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GENERAL NOTICES

NOTICE 378 OF 2009

**DEPARTMENT OF SCIENCE AND TECHNOLOGY
NOTICE FOR THE PUBLICATION OF THE REGULATIONS IN TERMS OF
THE INTELLECTUAL PROPERTY RIGHTS FROM PUBLICLY FINANCED
RESEARCH AND DEVELOPMENT ACT, 2008 (ACT NO 51 OF 2008)**

The Minister of Science and Technology intends to publish for public comment the Regulations in terms of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act no. 51 of 2008)

Regulations in terms of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act no. 51 of 2008)

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NOTICE 379 OF 2009

DEPARTMENT OF SCIENCE AND TECHNOLOGY

INTELLECTUAL PROPERTY RIGHTS FROM PUBLICLY FINANCED RESEARCH AND DEVELOPMENT REGULATIONS

In terms of section 17 of the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act No. 51 of 2008), the Minister of Science and Technology intends to make the Regulations set out in the schedules hereto.

Interested persons are invited to submit written comments on the proposed Regulations by 08 May 2009 to the following address:

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Attention: Tsitso Daniel Rasenyalo

SCHEDULE 1

Definitions and Interpretation

1. (1) In these regulations, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act has the same meaning, and –

“**benefits**” includes contribution to the socio-economic aspects of the people of the Republic and includes capacity development, technology transfer, job creation, enterprise development, social upliftment;

“**exclusive licence**” means any agreement in which a third party is granted exclusive rights in a licensed territory or field of use to intellectual property under the Act;

“**resources**” mean any contribution to research and development, and includes contribution in the form of financial or human resources, materials and infrastructure to undertake research and development, relevant background intellectual property, equipment and facilities; and

the “Act” means the Intellectual Property Rights from Publicly Financed Research and Development Act, 2008 (Act 51 of 2008)

(2) Whenever the last day fixed by the Act or by these regulations for doing anything falls on a Saturday or Sunday or a day which is a proclaimed public holiday in terms of any law in the Republic, it will be lawful to do any such thing on the next day following such Saturday, Sunday or public holiday, which itself is not a Saturday, Sunday or public holiday.

(3) Whenever any period is specified within which any act is to be performed, NIPMO may, save where expressly provided otherwise, extend such period either before or after its expiry.

Choice in respect of intellectual property

2. (1) The recipient must, in making the choice referred to in section 4(2)(a) of the Act, consider the following:

- (a) whether the intellectual property is protectable either for the purposes of further validations as undisclosed information or owing to the intellectual property complying with the requirements for statutory intellectual property protections; and
- (b) the potential for the intellectual property to contribute to the socio-economic goals of the Republic.

(2) Where the intellectual property is not protectable as mentioned in sub-regulation (1), a recipient may not be obliged to make a referral to NIPMO.

(3) In all other cases other than that mentioned in sub-regulation (2), including election not to retain ownership of intellectual property and abandonment of any patent application or patent owing to other reasons other than lack of patentability, a recipient will be obliged to make a referral in prescribed Form IP1 to NIPMO regarding the Recipient's intention to waive its rights or before taking any action to abandon such application or patent.

(4) Upon receipt of a referral of intellectual property to it by a recipient, NIPMO must consider all material information provided by the recipient in the referral.

(5) In considering the referral mentioned in sub-regulation (3) and (4), NIPMO must, in particular, take into consideration the following:

- (b) technology sector to which such intellectual property relates, and contribution of the intellectual property to the advancement of such sector;
- (c) commercial and social potential of such intellectual property and the development required thereto to make the intellectual property commercially viable;
- (d) ability for such intellectual property to be protected under any law in the world;
- (e) potential contribution of such intellectual property in addressing the State's strategic and emergency needs; and
- (f) any prejudice that might be suffered by the State if such intellectual property is not owned and protected by the recipient or the State.

(6) NIPMO must within 60 days of receipt of any referral, conclude its investigations and inform the recipient of its decision and, where applicable, obtain statutory protection for such intellectual property on behalf of the State.

(7) If NIPMO decides to take assignment of the intellectual property, it must request the recipient to execute such documents as may be required to effect such assignment of the intellectual property within 30 days of communicating its decision to the recipient.

(8) In the case of NIPMO taking assignment in terms of sub-regulation (7), the recipient and the intellectual property creators will automatically be granted an irrevocable, royalty free personal licence to the intellectual property for research and development and teaching purposes.

(9) If NIPMO decides not to take assignment of the intellectual property, NIPMO must within the period specified in sub-regulation (6), provide the recipient with a written notice in this regard.

(10) Based on the decision referred to in sub-regulation (9), NIPMO will irrevocably waive the State's rights under the Act to such intellectual property.

