the thesis may be required to be withheld in accordance with the procedures below:
 - (i) The College/Department may withhold public access to the Student's thesis/dissertation containing information on patentable invention until such time a patent application is filed by the TLO.
 - (ii) If the LTO or IP Unit decides not to pursue a patent protection in accordance with Article 7.1 (c) the thesis/dissertation may be released in accordance with the procedures adopted by the University.
 - (iii) If the Inventors' request for the return of the IP under Article 7.5 and wishes to pursue patent protection for the invention themselves, the Inventors may request the College/Department to withhold the thesis/dissertation for not more than three (3) months from the date of return of the IP in order for the relevant patent application to be filed.

ARTICLE 6 ADMINISTRATION

6.1 Creation of the Technology Licensing Office (TLO)/Intellectual property Unit (IP Unit)

To supervise the implementation of the IP Policy and commercialization of University IP assets, a Technology Licensing Office (TLO) or Intellectual Property Unit (IP Unit) shall be created with the following functions and responsibilities:

- i. Administer and monitor the implementation of the IP Policy;
- ii. Evaluate the potential of the works and/or inventions submitted for commercialization;

- iii. Negotiate with University personnel with respect to the development of independently owned technologies after a determination of their commercial potential for purposes of registration, licensing or joint venture agreements;
- iv. Manage the University's patent portfolio including the drafting, filling and prosecution of applications with the Intellectual Property Office of the Philippines (IP Philippines) as well as the maintenance or granted patents and registered trademarks;
- v. Administer the funds allocated for patenting and activities related to the protection and commercialization of the University IP;
- vi. Negotiate and manage contracts for the production, distribution and marketing of the University's IP assets;
- vii. Spearhead the preparation of business and marketing plans, and in securing financial assistance for any commercialized IP assets;
- viii. Administer payments derived from any commercialized IP assets;
- ix. Negotiate all license agreements for the University IP.

6.2 Staffing of LTO or the IP Unit

The LTO or IP Unit may have the following personnel, the number of which depends on the volume of activities that will be handled:

- i. Technology Licensing Officer – who shall direct and supervise the day-today operation.
- ii. Associate Technology Licensing Officer – who shall evaluate patentability and commerciability of University IP assets submitted to the TLO.
- iii. Financial Operations Staff – who shall handle financial matters of the TLO
- iv. Marketing Officer – who shall be responsible in locating suitable commercial development partners.
- v. Legal Officer – who shall handle legal matters and issues relating to University IP assets.
- vi. Office Operations Staff – who shall provide administrative support to the staff member of the TLO.

6.3 Creation of the Intellectual Property Management Committee (IPMC)

The University administration supervising the operation of the TLO or IP Unit may be placed under the Office of Vice President for Administration and finance or opt to create an IPMC with the following suggested functions:

- i. The IPC shall serve as the oversight committee that will oversee the management of the University's IP by the TLO or IP Unit.
- ii. The IPMC will be responsible for resolving any dispute that may arise from the interpretation of this IP Policy. If the matter cannot be resolved at the IPMC, such matter shall be referred to the University President for his decision, which will be final and conclusive.

- iii. The IPMC will also review and endorse license agreements negotiated by the TLO or IP Unit as well as periodically review the patent management and licensing practices of the University.

ARTICLE 7

DISCLOSURE, EVALUATION AND COMMERCIALIZATION OF UNIVERSITY IP

7.1 IP Disclosure and Evaluation Process

- (a) If an Inventor has developed any IP, the ownership of which is vested in the University under Article 5, or pursuant to any obligation to disclose such IP under any agreement the University may have with an external party, the Inventor(s) must promptly disclose the full details of the TLO or the IP Unit by submitting a Technology Disclosure Form with a copy to his/ her Dean of School.
- (b) The TLO or the IP Unit will evaluate the commercial potential and patentability of the IP. The TLO or the IP Unit may consult with other University Personnel or independent experts who are competent in the field to assist in the evaluation if appropriate or necessary.
- (c) The TLO or the IP Unit shall, within three (3) months from date of receipt of the Technology Disclosure Form, confirm in writing to the inventor(s) whether or not the University will pursue patenting and/or commercialization of the IP, subject to any obligations that may be owed to external parties [see further Article 7.1(e)]. Failure of the TLO to act within the period as stated herein shall be deemed as waiver by the University of its right to patent and/or commercialize.
- (d) The TLO or the IP Unit generally will seek patent protection in order to pursue commercialization of the invention and/ or protect scientifically meritorious inventions.
- (e) If there are obligations owed to an external party under the terms of a grant r research agreement in respect of the IP, the TLO or the IP Unit will contact the external party and proceed with the management of the IP in accordance with the terms of the agreement with such party.
- (f) The Inventor shall at all times maintain confidential the details of the invention in accordance with the Confidentiality policy set out in Article 9.1 below, in particular during the period when the TLO or the IP Unit is assessing the viability of commercialization and/or patenting the invention. Any publication (even verbal disclosure) which describes an invention prior to filing for a patent may jeopardize the patenting process. During the evaluation process, the inventor is obliged to delay public disclosure until patent application has been filed. The university must endeavor to minimize delays in publication.

