

**AGREEMENT ON ACCESS TO BIOLOGICAL RESOURCES AND/OR ASSOCIATED
KNOWLEDGE FOR RESEARCH/BIO-SURVEY AND BIOUTILISATION**

This Agreement is entered into as on the day of, year.....in accordance with Section 3 read with Section 19(1) of the **Biological Diversity Act, 2002** (Hereinafter referred to as "The Act") and Rule 14 of the **Biological Diversity Rules, 2004** (Hereinafter referred to as "The Rules").

Between

National Biodiversity Authority acting through and represented by (Name of the incumbent), Chairman being the authorised officer of the Authority (Hereinafter referred to as "the **NBA**" or "the Authority") having its office at 5th Floor, TICEL Bio Park, Taramani, Chennai-600 113, Tamil Nadu, India (www.nbaindia.org).

And

ABC..... (is either a person who is not a citizen of India; a citizen of India, who is a non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961; a body corporate, association or organisation- i) not incorporated or registered in India; or ii) incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management established and existing under the laws of(name of the country & Act) having its office at..... (Hereinafter referred to as **ABC**)

Hereinafter, the NBA and ABC shall collectively be referred to as "the Parties" and individually as "Party".

WHEREAS:

NBA has been established by the Government of India under the powers granted to it by Section 8 of the Biological Diversity Act 2002 (No. 18 of 2003). Under the said Act, NBA is the authority to permit access to any biological resources and / or associated knowledge found within the territory of India.

ABC is a (is either a person who is not a citizen of India; a citizen of India, who is a non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961; a body corporate, association or organisation- i) not incorporated or registered in India; or ii) incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management established and existing under the laws of(name of the country & Act)and having interests in research which requires certain biological resources and/or associated knowledge as a research materials.

ABC has made an application in **Form I** (to be attached with this agreement as Schedule C) under Rule 14 of the Biological Diversity Rules 2004 to seek approval from the NBA for access to the Biological Resources and/or associated knowledge for the purpose of Research/Bio-survey and bioutilisation.

The formats of this Agreement on access to biological resources and/or associated knowledge for research/bio-survey and bioutilisation have been prepared in accordance with the provisions of the Biological Diversity Act, 2002 and the Biological Diversity Rules 2004.

The Parties hereto agree as follows:

1. Definitions

In this Agreement, unless the context otherwise requires:

Act means the Biological Diversity Act, 2002 (Act 18 of 2003) and includes the Rules/Regulations/guidelines/notifications/regulations made under it.

Biological Resources: means biological resources as defined in the Act (and includes any associated knowledge) to which ABC seeks access to for purposes of research/bio-survey and bio-utilisation and is described in detail in **Schedule A** (details of the biological resources and/or associated knowledge to be furnished by ABC).

Research means any activity referred to in clauses (d) and (m) of section 2 of the Act but limited to the description provided in **Schedule B** (details of research to be furnished by ABC) to this Agreement.

Purpose

The purpose of this agreement is for access to biological resources and/or associated knowledge occurring in India for research/ bio-survey and bio-utilisation. In order to obtain approval from National Biodiversity Authority (established by the Government of India under the powers granted to it by Section 8 of the Biological Diversity Act 2002) any person, who is not a citizen of India; a citizen of India, who is a non-resident as defined in clause (30) of section 2 of the Income-tax Act, 1961; a body corporate, association or organisation- not incorporated or registered in India; or incorporated or registered in India under any law for the time being in force which has any non-Indian participation in its share capital or management is required to apply in **Form I** and pay application fee **Rs 10,000/=** (Rupees Ten thousand only) as per Biological Diversity Rule 14 (1,2). The National Biodiversity Authority, by order approves the access to biological resources and/or associated traditional knowledge for research/Bio-survey and bio-utilisation, in the form of an agreement duly signed by an authorised officer of the Authority and the applicant.

This regulation is mainly to contribute to the conservation and sustainable use of biological diversity and to secure equitable sharing of benefits arising out of the use of accessed biological resources if any.

2. Grant of Approval

2.1 ABC requests for approval and the NBA hereby grants approval for access to biological resources and/or associated knowledge specified in **Schedule A** for the purposes of

Research/Bio-survey and Bio-utilisation subject to the terms and conditions set forth in this Agreement.

2.2 Any activities/usage involving the biological resources and/or associated knowledge that are not expressly authorized by the provisions of this Agreement and any annexures hereto shall be deemed to be expressly prohibited.