(11) Within 30 days of the date of the notice referred to in sub-regulation (9), the recipient must offer an option to acquire the intellectual property to:

(a) the private entity or organisation that had provided some funding to the research and development giving rise to the intellectual property, subject to the rights of intellectual property creators in terms of section 10 of the Act to benefit sharing; or

(b) in the case where there was no funding provided by a private entity or organisation, to the intellectual property creators.

(12) In a specific case where a recipient does not wish to protect intellectual property governed by the Act because it wants to place such intellectual property in the public domain through open-source systems, the recipient must apply to NIPMO for approval in prescribed Form IP1, that such intellectual property be placed in the public domain through open-source systems.

(13) When making the application under sub-regulation (12), a recipient will be required to demonstrate to NIPMO the following considerations that are impacted by the intellectual property:

(a) it is in the public interest that the intellectual property is in the public domain through open-source systems;

(b) the intellectual property is deemed to be of foundational importance in

development of the science and will foster innovation by it not being protected through patenting system or remaining undisclosed;

- (c) the intellectual property emanates from a cooperative agreement with scientists in other countries, which requires that intellectual property emanating from an agreement be placed in the public domain through open-source systems and such agreement has been approved by NIPMO in terms of regulation 12; and
- (d) the intellectual property forms part of the development of 'open-standards' to ensure that research and development proceeds efficiently and effectively.

(14) NIPMO must, in making a decision under sub-regulation (12), consider the considerations demonstrated by the recipient and strike a balance of the following:

- (a) the commercial potential of the intellectual property itself and the extent to which it can assist in the development of new services or products, for the benefit of the Republic;
- (b) where the intellectual property has commercial potential, NIPMO must consider whether or not there is a need to issue a royalty free research license to other scientific organizations, including international organisations, to further the advance of science, while ensuring that economic rewards are enjoyed by the people of the Republic through the development of new services and products;
- (c) the needs of the people of the Republic that could be serviced by such intellectual property, and in particular whether such needs would be best serviced by placing the intellectual property in the public domain through open-source systems or protection through established means;
- (d) the need to encourage and support innovation, economic and social development; and
- (e) the amount of public funding provided to the research and development giving rise to the intellectual property.

(15) Within 60 days of receiving the referral referred to in sub-regulation (12) NIPMO must notify the recipient of the outcome of the referral, failing which approval will be deemed to have been granted.

Management obligations and disclosure duties

3. (1) NIPMO must within 3 months of coming into effect of these regulations, develop and publish guideline and the format for all reporting by the recipients in terms of the Act.

(2) Each recipient must report to NIPMO in such detail as set out in published guidelines developed by NIPMO and updated from time to time.

The National Intellectual Property Management Office

4. (1) The Minister must appoint a suitably qualified person to be the Chief Executive Officer of NIPMO, who will report to the Minister on all matters in terms of the Act and these regulations.

(a) The Chief Executive Officer will have the powers to act on behalf of NIPMO on all matters in the Act and these regulations as mandated by the Minister from time to time.

(b) The Chief Executive Officer must ensure that NIPMO is suitably capacitated with appropriately qualified personnel to execute its powers and duties in accordance with the Act and these regulations.

(2) NIPMO must keep an updated register of all institutions to which the Act applies in accordance with the provisions of section 3(2) of the Act.

(3) The Minister must appoint an Advisory Board, which must advise NIPMO on the performance of its functions, the exercise of its powers and the execution of its duties, including providing guidance and assistance to NIPMO in the implementation of the Act and the regulations

(4) The Advisory Board will consist of –

(a) a chairperson, appointed by the Minister.

(b) no fewer than 5, but not more than 9 members appointed by the Minister, and ;

(c) the Chief Executive Officer, who will serve on the Board by virtue of his office.

(5) A member of the Advisory Board, excluding the Chief Executive Officer will hold office for a period not exceeding four years, and will be eligible for reappointment, for one further term.

(6) The members of the Advisory Board will be appointed on the grounds of their knowledge and experience in intellectual property management, commercialisation, technology transfer and business skills, or have special knowledge or experience in relation to some aspect of NIPMO's functions.

(7) When considered collectively, the Advisory Board should be adequately composed to advise NIPMO.

(8) The chairperson, or in his absence a member of the Advisory Board elected by the members present, must preside at any meeting of the Advisory Board.

(9) The Minister must, in consultation with the Advisory Board establish a Dispute Tribunal Panel.

