

MEMORANDUM OF AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

This **AGREEMENT** is made and entered into by and between:

The **DEPARTMENT OF SCIENCE AND TECHNOLOGY - REGIONAL OFFICE NO. VIII**, a government agency duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at Government Center, Candahug, Palo, Leyte, represented in this Agreement by its Regional Director, **Engr. EDGARDO M. ESPERANCILLA**, hereinafter referred to as "**DOST VIII**",

The **EASTERN VISAYAS STATE UNIVERSITY (EVSU)**, a government higher educational institution that hosts the **EASTERN VISAYAS FOOD INNOVATION (EVFIC)**, with principal office at Quarry District, Tacloban City, represented in this Agreement by the University President, **Dr. DOMINADOR O. AGUIRRE, JR.**, hereinafter referred to as "**TECHNOLOGY DEVELOPER**"

-and-

The **MARY'S ABUYOG SPECIAL TSOKOLEYT MORON ATBP.**, a duly registered association with principal office at 83-c Taguiktic San Jose, Tacloban City, Leyte and represented in this Agreement by its Proprietor, **MS. ESMERALDA D. MANAOG**, hereinafter referred to as "**TECHNOLOGY ADOPTOR**".

-WITNESSETH-

WHEREAS, the **DOST VIII**, is mandated to render scientific and technological services in the region, conducts technology transfer and commercialization activities, and establishes collaborations with relevant entities to ensure utilization of research results by end-users, industry and general public;

WHEREAS, the **DOST VIII** and **EVSU** has formed a strategic collaboration in the establishment of the **EVFIC** to catalyze the development of the food processing industry in the region;

WHEREAS, the **TECHNOLOGY DEVELOPER** is undertaking the technology development on the **Water Retort of Chocolate Moron using the DOST-HITS equipment**, hereinafter called as the "**TECHNOLOGY**";

WHEREAS, the **DOST VIII** and **TECNOLOGY DEVELOPER** desire that the **TECHNOLOGY** can be used for the benefit of the industry;

WHEREAS, the **TECHNOLOGY ADOPTOR**, is an entity registered with the _____ Registration Number _____ has signified intent to adopt, utilize, make, produce and/or commercialize the **TECHNOLOGY** and/or the product called **Chocolate Moron**;

WHEREAS, **TECHNOLOGY ADOPTOR** has signified its intent to scale-up, produce and commercialize **TECHNOLOGY**;

WHEREAS, the **DOST VIII** and **TECHNOLOGY DEVELOPER** agree to grant the **TECHNOLOGY ADOPTOR** the authorization/permission to produce, manufacture,

market and commercialize the **Retorted Chocolate Moron** given that all the technology requirements have been met and fulfilled;

NOW, THEREFORE, for and in consideration of the foregoing premises and the stipulations herein set forth, the parties hereto voluntarily agree as follows:

1.0 **Grant of Authorization:**

The **TECHNOLOGY ADOPTOR** is hereby granted a non-exclusive and non-transferable authority/permission to adopt, utilize, make, produce and/or commercialize the **TECHNOLOGY** for a period of three years.

Obligations of DOST VIII:

DOST VIII shall have the following obligations during the effectivity of this Agreement:

- 2.1 Provide required technical and consultancy services to **TECHNOLOGY ADOPTOR**;
- 2.2 Provide assistance to **TECHNOLOGY ADOPTOR** through its various technology transfer and commercialization programs/projects;

Obligations of TECHNOLOGY DEVELOPER:

TECHNOLOGY DEVELOPER shall have the following obligations during the effectivity of this Agreement:

