

OFFICE OF THE SECRETARY

ADMINISTRATIVE ORDER NO. _____
Series of **2019**

SUBJECT: **REVISED** POLICY GUIDELINES GOVERNING CONTRACT RESEARCH

I. OBJECTIVE

The enhanced collaboration with the private sector, particularly through contract research, significantly contributes to the successful transfer or utilization of the results of the research and development activities undertaken by the government agencies. Thus, the Policy Guidelines aims to provide a uniform and effective policy on the contract research conducted by the DOST and its attached agencies.

II. APPLICABILITY

The Policy Guidelines shall apply to contract research or research and development work undertaken by the DOST or any of its attached agencies on contract basis.

III. DEFINITION OF TERMS

- A. As the term is used in the Policy Guidelines, it shall have the following meaning:
- a. *contract research* is a research and development work of interest to the contracting parties whose funding is defined in Article VII below;
 - b. *research and development work* is a creative work undertaken on a systematic basis in order to increase the stock of knowledge to devise new applications;
 - c. *contract basis* refers to engagement of DOST or any of its attached agencies by any of those listed in Article IV.A below to undertake research and development work which is fully or partially funded by the latter;
 - d. *contracting parties* refer to the DOST or any of its attached agencies on one hand and any of those listed in Article IV.A below called the Other Contracting Party, on the other;

- e. *fully funded* refers to payment of all costs and expenses for the contract research, as enumerated in Article VII below;
 - f. *partially funded* refers to partial payment of all costs and expenses for the contract research, as enumerated in Article VII below; and
 - g. *public entity* is a government agency or instrumentality, or government-owned and/or - controlled corporation.
- B. The following terms shall have the same meaning as defined in Republic Act (R.A.) No. 10055, otherwise known as the Philippine Technology Transfer Act of 2009, and its Implementing Rules and Regulations (IRR), as amended:
- a. intellectual property; and
 - b. intellectual property rights.

IV. ENGAGEMENT TO CONDUCT CONTRACT RESEARCH

- A. The following may engage DOST or any of its attached agencies to conduct contract research or perform research and development work and fully or partially pays for the same (individually called the “Other Contracting Party”):
- a. public entity, other than DOST or its attached agencies;
 - b. private entity, domestic or foreign, in the form of an organization, association, partnership, joint venture, higher education institution, or corporation; or
 - c. individual, Filipino or foreign citizen.
- B. When the Other Contracting Party is a public entity, other than DOST or its attached agencies, the provisions of R. A. No. 10055 and its IRR, as amended, and all other applicable laws, rules and policies, shall govern the contract research.
- C. For every contract research with one (1) big private entity or large enterprise, the DOST/Agency concerned is required to contract research and development work with at least two (2) micro, small, or medium enterprises, as defined under R. A. No. 6977, as amended by R. A. No. 8289, and further amended by R.A. No 9501, regardless of the source of funding. For this purpose, based on the aforesaid law, a big private entity or large enterprise has an asset size, less land, of more than One Hundred Million Pesos (Php100,000,000.00).

V. KINDS OF CONTRACT RESEARCH COVERED

The Policy Guidelines shall cover the following kinds of contract research or research and development work (called “R&D”):

- a. fundamental/basic research - experimental or theoretical work undertaken primarily to acquire new knowledge of underlying foundations of phenomena and observable facts, which can either be a free fundamental research or research without immediate or specific use in view, or an oriented basic research or research geared towards the solution of a specific problem that has not been solved before;
- b. applied research - investigation undertaken in order to acquire new knowledge directed primarily towards a specific practical aim or immediate commercial application;
- c. experimental research - systematic work, drawing on existing knowledge gained from research and/or practical experience that is directed to produce new materials, equipment, products and devices; install new processes, systems and services; or, improve substantially those that are already produced or installed; and,
- d. any other kind of R&D or creative work undertaken on a systematic basis in order to increase the stock of knowledge to devise new applications.