2.3 ABC hereby agrees that this Agreement shall not in any way constitute or be presumed to constitute a partnership, joint venture or joint enterprise in any way or for any purpose between the Parties hereto or make them in any way liable as partners of or as agents for one another. No Party has the authority to act for or to assume any obligation or responsibility on behalf of the other Party and the relationship between the Parties is that of a person and a statutory authority competent to approve access to biological resources and/or associated knowledge under the Act.

3. Assignment

3.1 Without the prior written consent of the NBA in each instance, neither this Agreement nor the approval granted hereunder shall be transferred or assigned in whole or in part by ABC to any person whether voluntarily or involuntarily, by operation of act or omission on the part of ABC or otherwise.

3.2 This Agreement is strictly personal to ABC and will be treated as terminated in the event of any substantial changes in the management or shareholding of ABC, that alters the control structure of ABC and includes changes brought by a transfer of business units, merger, demerger or any other kind of corporate restructuring.

4. Conditions for Access to Biological Resources and/or Associated Knowledge

4.1 ABC shall have access only to (quantity) of Biological Resources and/or associated knowledge from the location(s) as specified in the application Form I and undertakes to access the same in accordance with the directions given by the NBA (as delegated to the State Biodiversity Board (SBB) established in accordance with Sec. 22 of the Act or the Biodiversity Management Committee (BMC) constituted in accordance with Sec.41 of the Act or any other governmental agencies). The access to the biological resources and/or associated knowledge shall be done according to the guidelines/notifications/regulations issued by the Central Government.

4.2 ABC undertakes that it shall not allow any persons other than its authorized employees under its direct control and supervision to have access to the Biological Resources and/or associated knowledge. ABC undertakes to protect the Biological resources at least as well as it protects its own valuable tangible personal property and shall take measures to protect the biological resources and/or associated knowledge from any claims by third parties including creditors and trustees appointed by the court or other authorities in certain legal proceedings like bankruptcy, winding up etc.

4.3 ABC undertakes to comply with the existing national laws, regulatory mechanisms and international agreements/treaties however subject to the Act and this agreement. The applicant

shall also be abiding by the notifications/guidelines as issued/notified by the Government of India for the access to biological resources and/or associated knowledge.

4.4. The approval given under this agreement is without prejudice to any other approvals/permissions that may be required to be taken by ABC for the purpose of access to biological resources and/or associated knowledge from any other authorities under any law in force in the territory of India. Failure to acquire such approvals/permissions shall be deemed as a material breach of this Agreement and shall result in the termination of this Agreement. However, before such termination, upon an application by ABC, a reasonable time as deemed appropriate by NBA may be given to ABC to rectify the default and obtain required approval, permit, or licenses etc. within such time period so granted.

4.5 ABC shall not distribute, transfer or part with, or obtain any form of Intellectual Property Rights (IPRs) based on the Biological Resources and/or associated knowledge accessed under this Agreement in any manner without obtaining the prior approval of the NBA under the provisions of the Act.

4.6 ABC undertakes to submit half yearly reports on the progress of the Research/Bio-survey and Bio-utilisation to the NBA.

4.7 ABC shall deposit the voucher specimen/type specimen in the national designated repositories of India in culture collection in accordance with the guidelines/directions given by NBA.

4.8. In the event of seeking any form of intellectual property rights for any innovation on the accessed bioresources and/or associated knowledge in India or outside India, ABC shall collaborate with any Research Institution/Universities established in India under the laws of India and recognized by the Government of India and seek prior approval from NBA as per the provisions of the Act and Rules and the guidelines/ regulations for seeking intellectual property rights on biological resources and/or associated knowledge issued/notified by NBA or Central Government.

5. Liabilities and Indemnification

5.1 ABC shall be solely responsible for any claims by third parties arising from the ABC's acts or omissions in the course of performing this Agreement and under no circumstances shall the NBA be held responsible or liable for any such claims by third parties.

5.2 ABC shall indemnify and save NBA harmless and its employees from and against all claims, demands, losses, damages, costs (including attorney fees), actions, suits or other proceedings, all in any manner based upon, arising out of, related to, occasioned by or attributable to, any acts or conduct of the ABC, its employees or agents, (whether by reason of negligence or otherwise) in the performance by or on behalf of the ABC of the provisions of this Agreement or any activity undertaken or purported to be undertaken under the authority or pursuant to the terms of this Agreement.

