

5. INTELLECTUAL PROPERTY

5.1 Intellectual Property/ Intellectual Property Rights/ Ownership

5.1.a Copyright

1. Copyright of all works (as defined by Article IV- Section 32) shall be owned by the University unless under the following circumstances:
 - a. If the work is a product between the University and an external party, copyright ownership is subject to the terms provided in the agreement of both parties;
 - b. If the author is not a student, employee, faculty, staff or part of USM community; or
 - c. If the work is not funded or commissioned by the University or by third party involving the University.
2. All published works owned by the University shall bear a copyright notice composed and affixed in accordance with Philippine Copyright law. University-owned materials shall bear the notice:

© (Year of publication) University of Southern Mindanao

No other annotation, regarding a division, research center or other University unit may be used in the copyright notice.

5.1.b Patentable Technologies

1. All IPs, including new plant varieties and animal breeds referred to in this policy made or created by the University personnel or students shall be owned by the University when any of the following applies:
 - a. The invention developed in pursuant to the University Research operations.
 - b. The invention was developed through research and development funded by any government funding agency, government assisted funds, or allocation of the University funds.
 - c. The invention developed by University faculty, researcher, student or staff with substantial use of the University resources as stipulated in Article 4- Section 31 of this IP Policy
2. Subject to the provisions of the Technology Transfer Act of 2009, if the invention is the result of collaborative efforts of the university and external party, the patent over said invention shall belong in joint ownership among the university, the inventor/s of the external party.
3. Conflicts pertaining to IP rights shall be resolved through mediation and arbitration to be facilitated by the Office of the Vice President for Research, Development and Extension. Only in the event of failure of any of such modes may such conflict be the subject of court action.

5.1.c Trade and Service Marks

The University shall own trade or service marks relating to goods or services distributed by the University. These include names and symbols used by the university in conjunction with its computer programs or university activities and events.

5.1.d Protection of Undisclosed Information/ Trade secrets

Upon the determination of the President, circumstances are such that well-defined interests of the general public will better be protected by claiming legal protection of information or technology as "trade secrets".

5.1.e Tangible Research Property (TRP)

Research results which are in a tangible form (i.e. integrated circuit chips, computer software, biological organisms, engineering prototypes, laboratory notebooks or logbooks) which cannot be the subject of any other kind of intellectual property protection are presumptively owned by the university.

5.1.f Theses and Dissertations

1. A student shall own the copyright of his/her thesis/dissertation and associated data subject to provisions of applicable laws, the provisions of this policy as well as any agreement(s) with the university and/or external parties. However, if the research receives financial support from grants, salaries, stipends from funds administered by USM or utilizes university's facilities and equipment, the University shall retain a degree of copyright ownership over the thesis/ dissertation.
2. As a condition of awarding a degree, the student shall grant the university a non-exclusive worldwide, royalty free license to reproduce, publish and responsibly distribute copies of said thesis/dissertation in any form, and also entails placing a declaration on thesis use and publication on the page immediately following the title page.
3. In the event a thesis/dissertation contains information on an invention that may be patentable or registrable, if the same contains confidential information, and has been subjected to confidentiality agreement, the department, institute or college may withhold public access to said thesis/dissertation and the defense proceedings and may take such other reasonable steps to protect the author, the university and/or third party's IP rights. Thus, a confidentiality statement shall also be declared, and the use, reproduction and publication of the thesis/dissertation shall be applicable when disclosure has been executed and/or after the expiration of the confidentiality agreement.
4. The "Declaration on Thesis Use and Publication" will be stated as follows:

"I hereby acknowledge and comply with the regulations set forth by the University of Southern Mindanao concerning the preservation and utilization of this thesis. I understand that University of Southern Mindanao possesses the right to retain copies of the thesis/dissertation, permit its consultation, and publish all or parts of it in accordance with the principles of academic openness and intellectual property protection. Additionally, University of Southern Mindanao is authorized to preserve and

compile the thesis/dissertation through photocopying, reprinting in a reduced format, or employing other reproduction methods.

I am fully aware that should my thesis/dissertation be subject to any confidentiality agreement, this authorization statement shall only be applicable after the expiration of the confidentiality period ([state the period here, usually 1 year]).

I am fully aware that I should carry and include the University of Southern Mindanao, the College and the Department, and all individuals who contributed substantially to this thesis/dissertation, in any publication related to it."