VI. HANDLING/PROCESSING OF CONTRACT RESEARCH

- A. The following are the requirements and procedure to be complied with in engaging the DOST or any of its attached agencies (called "DOST/Agency") to conduct contract research:
 - a. submit project proposal to the DOST/Agency Head;
 - b. the Division/Department concerned of the DOST/Agency evaluates the project proposal and recommends to the DOST/Agency Head;
 - c. the DOST/Agency Head and/or its governing body, as the case may be, decides whether or not to approve or accept the project proposal; and
 - d. if project proposal is approved or accepted, a Research Funding Agreement (RFA) or Memorandum of Agreement (MOA), which contains provisions on budget, fund release, obligations of the parties, scope of research, project implementation, submission of reports, ownership of project properties, ownership and utilization of research data and findings, intellectual property (IP) or intellectual property rights (IPRs) ownership and management, confidentiality of information, sharing of any revenue, and other matters, shall be executed between the contracting parties.
- B. The following are the factors to be considered in approving or accepting the project proposal:
 - a. alignment to national priorities, DOST thrusts, and Agency mandate;
 - b. technical feasibility;

- c. capacity of the DOST/Agency to undertake the R&D, in terms of availability of manpower and facilities, and others; and
- d. other factors deemed necessary by the DOST/Agency Head.

VII. FUNDING OF THE CONTRACT RESEARCH

- A. The contract research is fully funded by the Other Contracting Party when it pays for all of the following costs or expenses:
 - a. personal services (e.g. honorarium or incentive pay, consultancy or professional fees);
 - b. maintenance and other operating expenses (e.g. travel or transportation, communication, supplies and materials, utilities, service fees);
 - c. equipment outlay (purchase, use, replacement or repair of equipment);
 - d. use of facilities; and
 - e. administration costs (administration expenses, printing or publication, indirect costs).
- B. The contract research is partially funded by the Other Contracting Party when it pays only for some of the costs or expenses as agreed upon with the DOST/Agency.
- C. In either case, whether the contract research is fully or partially funded by the Other Contracting Party, the DOST/Agency pays for the salaries of some or all the researchers involved in the R&D.
- D. In the computation of the costs or expenses contributed by the DOST/Agency or to be paid by the Other Contracting Party in contract research, the opportunity cost of the DOST/Agency and intellectual capital of the researchers involved in the R&D should be taken into account.
- E. The properties acquired for the contract research and paid for by the Other Contracting Party shall be owned by the latter unless donated to the DOST/Agency.
- F. The funds for the contract research shall be released either on lump-sum basis or fixed payment at regular intervals to be agreed upon by the parties in the RFA or MOA. The handling of the funds, budget or payments involved in the contract research shall comply with the accounting, auditing, budgeting and financial policies of the DOST/Agency.

VIII. OWNERSHIP OF THE DATA, FINDINGS, IP/IPRs DERIVED FROM THE CONTRACT RESEARCH

- A. The DOST/Agency owns the data, findings, IP/IPRs derived from the contract research when it entirely performed the R&D, whether or not fully or partially funded by the Other Contracting Party. Accordingly, all the

rights, title to and interest in the same, including the initiation of IP protection, shall be exercised by the DOST/Agency, subject to limitations stated herein.

- B. The DOST/Agency and the Other Contracting Party jointly own the data, findings, IP/IPRs derived from the contract research, in a percentage sharing indicated in the RFA, when both performed the R&D. For this purpose, the IP/IPRs that may emanate from the theory or project proposal submitted by the Other Contracting Party may be considered its contribution to the R&D thereby justifying its joint ownership in the IP/IPRs derived from it.
- C. The DOST/Agency and/or the public entity engaging the contract research may fully assume the rights and ownership of the data, findings, IP/IPRs derived from the contract research, in cases of national emergency or other circumstances of extreme urgency, or where the public interest requires, and in particular involves national security, nutrition, health, or the development of other vital sectors of the national economy. In this instance, Section 16, Article VII of R. A. No. 10055 and Rule 20, Chapter VII of the IRR, as amended, and other applicable provisions, shall be followed.