- (a) In establishing the Dispute Tribunal Panel, the Minister will assemble a panel of no more than 15 independent experts that can serve on sittings of the Dispute Tribunal from time to time, in terms of sub-regulation (9).
- (b) A sitting of the Dispute Tribunal will comprise at least 3 members of the Dispute Tribunal Panel.
- (c) A sitting of the Dispute Tribunal will hear and determine disputes referred to the Dispute Tribunal Panel in terms of these regulations.
- (d) The Minister will appoint the Chairperson of the Dispute Tribunal Panel;
- (e) The Dispute Tribunal Panel must establish its own rules of procedure including any appeal procedures in accordance with the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).
- (f) The Minister will publish such rules of procedure and amendments thereto by notice in the *Gazette*.

Remuneration of members of the Advisory Board and the Dispute Tribunal and administrative support

5. (1) The Minister, in consultation with the Minister of Finance, will determine the allowances and other benefits of the members of the Board and the Dispute Tribunal Panel, who are not in the full-time employ of the State.

(2) The administrative and secretarial support for the Board and the Dispute Tribunal Panel will be provided by NIPMO.

Operations of NIPMO

6. (1) NIPMO must within 7 days of receipt of any application or referral in terms of the Act, furnish the recipient with a written acknowledgement thereof.

(2) After consideration of any application or referral NIPMO must, in accordance with the timelines provided in the Act or these regulations, furnish the recipient with a written response of its decision thereto.

(3) Following an exercise by NIPMO of any discretionary power vested to NIPMO in terms of the Act or these regulations that adversely affects the rights of a recipient, a recipient must, if the Recipient intends to make representations on the matter, within 14 days of a decision by NIPMO, lodge with NIPMO a notice of intention to be heard in Form IP2.

(4) Upon receipt from a recipient of the notice of intention to be heard, NIPMO must, furnish the recipient with a date, time and place where such hearing is to take place.

(5) Any hearing in terms of this regulation must be open to the public and take place within 30 days of receipt by NIPMO of the notice of intention to be heard;

(6) A person who is presiding at such hearing will determine the procedure for the conduct of such a hearing.

(7) After such hearing, should NIPMO not reverse its decision, the affected recipient may within 14 days of NIPMO's decision, lodge with the Dispute Tribunal, an application for review or appeal against the NIPMO decision in Form IP3.

Rights of intellectual property creators in institutions to benefit sharing

7. (1) An institution must ensure that intellectual property creators receive their portion of the proceeds from commercialisation of the intellectual property created by

them and governed by the Act, within 120 days of receipt or vesting of any revenue by the institution or such extended period of time as may be agreed upon in writing by the institution and the intellectual property creators.

(2) For the purposes of determining nett revenues, the following costs of intellectual property protection and commercialisation may be deducted from revenues:

- (a) all out-of-pocket costs, fees and expenses that an institution incurs and pays to independent third parties in connection with any of the following activities:
 - (i) filing, prosecution, development and maintenance of any statutory protection for intellectual property, excluding any amounts recovered by the institution from any third party, including the intellectual property fund established under the Act and any licensee.
 - (ii) auditing, recovery or collection of gross revenues, including bank fees, charges and other expenses of any kind paid by an institution in order to collect, receive, account for, amounts payable to it for the commercialization of the intellectual property;
 - (iii) defence, validation and enforcement of intellectual property rights in any intellectual property office, court or tribunal;
 - (iv) legal advice and services in respect of the above activities or issuance or conveyance of any securities or other consideration constituting gross revenues, or in respect of any proposed, threatened or actual litigation involving the intellectual property; and
- (b) market research, business development, marketing, advertising, promotion or sales activities or services, reasonable travel, subsistence and administrative expenses directly incurred related thereto, cumulatively up to an amount of R1,000,000 (one million Rands).

(3) In the case where the revenues are in the form of non-monetary benefits, the institution must in accordance with International Financial Reporting Standards principles, determine the value of such non-monetary benefits, and the intellectual property creators will be entitled to a monetary benefit equal in value to their share of the non-monetary benefits in accordance with the Act and these regulations.

(4) Where the revenues are in the form of shares or equity in a juristic person, the intellectual property creators will be entitled to a portion of such shares or equity in accordance with section 10(2) of the Act.

Conditions for local intellectual property transactions

8. (1) A recipient may at its sole discretion determine the terms and conditions for any non-exclusive licence in the Republic to intellectual property governed by the Act, for a market related consideration.

(2) The recipient shall ensure that before granting an exclusive licence in the Republic, it is satisfied that the prospective licensee is capable of developing the intellectual property further where required and undertaking commercialisation thereof in the Republic.