5.2 Incentives on IP Assets

The university shall provide incentives to author(s) and inventor(s) who generated IP assets subject to availability of funds, provided that the requirements for incentives, based on the Implementing Rules for the USM Revised Intellectual Property Policy of 2019 (BOR Resolution No. 37 Series of 2020), are submitted. These are:

Rule 7. General Rule for Ownership - Any technology that is a result or the product of the four mandated functions of the University mainly instruction, research, extension and research generation shall be owned by the University unless mentioned under circumstances listed in Article 5 of the IP Policy Section 101.

7.1 Ownership shall belong to the employee, if the incentive activity is not a part of his regular duties even if employee uses the time, facilities and materials of the employer.

7.2. Ownership shall belong to the employer, if the invention is the result of the performance of his regularly-assigned duties, unless there is an agreement, express or implied, to the contrary.

Rule 8. Who may be named as applicant in the application. - The "University of Southern Mindanao" shall be assigned as the sole "Applicant" in the IPOPHL application form which places the University as the owner of the IP. This rule shall not apply only if conditions of Rule 7.1-7.2 are exemplified.

Rule 24.1. For Patent, Utility Model, Industrial Design and Plant registry, incentive for filing shall only apply

- (1) If the technology has been subject for technology pitching, before the grant of registration number provided the IP was filed. Certificate as presenter shall be attached together with the IP application number;
- (2) If the technology has been featured in science and technology symposiums, conference, expo or exhibit, before the grant of registration number provided the IP was filed. Certificate for poster or oral presentation entry shall be attached together with the IP application number;

- (3) If the technology has been part of the branding or any form of derivation for the realization of trademark application before the grant of registration number provided the IP was filed. IP application number for Trademark shall be attached;
- (4) If the technology has identified the adapter before the grant of registration of number provided the IP was filed. Signed Memorandum of Agreement signed by the University and adapter shall be attached together with the IP application number;
- (5) The technology has been applied for commercialization before the grant of registration number provided the IP was filed. Signed memorandum of agreement between the funding agency and the University shall be attached together with the IP application number.

Rule 24.2. For copyrighted works, incentive for filing shall only apply if the following supporting documents are fulfilled for each case described:

- (1) If the copyrighted work refers to a book which has contributed to the scientific body of knowledge and used as textbook or reference for teaching - Course syllabi relating to the copyrighted works, or Certificate from school library stating the copyrighted work has been indexed shall be attached together with the ISBN number.
- (2) If the copyrighted work of any form which has commercial value and contributed income generating funds to the University. Receipt of purchase of sold copies by institution or business establishments (i.e., bookstores, school libraries) shall be attached together with the ISBN number.
- (3) If copyright work in the form of literary work, dramatization, musical composition and audio-visual works has been adopted for filmmaking or multi-media production. Certificate from the production companies stating the copyrighted work has been used in any form of its operation shall be attached together with the ISBN number.
- (4) If the copyrighted work in the form of computer program has been adopted for operations and system in the University or other institution. Certificate from the office or institution that the copyrighted work has been used shall be attached together with the ISBN number.

An incentive of Php 5,000.00 shall be given to researcher/s after filing of Patent/Utility Model/Industrial Design/Trademark/Copyright/Plant Registry upon receipt of application form with assigned application number from IPOPHL. An additional incentive of Php 20,000.00 for every granted Utility Model; and Php 50,000.00 for every granted invention shall be given respectively.

Shares in royalty and other revenues shall be payable to the creator(s)/inventor(s) of the IP even after retirement, termination of their employment, contract of service, or in the case of students after their graduation; provided further, that said creator(s)/inventor(s) have not been dismissed from the university because of violation of provisions of this policy (e.g., selling or compromising university trade secrets).

5.3 Disclosure and Protection of Intellectual Property

5.3.1 IP Disclosure and Application Process

1. Before the execution of the Research Agreement, the researcher(s) shall comply for technology assessment report forms (USM IPTTBDO TA-1 and 2).
2. The researcher(s) shall promptly identify and disclose the intended IP to USM TTO by submitting the following requirements:
 - a. IP Disclosure Form (to be secured from the USM IPTTBDO)
 - b. Waiver forms (to be secured from the USM IPTTBDO)
 - c. If technology derived from student's thesis/ dissertations- final indexed manuscripts
 - d. If technology based on University funded research- signed terminal report
 - e. In case of personal funded research- report of the study and Waiver Form D

The IPTTBDO unit shall determine and recommend the technology for IP protection through the URDEC. IP derived from externally funded research shall be filed without prior recommendation from URDEC by virtue of signed MOA of the respective project.

The URDEC shall check for legitimacy and review proposed technology for IP filing application.

In case of external party involved such as in research grants with respect to the IP, the IPTTBDO shall notify the external party and proceed with the terms of the agreement with such party.