- (g) All Inventors shall disclose to the TLO or the IP Unit the identity of any party interested in the commercial exploitation of the IP in sufficient detail and as soon as practicable after the relevant facts have come to their knowledge. All inventors are also required to disclose any conflict of interest as set out Article in 9.2.
- (h) Prior to any patent filings or commercialization by a University Personnel in respect of IP deemed owned by the University Personnel under Article 5.2(b) above, the University Personnel shall make full and truthful disclosure to the University by Submitting the Declaration of Mandatory Disclosure.

7.2 Return of IP to Inventor(s)

- (a) The TLO shall within 3 months return the IP to the inventors for commercial exploitation where:
 - (i) The TLO has informed the Inventor(s) that it does not wish to pursue the commercial exploitation and patenting of the IP under Article 7.1 (c); or
 - (ii) The TLO does not inform the Inventor(s) within 3 months of the acknowledgement of receipt of the Technology Disclosure whether it wishes to pursue commercial exploitation and/or patenting of the IP; or
 - (iii) The university has not commercialized the IP after 3 years from the date of receipt of the Technology Disclosure and there are no on-going discussions with any interested parties.

7.3 Commercialization and Protection of the University's IP

- (a) The University shall be entitled to approach, negotiate and enter into any binding IP agreement with any third party on such terms and conditions as the University, being the legal and beneficial owner of such IP, shall in its sole and absolute discretion deem fit.
- (b) The University shall be entitled to assign rights or grant licenses, whether exclusive or not, in respect of the IP for such periods as it shall deem fit, or make such other arrangements relating to such IP as it may deem appropriate in order to facilitate technology transfer while protecting the rights of the University and the Inventors.
- (c) The University will not negotiate contracts for consulting services for individual Inventors as part of a license arrangement. Individual Inventors are free to negotiate such contracts on a personal basis.
- (d) The University may use any means whatsoever, as it shall in its sole and absolute discretion deem fit, to protect any IP owned by it, including but not limited to instituting proceedings concerning infringement of IP rights and breach of license agreements.

- (e) The support and cooperation of the Inventors are usually critical for successful commercialization. The Inventor(s) shall provide all information and render all assistance to the University in any phase as may be required from time to time.

7.4 Distribution of Commercialization Benefits

- (a) The University shall share with the Inventor(s) of the IP any Net Revenue [as defined in Article 7.4(b) below] received by the University in the following ratio:

University (40%)

Inventor(s) (60%)

- (b) Net Revenue is defined as the gross consideration (including all royalties, fees and other benefits) received from the commercialization of the IP less all Expenses incurred in the commercialization of that IP. Expenses shall include all patent filing and legal fees, marketing and licensing costs, administrative expenses and fixed overhead costs and any other expenses necessarily incurred for patenting and commercializing the IP.
- (c) If the University receives shares in a company in exchange for a license or assignment of the IP to the company, the shares the University obtains will be held by the University and the proceeds from the liquidation of the shares shall be distributed to the Inventor(s) according to the same ratio as set out in Article 7.4(a). An inventor may also request to hold his/her portion of the shares in his/her own name, in which case such Inventor shall no longer be entitled to any proceeds from the liquidation of the remaining shares by the University.
- (d) The Inventors' share of Net Revenue under Article 7.4(a) will be distributed equally among any joint Inventors unless the University has been previously notified in writing of any different sharing arrangement agreed upon between the joint Inventors.
- (e) It is the responsibility and obligation of each Inventor to keep the University updated of his/her current contact number and address in order for the University to distribute his/ her share of the Net Revenue.
- (f) The University's share of the Net Revenue shall be distributed as follows:
 - College/Department (30%)
 - Univ. Research Center (10%)
 - Administration of IP (30%)
 - Innovation Fund (30%)

Where there are multiple Inventors from different Colleges/Departments, the College's/ Department's share of Net Revenue will be distributed among the College/Department in accordance with the number of Inventors from each College/Department.