- 3.1 Optimize the **TECHNOLOGY** processes for adoption and commercialization of the **TECHNOLOGY ADOPTOR**;
- 3.2 Provide **TECHNOLOGY ADOPTOR** with the necessary information on the **TECHNOLOGY**;
- 3.3 Allow the use of EVFIC facilities by the **TECHNOLOGY ADOPTOR** in the production using the **TECHNOLOGY** particularly during the process optimization stage subject to existing policies on use of facilities of the EVFIC;
- 3.4 Conduct training of the personnel of **TECHNOLOGY ADOPTOR** on the **TECHNOLOGY** and production using the **TECHNOLOGY**;
- 3.5 Provide technical and consultancy services as the need arises on the **TECHNOLOGY** and production using the **TECHNOLOGY**;
- 3.6 Conduct performance appraisal/monitoring and evaluation visit on the use of the **TECHNOLOGY** and its production and commercialization;
- 3.7 Conduct monitoring and evaluation/impact assessment of related technology transfer activities on the **TECHNOLOGY** and the **TECHNOLOGY ADOPTOR**.

4.0 Obligations of TECHNOLOGY ADOPTOR:

TECHNOLGY ADOPTOR shall have the following obligations during the effectivity of this Agreement:

- 4.1 Provide the raw materials during the process optimization of the **TECHNOLOGY**;
- 4.2 Comply strictly with the requirements and specifications of the **TECHNOLOGY** and the use thereof as provided by **TECHNOLOGY DEVELOPER**;
- 4.3 Maintain the quality and safety of the product according to the standards specified by the **TECHNOLOGY DEVELOPER**;
- 4.4 Provide the land, building, facilities, machineries, equipment, materials, supplies, manpower, administrative support, working capital and all others necessary in all aspects of the production, marketing and/ or commercialization of the product;
- 4.5 Allow **DOST VIII** and **TECHNOLOGY DEVELOPER** free access to the production facilities and data at any time;
- 4.6 Provide data to **TECHNOLOGY DEVELOPER** in its conduct of the performance appraisal on the use of the **TECHNOLOGY** and on the production and distribution or commercialization of the product, including its performance standard and quality assurance.

5.0 Confidentiality or Secrecy:

- 5.1 **TECHNOLOGY ADOPTOR**, its officers, employees, agents and representatives shall keep in strictest confidence any and all information about the **TECHNOLOGY** and all other data which **TECHNOLOGY ADOPTOR** had come to know by virtue of this Agreement, and shall not use any information gained in connection with this Agreement for any purpose other than that specifically stated in this Agreement, and shall not disclose such knowledge to any other party without prior written consent of **DOST VIII** and **TECHNOLOGY DEVELOPER**.

5.2 This Confidentiality or Secrecy clause shall survive this Agreement.

6.0 Intellectual Property Rights:

- 6.1 **TECHNOLOGY ADOPTOR** shall sign or cause to be signed all documents necessary to perfect ownership rights of technology developer (**DOST VIII** and/or **EVSU/EVFIC**) in the **TECHNOLOGY** including all its intellectual property rights therein, including without limitation all necessary agreements with its employees, agents or representative.

7.0 Product Marking or Labelling:

- 7.1 **TECHNOLOGY ADOPTOR** agrees to acknowledge **DOST VIII** and **TECHNOLOGY DEVELOPER** in every presentation of the product. Further, in the event that the **Letters of Patent** are issued,

TECHNOLOGY ADOPTOR agrees to mark the patented product with the patent number.

- 7.2 Nutritional facts, shelf-life (expiration date) and other testing of the product shall be shouldered by **TECHNOLOGY ADOPTOR**.

8.0 **Infringement by Third Parties:**

- 8.1 Each party shall promptly give notice in writing to the other party of any known actual or potential infringement of the **TECHNOLOGY**.
- 8.2 Each party agrees to cooperate with, and give reasonable assistance to the other party, in abating or preventing an infringement.