(3) The exclusive licence agreement must include but not be limited to:

- (a) diligence terms requiring the prospective licensee to furnish the recipient with a satisfactory development and marketing plan, and other appropriate terms to ensure that the benefits of the intellectual property accrue to the people of the Republic;
- (b) the irrevocable and royalty-free right of the State to use or have the intellectual property used on behalf of the Republic, for the health, security and emergency needs of the Republic;
- (c) the following statement - *"The intellectual property under this transaction was created with support from the South African Government under (identify the contract) awarded by (identify the Funding Agency). The South African Government has certain rights in the intellectual property"*;
- (d) NIPMO's rights in terms of section 14(4) of the Act, if the intellectual property is not commercialised within the reasonable period set out in the exclusive licence agreement.

(4) The recipient must develop and implement internal policies and procedures to give effect to the following preferences:

- (a) BBBEE compliant entities and small enterprises; and

- (b) parties that seek to use the intellectual property in ways that provide optimal benefits to the Republic.

(5) Intellectual property in the Republic may only be assigned to an entity that is domiciled in the Republic, provided that such entity:

- (a) is a start-up company established by an institution for the purposes of commercialisation of intellectual property, in which case, an institution may not dispose of a controlling interest in the start-up company without the prior written approval of NIPMO;
- (b) co-financed the development of the intellectual property and the recipient proves to the satisfaction of NIPMO that an exclusive licence would not suffice for the commercialisation of the intellectual property;
- (c) is the result of a merger, consolidation or reorganisation involving a recipient where such merged, consolidated or reorganized entity company assumes a recipient's rights and obligations under the Act and provided that NIPMO has upon application by a recipient, given its consent in writing to such assignment, prior to its occurrence.

(6) Any recipient wishing to assign intellectual property governed by this Act, to an entity in the Republic shall submit to NIPMO an application for approval of such assignment, in prescribed Form IP4.

(7) In the application referred to in sub-regulation (6) the recipient shall prove that such assignment is:

- (a) in the public interest; and
- (b) provide reasons as to why the intellectual property may not be commercialised through other means such as an exclusive licence.

(8) The State must only exercise the rights granted to it under section 11(1)(e) of the Act, after establishing the existence of a specific health, security and other emergency need of the Republic subject to the following:

- (a) Before any proclamation by Parliament, the State must determine the ability of a recipient or any third parties licensed to commercialise the intellectual property, to meet the specific health, security and other emergency need of the Republic.

- (b) The State must exercise such rights itself or through its organs or institutions or organs of other governments or international organisations such as the United Nations or its agencies.
- (c) The exercise of such rights by the State must be for a reasonable defined period of time until such emergency has been alleviated.
- (d) In exercising the rights in terms of section 11(1)(e) the State must seek to balance the rights of the recipient, third parties licensed by the recipient to commercialise such intellectual property and the use by the State of the intellectual property.

Conditions for offshore intellectual property transactions

9. (1) A recipient may at its sole discretion determine the terms and conditions for any non-exclusive licence to intellectual property governed by the Act, outside the Republic or with an off-shore entity or person, for a market related consideration.

(2) Each off-shore transaction must include the following statement -
“The intellectual property under this transaction was created with support from the South African Government under (identify the contract) awarded by (identify the Funding Agency). The South African Government has certain rights in the intellectual property”.

(3) The recipient must ensure that before granting an exclusive licence outside the Republic or to an off-shore entity or person, it is satisfied that the prospective licensee is capable of developing the intellectual property further where required and undertaking commercialisation thereof.

(4) The exclusive licence agreement must contain at least the following terms:

- (a) diligence terms requiring the prospective licensees to furnish the recipient with a satisfactory development and marketing plan, and other appropriate terms to ensure that the benefits of the intellectual property are reasonably accessible to the people of the Republic;

- (b) the irrevocable and royalty-free right of the State to use or have the intellectual property used on behalf of the Republic, for the health, security and emergency needs of the Republic;
- (c) NIPMO's rights in terms of section 14(4) of the Act, if the intellectual property is not commercialised within the reasonable period set out in the exclusive licence agreement.

(5) Prior to initiating any application for final approval in terms of any other applicable regulatory approval in respect of disposal of capital, and subject to section 11(1)(e) of the Act, a recipient must lodge an application in prescribed Form IP5 with NIPMO, for approval of an assignment of intellectual property off-shore in terms of section 12(2) of the Act and must ensure that the recipient complies with the following conditions:

- (a) The application must detail compliance with section 12(2) of the Act and this sub-regulation (5).
- (b) the recipient satisfactorily proves to NIPMO that there is no person in the Republic who has sufficient capacity and is willing and able to develop and commercialise the intellectual property in the particular off-shore territory;
- (c) it is not economically viable for a person in the Republic to commercialise the intellectual property off-shore in the particular territory;
- (d) the benefits to the people of the Republic resulting from such assignment have been clearly articulated in the application to NIPMO;
- (e) the recipient retains the rights to the intellectual property in the Republic to ensure that the benefits of the intellectual property are reasonably accessible to the people of the Republic; and
- (f) no entity or person domiciled in the Republic will be required to make any consideration to the assignee or related persons for any transaction involving the intellectual property that is the subject of the assignment.