No public disclosure about the IP shall be made which include the disclosure of confidential information and will constitute prejudice of its full protection. If public disclosure is made, an IP application shall be filed within three (3) months from the date of such public disclosure.

Concerning biodiversity, genetic resources or materials associated with traditional knowledge, and indigenous knowledge, systems and practices, the rules on disclosure for the protection of their IPs, as stated in Section 3, Rule 12 of R. A. No. 10055, shall govern.

5.4 Technology Transfer

In pursuant to Article IX of R. A. No. 10055 and Rule 24, Chapter IX of the IRR or Joint DOSTIPO Administrative Order No. 02-2010 dated 18 August 2010, the University of Southern Mindanao IPTTBDO particularly its Intellectual Property and Technology Transfer Division is hereby created which shall carry out the following functions:

1. Manage the University Portfolio which includes providing assistance in IP drafting disclosures for IP Filing and prosecution with IPOPHL and maintenance of registered IP's;
2. Evaluate potential of IP's for deployment, extension, and commercialization which includes preparing technology assessment report, business/ marketing plans, and IP valuation reports;

3. Assist university researchers and business/other organizations seeking technology adopters;
4. Assist in preparing legal documents pertaining to IP and commercialization;
5. Negotiate between technology adopter and the author/inventor of technology for purposes of registration, licensing, joint venture or other technology transfer arrangements;
6. Review and recommend, upon consultation with the appropriate units of the constituent universities, appropriate intellectual property policies for the university;
7. Promote a culture of innovation and entrepreneurship in all USM campuses through provision of training courses and seminars on intellectual property and technology commercialization;
8. Administer and monitor implementation of the IP Policy.

The President may authorize the Vice-President for Research, Development and Extension (VPRDE), or other Designee, the authority to negotiate and execute, on behalf of the University, legal documents relating to the University's IP and the formation and operation of companies for the commercialization of University technologies.

The URDEC shall function as a review committee that will oversee the management of the IPTTBDO.

5.5 Commercialization

5.5.a Intellectual Property Commercialization

USM has the first right to commercialize any IP generated in the University. In cases where the University failed to commercialize an IP one year after it was granted, the inventor/s shall be allowed to commercialize or participate in a spin-off company subject to the provision of RA 10055 Chapter VI.

5.5.b Identification of IP's for Commercialization

1. The requirements for IP to be considered eligible for transfer or commercialization are as follows:
 - a. Technology Assessment Report forms (USM TTO TA- 3, and 4);
 - b. Cost and revenue analysis report, stating total R&D cost particularly to production of technology;
 - c. Acceptance of the technology/IP application or the grant of the patent and/or other IP.
2. The IPTTBDO shall determine and recommend to the University the technology for commercialization with approval from URDEC.
3. The URDEC shall check for legitimacy and review identified technology for commercialization.

To facilitate promotion, dissemination or commercialization of technologies generated, the researcher(s) shall provide the IPTTBDO relevant information/documents to prepare various marketing or promotional tools or kits, where applicable, without compromising the full protection of the IPs, such as:

- a. Technical or terminal reports, consisting of manufacturing process or operations, materials and equipment requirements or specifications, quality control parameters, utilities or power requirements, product quality specifications and test procedures, and others;
- b. Invention disclosure documents;
- c. Design and/or diagrams or blueprints of equipment; and,
- d. Plant design or layout.

In case of an external party involved such as in research grants with respect to the commercialization of the IP, the IPTTBDO shall notify the external party and proceed with the terms of the agreement with such party.

Secondment shall be allowed and shall be in accordance with exiting University and provisions in RA 10055. In the case where the University researcher would be employed by an existing company, which will pursue the commercialization of the technology/IP, the applicable provisions of R. A. No. 8439 shall prevail.

5.5.c Technology Commercialization Modes and Principles

The Guiding Principles on Intellectual Property Commercialization (stated in Chapter II of the Joint DOST-DTI-IPOPHL Administrative Order No. 001) must be observed in the transfer or commercialization of IPs through various modes.