9.0 **Warranties and Liabilities:**

- 9.1 The **TECHNOLOGY**, information, documentation, and all related materials, are provided by **TECHNOLOGY DEVELOPER** and accepted by **TECHNOLOGY ADOPTOR** "as is." **TECHNOLOGY DEVELOPER** makes no warranties, express or implied, with respect to the performance, merchantability, completeness, capability, fitness for a particular purpose, or non-infringement of the **TECHNOLOGY**.
- 9.2 **TECHNOLOGY DEVELOPER** shall not be held accountable for any defects, failures and unsatisfactory performance of the **TECHNOLOGY** arising from any unauthorized deviation in its utilization as specified by **TECHNOLOGY DEVELOPER**. In no case shall **TECHNOLOGY DEVELOPER** be liable for consequential, incidental, liquidated, punitive, exemplary, and special damages in relation to the adoption, utilization, production, manufacturing, selling, distribution and commercialization of the **TECHNOLOGY**.
- 9.3 **TECHNOLOGY ADOPTOR** warrants that it has all the regulatory licenses and approvals in applying the **TECHNOLOGY** and/or producing the product and performing its obligations under this Agreement.

10.0 **Transfer or Assignment:**

- 10.1 **TECHNOLOGY ADOPTOR** shall not transfer, assign, or sub-license the **TECHNOLOGY**, or any part thereof, to any other entity, without the prior written consent of **TECHNOLOGY DEVELOPER**.

11.0 **Force Majeure:**

- 11.1 The Parties agree that they will carry on their obligations under this Agreement correctly and punctually and with due diligence. If either Party is temporarily unable, by reason of force majeure, to meet any of its obligations under this Agreement and if such Party gives to other Party written notice of the event within 15 days after its occurrence, such obligation of the Party shall be suspended for as long as the inability continues;
- 11.2 Neither party shall be liable to the other Party for loss or damages sustained by reason of force majeure or delay arising from such event; and,

Dr. HILARIA L. BUSTAMANTE
M. GRANADA
ENGR. ERU
MS. ESMERALDA MANAOG
JEO. AGUIRRE, Jr.
Dr. DOM
Dir. EDGARDOM. ESPERANILLA

- 11.3 The term "force majeure" as used herein shall mean strikes, labour disputes, lockouts or other industrial disturbances, acts of the public enemy, wars, terrorism, blockages, insurrection, riots, epidemics, landslides, earthquakes, storms, lightning, floods, fire, wash outs, civil disturbances, large scale explosions, fuel shortages, and any other similar events, not within the control of either Party.

12.0 Relationship of the Parties:

Each party hereto is contracting independently with the other and neither party shall be deemed to be an agent, representative or a partner of the other party as a result of any provision of this Agreement. Neither party shall have the right or authority to assume or create any obligation or responsibility, whether express or implied, on behalf of or in the name of the other party or to bind the other party in any manner or for any purpose.

13.0 Applicable Laws, Rules and Regulations:

- 13.1 The laws, rules and regulations of the Republic of the Philippines, such as the Philippine Technology Transfer Act of 2009 and its Implementing Rules and Regulations, the Intellectual Property Code of the Philippines, and the Administrative Orders and Circulars of **TECHNOLOGY DEVELOPER** and **DOST**, shall govern the Interpretation of this Agreement. In the event of litigation, the venue shall be the proper court in the place where the **TECHNOLOGY DEVELOPER** or **TECHNOLOGY ADOPTOR** has its principal office, as may be mutually agreed upon.

- 13.2 Particularly, as required under the Joint DOST-DTI-IPOPHIL Administrative Order No. 001 dated 26 June 2012 entitled "Guidelines on Intellectual Property Valuation, Commercialization and Information Sharing of Republic Act No. 10055", it is hereby stated and understood that:

- 13.2.1 The **TECHNOLOGY** or Intellectual Property under this Agreement was created with support from the Republic of the Philippines under (identify the agreement/s) awarded by (identify the GFA/s). The Republic of the Philippines has certain rights in the **TECHNOLOGY** or Intellectual Property under Article VII of the Philippine Technology Transfer Act of 2009;

- 13.2.2 **TECHNOLOGY DEVELOPER** is hereby allowed to use research findings or results for academic, research and other scholarly purposes and for the same to be published within a reasonable period of time, subject to the requirement that the same shall not constitute a prejudicial disclosure, nor include the disclosure of confidential information as agreed upon by the parties herein; and,

- 13.2.3 **TECHNOLOGY DEVELOPER** reserves the right for itself and other to make and use, solely for non-commercial research purposes, the **TECHNOLOGY** or Intellectual Property subject of this Agreement.