(6) Failure to comply with regulation 9(4) will render such intellectual property subject to the provisions of section 14(5) of the Act.

Intellectual Property Fund

10. (1) NIPMO must develop appropriate policies and procedures for the effective implementation of the Intellectual Property Fund to ensure that the objects of the Act are met.

(2) NIPMO must, in accordance with the objects of the Act, determine the operations of the Intellectual Property Fund, subject to availability of funding from National Treasury.

Acquisition of intellectual property rights by the State and non-commercialisation

11. (1) It is a specific objective of the Act to ensure that intellectual property governed by the Act is disclosed, appropriately protected and commercialised for the benefit of the people of the Republic. Accordingly:

- (a) a recipient must unless directed otherwise, provide NIPMO with status and commercialisation reports in prescribed Form IP6 twice a year, detailing the intellectual property governed by the Act owned by Recipient and the state of commercialisation thereof in accordance with regulation 3(1); and
- (b) NIPMO may on a periodic basis, but no more than once a year, unless reasonably required, conduct reviews in terms of any Recipient's obligations under the Act including the commercialisation of the intellectual property governed by the Act.

(2) If the review referred to in sub-regulation (1)(b) reveals any intellectual property that was not disclosed as required by the Act, NIPMO must, in accordance with the procedures set out in paragraphs (a) to (f), have the right to enforce the provisions of section 14(5) of the Act.

- (a) Prior to demanding assignment of intellectual property in terms of section 14(5) of the Act, NIPMO must first issue a written notice to the affected recipient together with supporting particulars in respect of such intellectual property, and request the recipient to provide a written response with reasons and supporting evidence why the provisions of section 14(5) of the Act should not be exercised.
- (b) If the recipient does not provide the written response referred to in paragraph (a) within 30 days of the date of the notice issued by NIPMO, NIPMO must

proceed to demand that the recipient assign the relevant intellectual property to NIPMO.

- (c) Upon receipt of the recipient's response, determine the materiality of the response and reasons, NIPMO must make a determination and may request additional information or particulars from the recipient.
- (d) Any determination in terms of paragraph (c) will be subject to review by the Dispute Tribunal, upon application by the recipient in accordance with the Dispute Tribunal's rules of procedure.
- (e) The decision of the Dispute Tribunal will be final.
- (f) Should the Dispute Tribunal rule in the recipient's favour, the proceedings will be deemed to have been terminated and thereafter NIPMO may not exercise the rights upon which the proceedings were based, unless it issues a new notice based on different facts.

(3) If a review referred to in sub-regulation (1)(b) reveals any intellectual property that is not being commercialized to the benefit of the people of the Republic or an exclusive licensee that is not commercializing any intellectual property in accordance with the terms of the relevant licence agreement, NIPMO must, in accordance with the procedures set out in this sub-regulation (3) have the right to require that the relevant recipient grants a non-exclusive licence in one or more fields or in a specified territory, to a third party to commercialise such intellectual property.

- (a) NIPMO must consult with the recipient with a view of addressing the lack of commercialisation or understanding the reasons for lack of compliance by the exclusive licensee with the terms of the licence agreement.
- (b) If no progress has been made after a period of 6 months of consultation envisaged in paragraph (a), NIPMO may no later than 3 months thereafter issue a written notice to the recipient requiring that it either grants a licence to another third party or it puts in place steps to convert the exclusive licence to a non-exclusive licence and seek other commercialisation partners.
- (c) NIPMO decision in terms of paragraph (b) will be subject to appeal to the Dispute Tribunal, upon application by the recipient in accordance with the Dispute Tribunal's rules of procedure.

- (d) The decision of the Dispute Tribunal will be final.
- (e) Should the Dispute Tribunal rule in the recipient's favour, the proceedings will be deemed to have been terminated and thereafter NIPMO may not exercise the rights upon which the proceedings were based, unless it issues a new notice based on different facts.

(4) NIPMO may at any stage, by written notice to a recipient, terminate the proceedings referred to in sub-regulations (2) and (3), if it is satisfied that it does not wish to continue to exercise the rights under section 14 of the Act or if it is satisfied with the recipient's response, or upon reaching a satisfactory outcome with the recipient.

Co-operation between private entities or organisations and institutions

12. (1) An institution may licence its share of the intellectual property governed by section 15(2) of the Act to one or more co-owner(s) of the intellectual property for purposes of commercialisation.

(2) Any assignment of intellectual property governed by section 15(2) of the Act must be in accordance with the provisions of regulations 8 and 9.