- (g) The University shall distribute to the Inventor(s) the proportion of the Net Revenue due to them in such manner and at such times the University shall, in its sole and absolute discretion, deem fit.
- (h) Where the University returns the IP to Inventor(s) under Article 7.2 above, the Inventor(s) shall sign a Letter Agreement, which shall include the following terms and conditions for the return of the IP:
 - (i) The Inventor(s) shall be entitled to file for patent rights in their own name and at their own expense.
 - (ii) The University shall be entitled to a percentage of any benefits received by the Inventor(s) from the commercial exploitation of the IP as follows:
 - (A) The Inventor(s) shall account to the University 20% of any Net Revenue that the Inventors receive for the commercial exploitation of the IP. Net Revenue in this context shall mean the gross consideration (including all royalties, fees and other benefits, but excluding shares in a company), received less all Expenses incurred in the commercial exploitation of the IP. Expenses in this context shall mean all patent filing, licensing, legal, and any other reasonable and necessary expenses incurred for patenting, enforcement of rights and commercially exploiting the invention.
 - (B) Where the Inventor(s) receive shares in a company in return for the license or assignment of the IP to the company, the University shall be entitled to 20% of the Inventors' shares. Such percentage may be reviewed on a case-by-case basis.

Where the Inventor(s) will be receiving shares in a start-up company that the Inventor(s) found, the University or its nominee will further have a first right to invest in up to 40% of the total equity of the company at the initial formation of the company.

The university's share of the said Net Revenue shall be distributed as per Article 7.4 (f) above.

- (i) The Inventors shall submit to the University an annual report, and will keep the University informed of the status of each and every patent application filed in connection with the IP.
- (ii) The Inventor(s) shall disclose, furnish or otherwise make available to the University all information relating to or in connection with such patent application(s) and/or the commercial exploitation of the IP as and when requested by the University.

- (iii) The University may, but is not obligated to, request for the IP to be returned back to the University if the Inventor(s) fail to commercialize the IP after 3 years from the date the IP is returned to the Inventor(s).

ARTICLE 8

RESEARCH COLLABORATIONS WITH EXTERNAL PARTIES

8.1 Research Collaborations with Non-Commercial Parties

- (a) Non-commercial parties include other universities, research institutions, government agencies and non-governmental organizations.
- (b) In collaboration with non-commercial parties, IP will generally be jointly owned where both parties have jointly developed the IP (i.e. where employees/students of both parties are involved in creating, developing or generating the IP). Usually the parties will have the right to jointly commercialize the jointly-owned IP.
- (c) Where the IP is solely developed by the University, the University will retain the ownership of the IP but the non-commercial party will have free internal use of the subject IP. The terms and conditions of any commercial use of IP shall be subject to negotiations.

8.2 Research Collaborations with Industry

- (a) Collaborations with industry are encouraged as interaction with industry ensures that research at the university remains relevant and they also provide exposure to students to possible future employers. Companies will also benefit as they obtain access to the University's expertise, facilities and resources not otherwise available elsewhere.
- (b) The guidelines below lay down the factors that are taken into consideration in determining the IP terms in order to provide consistency in decision-making. The guidelines also recognize the different types of projects that can be undertaken with industry, which can range from exploratory research (where the application is not known), technology development (where the application is known) to product design and problem solving. The guidelines also provide for recognition of the University's contributions in the form of license fees payable by the Company as the Company obtains commercial benefits from IP generated with the help of the University.
- (c) The following guidelines on IP ownership and commercial use and licensing of the subject IP will apply to all research projects with industry.
 - (i) Joint Ownership of IP by the University and the Company

- A. The University will consider joint ownership where the Company will be contributing background IP to the project or will have intellectual contribution background IP, that is, employees of the company are also involved in creating or generating the IP together with the University. The Company must also be providing funding for a significant portion of the total project costs.
 - B. As a joint-owner which has contributed significantly to the development of the IP , the Company will have a non-exclusive royalty –free right to commercially exploit the project IP on its own without accounting to the University, the University will also retain the right to give out non-exclusive licenses without accounting to the Company.
 - C. The Company will have the right to license the IP non-exclusively to third parties but is required to account to the University a percentage of any licensing revenue it receives.
 - D. If the Company wishes to commercially exploit the IP exclusively, the Company will also have a first right to negotiate a royalty-bearing exclusive license with the University on commercial terms.
- (ii) Sole Ownership of IP by the Company
- A. The university will consider the sole ownership by the Company if the project meets the following criteria.
 1. The project is focused mainly on product development or improvements to the Company’s existing products or services and only the Company’s background IP is involved;
 2. The project has unambiguous known objectives and the Company lays down a defined way of performing the study;
 3. The University’s existing IP is not involved as the Company requires mainly access to the expertise and know-how of the University’s staff members;
 4. The University must benefit from the project and acquiring relevant industry experience through the exposure provided by working with the Company.
 - B. The Company will be required to bear the full project cost, which includes full University manpower and facilities/equipment costing.
 - C. The company’s ownership of IP, will, however, be limited to the Company’s Field of Application as specified in the project agreement. The University will reserve ownership of any project IP generated in the fields of application not