14.0 Arbitration:

The parties shall attempt amicably to resolve any and all controversies, disputes or claims arising out of or relating to this Agreement or a breach thereof. Any such controversies, disputes or claims, which have not been resolved within ninety (90) days after written notice from one party to the other party that such controversy, dispute or claim exists, shall be finally settled by arbitration in accordance with the Procedure of Arbitration of the Arbitration Law of the Philippines or Arbitration Law of the United Nations Commission on International Trade Law (UNCITRAL) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce, at the option of **TECHNOLOGY DEVELOPER**. The venue of arbitration shall be the Philippines or any neutral country, at the option of **TECHNOLOGY DEVELOPER**.

15.0 Effectivity or Term:

- 15.1 This Agreement shall take effect immediately upon the date of signing by the parties hereto and shall remain in force for a period of one (1) year unless otherwise terminated for any cause by **TECHNOLOGY DEVELOPER** and/or **DOST VIII**.
- 15.2 This Agreement may be extended or renewed upon the mutual consent in writing by the parties herein.
- 15.3 A Technology Licensing Agreement may be undertaken after expiration of this Agreement under such terms and conditions that maybe agreed upon by all parties. After the expiration or termination of the Agreement, all information gained by the **TECHNOLOGY ADOPTOR** for commercialization/business purposes shall remain confidential;
- 15.4 Failure of the **TECHNOLOGY ADOPTOR** to commercialize the **TECHNOLOGY** within one year shall automatically pre-terminate this Agreement;

16.0 Termination or Cancellation:

- 16.1 **TECHNOLOGY DEVELOPER** and/or **DOST VIII** has the right to terminate or cancel this Agreement without need of judicial action and without any penalty or sanction, at any time before its expiration, for unsatisfactory performance by **TECHNOLOGY ADOPTOR** or for its violation of any term of this Agreement or for any cause whatsoever, by giving the other party a written notice at least thirty (30) calendar days in advance to that effect, which notice shall be final and binding on all the parties.
- 16.2 **TECHNOLOGY DEVELOPER** and/or **DOST VIII** has likewise the right to terminate or cancel this Agreement if **TECHNOLOGY ADOPTOR** is adjudged bankrupt or insolvent, or makes a general assignment of control, merger or consolidation thereof, or a trustee, receiver, judicial manager, liquidator, administrator, or conservator is appointed for **TECHNOLOGY ADOPTOR**; if **TECHNOLOGY ADOPTOR** files a petition for insolvency, suspension of payments, or to reorganize under the bankruptcy or similar laws; or, **TECHNOLOGY ADOPTOR** ceases its business operations, or permits its license or authority to conduct its

business to expire or be revoked without said license being immediately renewed.

- 16.3 Within thirty (30) calendar days after the termination or cancellation of this Agreement, the parties shall settle their respective accountabilities as of the date of termination or cancellation. Should this Agreement be terminated or cancelled due to any reason attributable to **TECHNOLOGY ADOPTOR**, the **TECHNOLOGY ADOPTOR** shall be prohibited from using the **TECHNOLOGY** after the expiration of this Agreement.

17.0 **Successors and Assigns:**

This Agreement shall be binding upon the parties and shall inure to their benefit of their permitted successors and assigns.