(3) In respect of intellectual property emanating from a collaborative research and development agreement involving at least one international funding or donor organisation, and one or more research institutions or organisations, a recipient must, unless specifically provided for in section 15(2) of the Act:

- (a) retain ownership of all pre-existing intellectual property it brings into the collaborative agreement and commercialise such intellectual property in accordance with the provisions of the Act;
- (b) retain ownership of any intellectual property developed by its intellectual property creators from the collaborative agreement, or jointly own any intellectual property jointly developed by its intellectual property creators and collaborators in terms of the provisions of the collaborative agreement;
- (c) ensure commercialisation of the intellectual property from the collaborative agreement in the Republic, in accordance with the Act;
- (d) where the collaborative agreement requires that intellectual property emanating from the collaborative research and development be placed in the public domain

or be subject to an open licence or should not be commercialised or a royalty free-licence be granted to any other party for commercialisation purposes, the recipient will be required to refer such agreement to NIPMO for approval, prior to commencement of such agreement.

- (e) In approving the agreement mentioned in paragraph (d), NIPMO must have regard to the motivation from the recipient and also the factors set out in regulation 2.

(4) NIPMO must from time to time, publish guidelines in respect of multi-party collaborative research and development agreements.

(5) In developing such guidelines, NIPMO must consider, amongst other factors, advice and guidelines produced by international bodies of which South Africa is a member including Standards Bodies, Agencies of the United Nations, the World Trade Organization and the Organization for Economic Cooperation and Development.

Determination of full cost

13. For the purposes of section 15 of the Act, full cost will be determined as follows:

- (a) Each institution must on an annual basis, agree with NIPMO on the methodology for calculation of its applicable direct costs and indirect costs of undertaking research and development.
- (b) The methodology referred to in paragraph (a) must comprise the basic applicable direct costs of undertaking the research and development determined in accordance with International Financial Reporting Standards principles.
- (c) Where it is not feasible to determine the indirect costs accurately, the methodology may comprise a determination of a surcharge in the form of a percentage to be levied on the direct costs, as a best pre-estimate of the indirect cost of undertaking such research and development.
- (d) The indirect cost percentage may vary from organizational units or faculties within an institution and the institution must justify to NIPMO for NIPMO's acceptance, any variations.

- (e) Each institution must, on an annual basis, submit to NIPMO matrices substantially in the format set out in Annexure A to these regulations or such other format as may be provided by NIPMO in guidelines, together with an explanatory note in respect of how such factors have been arrived at, for NIPMO's approval.
- (f) NIPMO must, within 60 days of receipt of the matrices referred to in paragraph (e), consult with the institution with a view on agreeing on acceptable matrices for that institution.
- (g) Upon written request to NIPMO, an institution must, be given a certificate by NIPMO to verify costing models and pre-estimates in respect of any agreement for research and development funded on full cost basis, prior to commencement of such agreement.

Prescribed Forms

14. Forms prescribed for purposes of these regulations are set out in Schedule 2 to these regulations.

Short title and commencement

15. These regulations are called the Intellectual Property Rights from Publicly Financed Research and Development Regulations, 2009, and come into operation on 1 June 2009.

Annexure A

Illustrative matrix for determining full cost of research and development

<p>NAME OF INSTITUTION</p>							
<p>Direct Costs Factors</p> <p>1.</p> <p>2.</p> <p>3.</p> <p>4.</p> <p>.....</p> <p>.....</p> <p>n.</p>	<p>Organisational unit or faculty specific surcharge (as a percentage of total direct costs) approximating 'Indirect Cost'</p>	<p>e.g. Health</p>	<p>Engineering</p>	<p>Social Science</p>	<p>Natural Sciences</p>	<p>Law/ Admin</p>	<p>etc</p>
<p>Indirect Cost Calculation Explanation</p>							

SCHEDULE 2**PRESCRIBED FORMS**

<u>Form no</u>	<u>Regulation</u>	<u>Description</u>
IP1	2(3); 2(12)	Referral to NIPMO by the Recipient for the waiver of rights to ownership of IP
IP2	6(3)	Notice to be heard following an adverse decision by NIPMO
IP3	6(7)	Application for review or appeal
IP4	8(6)	Application for approval of local assignment
IP5	9(5)	Application for approval of off-shore assignment
IP6	11(1)(a)	Status and commercialisation reports on IP

**Referral of Intellectual Property and Abandonment Form
(Section 4(2) and 4(3) of Act 51 of 2008; Reg. 2(3)) and 2(12)**