specified in the project agreement and will be free to exploit the IP in those other fields of application.

8.3 General Policies on Other Terms in Research Agreements

(a) Publications

The University reserves the right to publish or present the findings of the project, subject to only the right of the external party to require the delay of any publication or presentation in order to remove any of its confidential information or for the filing of any patents in accordance with the term of the research agreement for the project.

(b) Warranties

As the research is only conducted on a reasonable efforts basis, the results are provided “as-is” and without any representation or warranty of merchantability or fitness for any particular purpose or any warranty that any use will not infringe or violate any patent or other proprietary rights of any other person.

(c) Indemnities

The University requires the external party to indemnify the University from any claim, loss, cost, expense or liability of any kind that may be incurred by the University due to the external party’s use (commercial or otherwise) of the results or IP generated from the project.

(d) Overhead Charge

- (i) A ten percent (10%) overhead charge will apply to all research projects to take into account the overhead costs in providing the facilities and resources to carry out research at the University. The Overhead charge shall be distributed in the following ratio:
 - University (30%)
 - University Research Center (20%)
 - College/Department (40%)
- (ii) The overhead charge will be imposed on all direct funding received from the external party.
- (iii) The overhead charge does not apply to unrestricted or outright grants or to government grants that do not allow such overhead charges.

Usually for such grants, no specific results are required or expected from the sponsor and no rights to any IP accrue to the sponsor.

**ARTICLE 9
GENERAL OBLIGATIONS**

9.1 Confidentiality

- (a) All University Personnel and Student shall at all times maintain confidential all information defined herein, whether made/developed on his/her own, in collaboration with University colleagues , or acquired through discussions (whether formal or informal) with University colleagues.
- (b) The above confidentiality obligations shall not apply in any of the following circumstances.
 - (i) where disclosure is required by law or any government agencies.
 - (ii) where the information is in the public domain or becomes generally available to the public; or
 - (iii) where disclosure is made with the prior consent of the University.

9.2 Disclosure of conflicts of Interest

- (a) All Inventor (s) Creator (s) who have any interest, whether directly or indirectly, in any party interested in commercial exploitation of University IP, shall make full and honest disclosure of the nature and extent of their interest to the University, as soon as practicable and to the best of their knowledge .without prejudice to the generality of the foregoing, an Inventor shall be deemed to have an interest if he/she (or a person over whom he/she has control) in a director of, or a share holder with a materials shareholding in the organization or company interested in the commercial exploitation of the University IP.
- (b) In addition, all University Personnel shall make full and honest disclosure and seek the approval of the University in the event of any situation where a conflict of interest may arise as highlighted in Section 10.2.
- (c) Failure to declare his/her interest in the commercial exploitation of the University IP and/or seek the approval from the University as required in 9.2 (a) and (b) above shall subject the University Personnel liable to disciplinary or other action which the University shall, in its sole and absolute discretion impose.

**ARTICLE 10
CONSULTANCIES/DIRECTORSHIP IN COMPANIES**

10.1 Consultancies

- (a) University Personnel entering into consultancy work pursuing the commercialization of the IP shall commit not to disclose or to transfer to external party any IP belonging to the University. They shall also ensure that a separate agreement is entered into with the appropriate College/ Department for the use of the university facilities, equipment or resources for such consulting work.

- (b) In any consulting service, University Personnel shall not breach the confidentiality obligations to which they are subject by virtue of being employees of the University. They shall not disclose any Confidential Information which relate to University IP or any research which is being carried out at the University.