18.0 **No Waiver:**

The failure or delay of a party to exercise its rights under this Agreement, or any custom or practice of a party in variance with the terms hereof, shall not constitute a waiver by the relevant party of the terms of this Agreement, and the relevant party may demand exact compliance with the terms hereof. Waiver by a party of any particular default by the other party shall constitute a waiver of any subsequent default of the same or different nature.

19.0 **Entire Agreement:**

This Agreement shall contain the entire Agreement between the parties on the subject matter and supersedes all previous agreements or understandings in respect of that subject matter.

20.0 **Amendments or Modifications:**

No amendment or modification to this Agreement shall be valid and binding between parties unless made in writing and signed by the parties herein.

21.0 **Severability:**

If any part of this Agreement is declared void, illegal or unenforceable, the remaining parts of this Agreement shall remain in full force and effect.

22.0 **Other Provisions:**

- 22.1 Each Party shall comply with all governmental regulations relating to this Agreement and agrees to indemnify and hold the other Party harmless from any loss, damage or cost including attorney's fees, incurred by the other Party arising from violation of any such governmental regulations;
- 22.2 In the event that any provision of this Agreement shall be declared null and void, this Agreement shall be construed as if such provisions were not part of this Agreement; and,

22.3 The terms and conditions herein contained, constitute the entire Agreement between the parties regarding the subject matter hereof, and supersede all previous Agreements and understandings, whether oral or written, between the parties hereto with respect to the subject matter hereof. No modification, alteration, addition or change in the terms hereof shall be binding on either party hereof unless reduced to writing and duly executed by the parties in the same manner as the executions of this Agreement.

IN WITNESS WHEREOF, the parties hereto affixed their signatures this 16th day of June 2017 in Tacloban City, Philippines.

**DEPARTMENT OF SCIENCE AND
TECHNOLOGY - REGIONAL OFFICE
NO. VIII**

**EASTERN VISAYAS STATE
UNIVERSITY**

Engr. **EDGARDO M. ESPERANCILLA**
Regional Director

Dr. **DOMINADOR O. AGUIRRE, JR.**
University President

MARY'S ABUYOG SPECIAL TSOKOLEYT MORON ATBP.

ESMERALDA D. MANAOG
Proprietor

SIGNED IN THE PRESENCE OF:

ENGR. ERNESTO M. GRANADA
ART, TO, DOST

HILARIA L. BUSTAMANTE
EVFIC Director

ACKNOWLEDGEMENT

REPUBLIC OF THE PHILIPPINES)
CITY OF TACLOBAN

)SS.

AUG 07 2017

BEFORE ME, a Notary Public and in the City of Tacloban, Philippines, this ____ day of _____ 2017 personally appeared the following persons exhibiting to me their respective government issued identification documents (IDs) specified below:

1. **Engr. EDGARDO M. ESPERANCILLA**
Identification (ID) : Passport
No. :
Issued by :
Issued on :
2. **Dr. DOMINADOR O. AGUIRRE, Jr.**
Identification (ID) :
No. :
Issued by :
Issued on :
3. **Ms. ESMERALDA D. MANAOG**
Identification (ID) :
No. :
Issued by :
Issued on :

All known to me to be the same persons who executed the foregoing Memorandum of Agreement, consisting of 10 pages including this page where this Acknowledgment is written, and they acknowledged to me that the same is their free and voluntary act and deed as well as of the respective entities represented.

WITNESS MY HAND SEAL on the date and at the place first above written.

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Book No.: IV
Series of 2018

CARISSA E. SANTO
Notary Public
NC # 2016-02-49
Commissioned for the City of Tacloban and the
Territorial Jurisdiction of RTC Tacloban
Issued on Feb. 24, 2016 and until Dec. 31, 2017
2nd Floor, Prima Asuncion Bldg.
Apitong Road, Tacloban City
Roll of Attorneys No. 57572
MCLE Compliance No. V-0022255; April 30, 2016
IBP No. 1030899; 01-04-2017; Leyte Chapter
PTR No. 7572705; 01-04-2017; Tacloban City