RECIPIENT				
Contact Details				
Intellectual Property Title				
	TYPE OF INTELLECTUAL PROPERTY			
	<i>Undisclosed information / Trade Secret</i>	<i>Invention / Patent</i>	<i>Design</i>	
<i>(Please Select one or more)</i>				
	<i>Copyright</i>	<i>Software / Computer Program</i>	<i>New Plant Variety</i>	
	SUMMARY DESCRIPTION OF THE INTELLECTUAL PROPERTY			
Date of disclosure of intellectual property by intellectual property creator(s) to Recipient		<i>(Day)</i>	<i>(Month)</i>	<i>(Year)</i>
INTELLECTUAL PROPERTY CREATOR(S)				
<i>First Name</i>	<i>Middle Name</i>	<i>Last Name</i>		
PATENT APPLICATIONS / PATENTS <i>(where applicable)</i>				
	<i>Provisional Patent</i>	<i>PCT Patent Application</i>	<i>Convention Application</i>	<i>Non-Convention Application</i>
Number				
Date of filing:				
* Country /				

Territory				
Date of Grant:				
OTHER FORMS OF APPLICATIONS / GRANTED RIGHTS <i>(where applicable)</i>				
Number				
Date of filing:				
Country / Territory				
Date of Grant:				
MONTH AND YEAR OF FIRST REPORTING OF INTELLECTUAL PROPERTY TO NIPMO <i>(please attach copy)</i>				
<i>(Month)</i>		<i>(Year)</i>		
FUNDING AGENCY <i>(i.e. the funding agency that funded the conception or development of the intellectual property)</i>				
PLEASE INDICATE THE LATEST STAGE OF DEVELOPMENT OF ANY PRODUCT ARISING FROM THIS INTELLECTUAL PROPERTY, ACCORDING TO THE FOLLOWING CATEGORIES				
UNDER EVALUATION <i>(i.e. no protection, pending IP and market assessment)</i>	DISCLOSED AND PROTECTED <i>(i.e. no decision and agreement made to commercialise)</i>	LICENSED <i>(i.e. licence agreement signed with a third party to commercialise, but pre-revenue)</i>	COMMERCIALISED <i>(i.e. revenue generation stage)</i>	
REASONS FOR REFERRAL <i>(please provide supporting documents and arguments as required by regulations)</i>				
Put into the public domain	Not statutorily protectable	Abandonment of intellectual property		
		Unfavourable Search and/or examination	Lack of market and commercial potential	
REQUIRED ACTION FROM NIPMO				
<i>Approval to put in public domain</i>	<i>Approval to abandon intellectual property</i>	<i>Waiver of rights to intellectual property creators</i>		

Notice of Intention to be heard by NIMPO
 (Act 51 of 2008; Reg. 6(3))

**NIPMO REFERENCE
 NUMBER**

RECIPIENT
 Contact Details

NIPMO DISCRETIONARY POWER IN ISSUE
 (please provide supporting documents)

DATE OF NIPMO EXERCISING DISCRETIONARY POWER

(Day)

(Month)

(Year)

REQUIRED ACTION FROM NIPMO

Request for a hearing

**NAME OF AUTHORISED
 REPRESENTATIVE OF
 RECIPIENT**

SIGNATURE

DATE

(Day)

(Month)

(Year)

FORM IP3

Dispute Tribunal Notice of Appeal / Review of NIPMO Decision
 (Act 51 of 2008; Reg. 6(7))

NIPMO REFERENCE NUMBER					
RECIPIENT Contact Details	NIPMO DECISION BEING APPEALED / REVIEW REQUESTED (please provide supporting documents)				
DATE OF NIPMO DECISION					
(Day)	(Month)	(Year)			
BASIS OF APPEAL / REVIEW (please provide particulars of appeal / review)					
NAME OF AUTHORISED REPRESENTATIVE OF RECIPIENT	SIGNATURE	DATE			
		(Day) (Month) (Year)			
		<table border="1" style="margin-left: auto; margin-right: auto;"> <tr> <td style="width: 30px; height: 20px;"></td> <td style="width: 30px; height: 20px;"></td> <td style="width: 30px; height: 20px;"></td> </tr> </table>			

FORM IP4

Local Assignment of Intellectual Property (IP)
(Section 11(3) of Act 51 of 2008; Regulations 8(5) and (6))

RECIPIENT	
Contact Details	
Intellectual Property Title	
Type of intellectual property (e.g. patent, design, plant breeders right, copyright)	
Application / Registration No (where applicable)	
Country / Territory (where applicable application filed or registered)	
Status of intellectual property (for example, granted, application, non-registered)	
Date of reporting of intellectual property to NIPMO (please attach copy)	
Funding Agency (i.e. the funding agency that funded the conception or development of the intellectual property)	
Summary description of the intellectual property	
Explanation of why the assignment is necessary for commercialization of the intellectual property.	
Explanation of why the intellectual property cannot be commercialized through means other than assignment to a third party, such as through exclusive licensing.	
Full Details of proposed assignee (include registration number).	
Type of entity in terms of Regulations 8(5).	
Details of proposed assignee in terms of sections 11(1)(b) and (c) of the Act	
How the public interest will be	

served by assignment including, for example, 1) agreement by the assignee that it and its successors will be commercialise the intellectual property in the Republic and make the products readily accessible, 2) remedies for failure to commercialise the intellectual property and 3) disposition of the intellectual property in the event of liquidation of the assignee (section 11(3)(a) of the Act), or is otherwise unable or unwilling to commercialize the technology, (4) continued reporting obligation of the assignee under the Act.