Modes of Commercialization

1. Licensing/Other Agreement - The University, through the IPTTBDO, shall prepare a Licensing Agreement or other appropriate agreement by the following process:
 - a. The University, through consultative meetings/ negotiations by the IPTTBDO and the researcher(s), shall closely coordinate with prospective Technology Adopter to discuss or negotiate on the terms of the technology transfer or commercialization and compliance therewith.
 - b. The University, through the IPTTBDO, shall prepare a draft of the licensing agreement, or a Technical Service Contract, or any other agreement, signed by both University and prospective Technology Adaptor.
 - c. In case of direct negotiation for the technology commercialization agreement, the university shall submit a written request to the Secretary of DOST to obtain a written recommendation from the DOST Secretary on the agreement and to secure a Fairness Opinion Report (FOR) from an independent third-party body, submitting relevant documents, such as:
 - i. Proposed transaction;
 - ii. Valuation Report;

- iii. Due Diligence Report on the parties to the transaction, and
 - iv. List of potential recommendees for membership in the Fairness Opinion Board (FOB)
 - v. Signing or Execution of the Agreement upon obtaining the written recommendation from the Secretary of the DOST and/or favorable FOR on the transaction, the agreement may be signed or executed by the parties.
2. Spin-off - The University's researcher-employee may establish or participate in a spin-off firm to commercialize or pursue commercialization of the IP's generated from the R&D funded by the government by complying to the provisions of the IRR of the RA 10055 Chapter VI and Chapter VII rule 16. The spin-off firm may apply for a Technology Business Incubator (TBI) arrangement based on existing TBI policies of the University.
3. Direct Sale - The University, through the IPTTBDO, shall have a Technical Service Contract, or any other agreement, and present the agreement to the prospective Technology Adaptor for review before finalization, signed by both parties to facilitate technology transfer.

5.5.d Revenue Sharing Between RDI And Researcher(s)

Under the rights of the researchers granted under R. A. No. 8439 or the "Magna Carta for Scientists, Engineers, Researchers, and other S&T Personnel in Government", the University and the researcher(s) shall have sixty percent (60%), and forty percent (40%) share, respectively, in the revenues derived from R&D projects.

Net profit shall mean gross sale minus royalty, production cost and other expenses.

- a. When the University undertakes the commercialization/distribution of the technology and IP's, royalty share shall be 15% of the gross sale. Further, the researcher/s or author/s shall also have 20% share in the net profit.
- b. When the University undertakes commercialization/ distribution of the technology and IP's involving external party (research grants/ collaborators/ etc.) royalty sharing shall depend on the terms of agreement with the involved party.

The researcher may claim payment for the share upon submission of the following documentary requirements:

- a. Copies of applicable agreement, and report on the technology transfer agreement stating the names and share distribution of all entitled University personnel;
- b. Copy of IP protection filing or Certification or Registration of the relevant technologies/IPs/IPRs, if applicable;
- c. Copy of technical report in published form or project technical report, both with International Standard Book Number (ISBN) of the University's technologies without IP Protection; and
- d. Copy of Official Receipt of payment for royalty made by the Technology Adopter to the University.

The apportionment/distribution of the share among the researchers shall be stipulated in the MOA/Special Order/Research Agreement. In the absence of a written agreement among the researchers, the share shall be distributed among involved researchers as follows:

- a. For technologies/IPs with only one researcher, one hundred percent (100%) shall be vested on the sole researcher;
- b. For technologies/IPs/IPRs with two researchers, sixty percent (60%) shall be given to the principal author/researcher and forty percent (40%) to the co-researcher; and
- c. For technologies with three or more researchers, forty percent (40%) shall go to the principal author/researcher and sixty percent (60%) shall be distributed among the other researchers.

Duration of Payment. The researchers shall continue to receive their share under the following conditions:

- a. Researchers who have retired or have severed their employment ties with University shall continue to receive their share within their lifetime for as long as there are royalties and revenues derived from the commercialization of the technology/IP/IPR;
- b. In no case shall the researcher assign, convey, or transfer his/her right, title, or interest in and to the share in royalties.

The University's share of the Net Revenue shall be distributed as follows:

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| a. College/Unit (of where the author of IP is assigned, c/o College Dean) | 25% |
| b. Tech Transfer Office (c/o IPTTBDO) | 50% |
| c. Innovation Fund (c/o R&D Director) | 25% |

5.5.e General Provisions

Basic Provision - Any issues on the IPs/IPRs generated out of Government funded R&D shall not impede the expedient transfer, roll-out or commercialization of the needed technology, as may be determined mainly by the DOST Secretary in case of national emergencies or the need to advance national and local interests.

Dispute Resolution - Any dispute relating to any provision in this Protocol or arising between the University and the researchers about any of the provisions in the Research Agreement shall be resolved amicably through the alternative dispute resolution process of the University.

Separability Clause - If any provision of the Protocol is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions.

Amendments - The IPTTBD office upon recommendation to, and approval of the University President, may as it is necessary, amend, revise, and/or add to these implementing rules and regulations in order fully implement the intent of the intellectual property rights.

Effectivity - The University administration shall endeavor to make this protocol effective upon the approval of the USM Board of Regents and 30 days after its publication in the University website.