IX. COMMERCIALIZATION OF THE IP/IPRs DERIVED FROM THE CONTRACT RESEARCH

- A. The commercialization of the IP/IPRs derived from the contract research shall comply with the applicable provisions under R.A. No. 10055 and its IRR, as amended, Joint DOST-DTI-IPOPHL Administrative Order No. 001, Series of 2012, entitled Guidelines on Intellectual Property Valuation, Commercialization and Information Sharing (i.e., licensing preferred over outright sale, non-exclusive licensing preferred over exclusive licensing, and others), Revised DOST IP Policy, and other laws, rules and policies, unless otherwise indicated herein or in the RFA or MOA.
- B. In the commercialization by the DOST/Agency of the IP/IPRs derived from the contract research, the pertinent provisions under Rule 11, Chapter III of the amended IRR of R. A. No. 10055, including the policies, rules, and guidelines issued pursuant thereto, shall be complied with, except if the commercialization is undertaken by the Other Contracting Party, in which case, paragraph C below will apply.
- C. Given that the Other Contracting Party was the one which contracted the R&D and fully or partially funded the same, its commercialization of the IP/IPRs derived from it shall be exempt from the process under Rule 11, Chapter III of the amended IRR of R. A. No. 10055, including the policies, rules, and guidelines issued pursuant thereto.
- D. Considering that the Other Contracting Party fully or partially funded the contract research, it may be granted exclusivity in the commercial use of

the IP/IPRs derived from it within a reasonable period of time, or it may be conferred priority in the selection of adoptor, licensee, transferee, or investor in the commercialization of the IP/IPRs, given the qualifications and capabilities needed for the same.

However, should the Other Contracting Party fail to commercialize the said IP/IPRs within a reasonable time as may be determined by the DOST/Agency, not to exceed two (2) years from the completion of the contract research, the DOST/Agency may opt to consider terminated the exclusivity or priority granted to the Other Contracting Party and shall exercise full authority and rights in the commercialization and utilization of the IP/IPRs.

Further, the DOST/Agency may revoke any co-ownership of the Other Contracting Party in the IP/IPRs, which shall be deemed transferred to the DOST/Agency.

In any event, the Other Contracting Party may waive or reduce any share in the revenues that may be generated from the commercialization of the IP/IPRs.

- E. Any sharing of revenues between the DOST/Agency and the Other Contracting Party in the commercialization of the IP/IPRs derived from the contract research shall be indicated in the RFA or MOA.

X. UTILIZATION OF THE DATA, FINDINGS, IP/IPRs GENERATED FROM THE CONTRACT RESEARCH

- A. The DOST/Agency shall be allowed to use the findings or results of the contract research for academic, research and other scholarly purposes and for the same to be published within a reasonable period of time upon determination that the same will not constitute a prejudicial disclosure nor include the disclosure of confidential information.
- B. The DOST/Agency reserves the right for itself and others to make and use the data, findings, IP/IPRs solely for non-commercial research purposes.
- C. The DOST/Agency shall require the Other Contracting Party to fully acknowledge the assistance of the former in case the findings or results of the R&D and the IP/IPRs derived therefrom are published or presented in any medium or form, or through various fora, seminars, and meetings. Such publication or presentation should not prejudice the intellectual property protection and the proprietary or confidential nature of the information.
- D. The Other Contracting Party may utilize or publish the data, findings, IP/IPRs upon prior consent of the DOST/Agency without prejudice to intellectual property protection.

XI. CONFIDENTIALITY OF INFORMATION

The Other Contracting Party shall keep confidential all restricted or undisclosed information, knowledge, data or other information relating to the R&D and the IP/IPRs generated therefrom, including the technologies, products, processes, know-how, methodologies, systems, analyses, designs, formulas, test data, client lists, business plans, marketing plans and strategies, and pricing strategies, or other subject matter, called “Confidential Information”, that are not part of the public domain, or which may have been produced, obtained or otherwise acquired in relation to the R&D, subject to compliance with applicable laws, rules and regulations, such as the Freedom of Information (E.O. No. 2, series of 2016), Data Privacy Act (R. A. No. 6713) and on data sharing, and the Confidential Information shall not be used by the Other Contracting Party without the consent of the DOST/Agency.

XII. GENERAL PROVISIONS

- A. All disputes, controversies, or claims arising from or relating to the Policy Guidelines shall be settled through negotiation and/or mediation and, if unsuccessful, the same shall be decided by arbitration in accordance with Republic Act No. 9285 or the Alternative Dispute Resolution Law of 2004, or the Rules on Alternative Dispute Resolution for Disputes between National Government Agencies issued by the Office of the Solicitor General, as may be applicable.
- B. All previous Orders, Circulars, and issuances inconsistent herewith are considered superseded and repealed.
- C. If any provision of the Policy Guidelines is declared unconstitutional, the same shall not affect the validity and effectivity of the other provisions.
- D. The Policy Guidelines shall take effect immediately upon filing of required copies thereof at the UP Law Center in accordance with law.

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