Off-Shore Assignment of Intellectual Property
(Section 12(2) of Act 51 of 2008; Reg. 9(4) and (5))

RECIPIENT	
Contact Details	
Intellectual Property Title	
Type of intellectual property (e.g. patent, design, plant breeders right, copyright)	
Application / Registration No (where applicable)	
Country / Territory (where applicable application filed or registered)	
Status of intellectual property (for example, granted, application, non-registered)	
Date of reporting of intellectual property to NIPMO (please attach copy)	
Funding Agency (i.e. the funding agency that funded the conception or development of the intellectual property)	
Summary description of the intellectual property	
Explanation of why the assignment is necessary for commercialization of the intellectual property.	
Explanation of why the intellectual property cannot be commercialized through means other than assignment to a third party, such as through exclusive licensing.	
Full details of proposed assignee (include registration number; country of domicile).	
Compliance with each of regulations 9(4)(a) – (f). In particular, must substantiate public benefit and any retention of rights to the intellectual property in South Africa.	
How the public interest will be served by assignment including, for example 1) agreement by the	

assignee that it and its successors will be commercialise the intellectual property in the Republic and make the products readily accessible, 2) remedies for failure to commercialise the intellectual property and 3) disposition of the intellectual property in the event of liquidation of the assignee (section 11(3)(a) of the Act), or is otherwise unable or unwilling to commercialize the technology, (4) continued reporting obligation of the assignee under the Act.

Detail alternative commercialisation of intellectual property if this application is not approved. Please substantiate.

**Intellectual Property Status and Commercialisation Report
(Section 5(1)(h) of Act 51 of 2008; Reg. 11(1)(a))**

RECIPIENT			
Contact Details			
Intellectual Property Title			
TYPE OF INTELLECTUAL PROPERTY			
<i>(Please Select one or more)</i>	<i>Undisclosed information / Trade Secret</i>	<i>Invention (Patent)</i>	<i>Design</i>
	<i>Copyright</i>	<i>Software / Computer Programs</i>	<i>New Plant Variety</i>
Summary description of the intellectual property			
Date of disclosure of intellectual property by intellectual property creator(s) to OTT			
INTELLECTUAL PROPERTY CREATOR(S)			
Intellectual property creator(s) (First Name; Middle Name; Last Name)	<i>First Name</i>	<i>Middle Name</i>	<i>Last Name</i>
Intellectual Property Title			
PATENT APPLICATIONS / PATENTS (where applicable)			

	<i>Provisional Patent:</i>	<i>PCT Patent Application</i>	<i>Convention Application</i>	<i>Non-Convention Application</i>
Number				
Date of filing:				
Country / Territory				
Date of Grant:				
OTHER FORMS OF APPLICATIONS / GRANTED RIGHTS <i>(where applicable)</i>				
Number				
Date of filing:				
Country / Territory				
Date of Grant:				
Month and Year of first reporting of intellectual property to NIPMO (please attach copy)				
Funding Agency (i.e. the funding agency that funded the conception or development of the intellectual property)				
PLEASE INDICATE THE LATEST STAGE OF DEVELOPMENT OF ANY PRODUCT ARISING FROM THIS INTELLECTUAL PROPERTY, ACCORDING TO THE FOLLOWING CATEGORIES				
Under Evaluation (i.e. no protection, pending IP and market assesment	Disclosed and Protected (i.e. no decision and agreement made to commercialise)	Licensed (i.e. licence agreement signed with a third party to commercialise, but pre-revenue)	Commercialised (i.e. revenue generation stage)	
In the designated reporting period, what was the total income received as a result of license or option agreements?				
If any product arising from this invention has reached the market				

what was the calendar year of the first commercial sale?	
Please provide the commercial name of any products, utilising the intellectual property, that have first reached the market during the designated reporting period.	
In the designated reporting period, how many exclusive licenses and/or options have been awarded? (please provide details below)	
In the designated reporting period, how many non-exclusive licenses and/or options have been awarded? (please provide details)	
In the designated reporting period, how many licenses and/or options of any type were awarded to small businesses or BEE entities (please provide details)	