10.2 Conflict of Interest

(a) Conflict of interest may arise in various situation relating to technology transfer interaction with industry. To minimize or prevent such conflict of interest situations, University Personnel must make full and honest disclosure to, and seek approval of, the University in the following situations:

- (i) undertaking sponsored or collaborative research with a company that has licensed IP from the University, where the research is related or in the same area as the IP licensed.
- (ii) deployment of Students by the University Personnel to do product and/or process research and development for a company in which the University Personnel has an interest. In cases where a University Personnel supervises final- year projects and higher degree students, this includes working on thesis topics in which the University Personnel has a commercial interest in the research area;
- (iii) transmitting to a company information that is not generally available to the public. This includes withholding or reducing publications after transferring technology to the company, or falling to attend to industry visitors from competing companies;
- (iv) Undertaking or changing the orientation of the University Personnel's research (whether supported by University funds or external grants) to serve the research, product development or other needs of a company;
- (v) use of University Personnel's position in the University to participate in company activities;
- (vi) purchasing of equipment, instruments, materials or other items for university teaching and/or research from a company in which the University Personnel has an interest;
- (vii) engaging in consultation with a company in which the university personnel or any person related to him (including without limitation, his parent, spouse, brother, sister, daughter, or any person who is holding legal title for the benefits of the university personnel) has an interest, whether legal, beneficial or otherwise.

10.3 Directorship of Companies (Including University Spin-Off Companies)

Subject to the conditions as laid down by the University for academic staff to undertake external consultation and specialist work (including Non-Executive Company Directorship), University Personnel may be given approval to accept appointment to non-executive directorships in companies, including companies to be formed, that will commercialize their inventions.

ARTICLE 11 GENERAL PROVISIONS

11.1 Interpretation

The Intellectual Property Code of the Philippines (Republic Act No. 8293), the Plant Variety Protection Act of 2002 (R.A 9168), the Agriculture and Fishery Modernization Act (R.A. 8435), the Philippine Fisheries Code of 1998 (R.A. 8550), the Wildlife Act (R.A 9147), Indigenous People Rights Act (IPRA Law), the Inventor's and Invention Incentives Act (R.A. 7459), the Magna Carta for Scientist, Engineers, Researchers and other Science and Technology Personnel in Government (R.A. 8439), the Administrative Code of 1987 (E.O. 292),and the respective chapters of agencies under the University, and other relevant laws and their corresponding amendments, implementing rules and regulation are deemed written into the IP Policy.

11.2 Construction

In the event of doubts in the interpretation of this IP Policy, the provision should be construed in favor of the University/generator of IP.

11.3 Waiver of Policy

The University shall have the discretion to waive or vary any all of the provision of this rules in particular case. A waiver on one occasion and for a particular case shall not be deemed to be a waiver or variation of the same or any other provision on a future case.

11.4 Commencement and Application of IP Policy

This policy is effective from 2011 and shall be applicable to all University IP licensed after the effective date. The rules set out in the IP Policy are subject to the terms of any agreement with external parties that the University may enter into.

11.5 Amendments of the Rules and Guidelines of the IP Policy

The rules and guidelines set out in the IP Policy may be amended by the University from time to time. The University shall under take to notify University Personnel and Students as soon as is

practicable of the amendments so made. In any case, the amendments shall be in full force and effect on the date the amendments have been announced by the university to take effect.

ARTICLE 12

PENALTIES

Any person found to have violated any of the provision of this IP Policy shall be dealt with in accordance with the provisions of faculty, staff, administrative or applicable employment manual. Any violation of these policies shall be considered as a disciplinary offence.

III. REFERENCES

Research Operation Manual of Central Philippine University
Draft Template on Intellectual Property Policy for Higher Education Institutions (HEIs)
Research Manual of Western Visayas State University
Intellectual Property Code of the Philippines (R.A. 8293)
BOR Resolution #_____, RSU_____

IV. APPENDICES

A. INTELLECTUAL PROPERTY RIGHTS COUNCIL

Chairman: Vice President for REP

Co-Chairman: Director of Research

Members:

- a. College Deans
- b. Provincial Director of DOST, DTI, TESDA and DOLE

B. PUBLICATION COMMITTEE

Chairman: Vice President for REP and VPAA

Co-Chairman: Director for extension

Members:

- a. 2 Language Faculty (English and Filipino)
- b. 2 IT Faculty
- c. 2 External Editor
- d. 2 External Evaluators/Editors

C. PATENTING COMMITTEE

Chairman: Dean of College of Engineering and Technology

Co-Chairman: Director for Research

Chair of Research- CET

Members: All Department Heads of College of Engineering And Technology (CE, ME, Ag. Eng'g, EE, IT)

D. COPYRIGHT COMMITTEE

Chairman: Vice President for REP

Co-Chairman: Vice President for Academic Affairs

Members: College Deans and Research Director