5.3 The ABC undertakes to pay a sum of ten lakhs rupees for any material breach of this Agreement and further undertakes to pay such sum of ten lakhs rupees in addition to the amount

as determined by NBA as the loss incurred by the Republic of India or the stake holders involved.

6. Terms and Termination

6.1 This Agreement, unless terminated as provided herein, shall remain in effect for a period of years (case to case basis) from the date on which ABC made its first access to the Biological Resources under this Agreement.

6.2 NBA may terminate this Agreement by a written notice on the happening of any of the following:

(a) If ABC does not make a payment due hereunder and fails to cure such non-payment within Thirty (30) days after the date of notice in writing of such non-payment by NBA.

(b) If ABC defaults in the performance of any obligations under this Agreement and the default has not been remedied within sixty (60) days after the date of notice in writing of such default by NBA.

(c) The NBA shall revoke access or approval granted to ABC if any of the circumstances mentioned in Biological Diversity Rule 15(1) arises and on any one or more of the grounds stated therein, namely:

1. If ABC has violated any of the provisions of the Act or the conditions on which approval was granted,
2. If ABC has failed to comply with the terms of agreement,
3. If ABC has failed to comply with any of the conditions of access granted,
4. on account of over riding public interest or for protection of environment and conservation of biological diversity.

(d) The NBA shall revoke access or approval granted to the ABC in case if it is found that ABC has accessed/attempted to access the biological resources for which access is restricted or prohibited under rule 16, namely: any endangered taxa ; any endemic and rare species; access may likely to result in adverse effect on the livelihoods of the local people; the access may result in adverse environmental impact which may be difficult to control and mitigate; access may cause genetic erosion or affecting the ecosystem function; and the use of resources for purposes contrary to national interest and other related international agreements entered into by India

In the event of revocation of access or approval as mentioned above this agreement shall automatically stand terminated.

6.3 As regards all other aspects and terms & conditions not provided for in this agreement, they shall be governed by the provisions of the Act, rules, regulations and the order of approval. ABC may terminate this Agreement by giving sixty (60) days advance written notice of termination. Upon termination, ABC shall submit a final payment report to NBA and any outstanding payments shall become immediately payable.

6.4 Upon termination of this Agreement, ABC shall cease all use of the Biological Resources and/or associated knowledge and shall, upon request, return or destroy (at the option of NBA) all Biological Resources under its control or in its possession. The costs in this regard shall be borne by ABC.

6.5. NBA shall not be liable for any loss or damage whatsoever caused to ABC due to revocation of approval for access and/ or termination of this agreement on any ground whatsoever.

7. Notice

7.1 Wherever in this Agreement, it is required or permitted that a communication, notice or demand be given or served by either Party to or on the other Party, such communication, notice or demand will be in writing and will be validly given or sufficiently communicated if forwarded by Registered mail acknowledgement due, e-mail, telegram, telex or facsimile as follows:

The addresses for communication are:

To the NBA:

The Chairperson, National Biodiversity Authority, 5th Floor, TICEL Bio Park, Taramani, Chennai-600 113, Tamil Nadu, India.

e-mail: chairman@nbaindia.in Fax:044-2254 1073

To ABC:

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7.2 Notice will be deemed to have been delivered:

- (a) if delivered by hand, upon receipt;
- (b) if sent by electronic transmission, 48 hours after the time of transmission, excluding from the calculation weekends and public holidays;
- (c) if sent by certified mail, four (4) days after the mailing thereof, provided that if there is a postal strike or other disruption such notice will be delivered by hand or electronic transmission.

7.3 The Parties may change their respective addresses for delivery by delivering notice of change as provided in this paragraph.

8. Confidentiality

8.1 The NBA agrees to treat as confidential any and all Confidential Information marked as "CONFIDENTIAL" and to that end further agrees that information disclosed pursuant to this Agreement relating to the Formulations, including efforts to commercialize the Formulations, shall be deemed Confidential Information.

8.2 Notwithstanding clause 8.1, Confidential Information may be disclosed to the extent required by any law or regulation or order of any governmental/administrative/judicial authority having jurisdiction over any of the Parties, with appropriate efforts made to maintain confidentiality.

8.3 NBA shall maintain Confidential Information in confidence, for as long as the confidential information does not fall within the Public Domain.

9. Arbitration

9.1. If any controversy, question, dispute or difference (hereinafter referred to as a ‘**Dispute**’) between the Parties hereto arises under this Agreement, any Party may give the other Party a written notice of Dispute adequately identifying and providing details of the Dispute. On receipt of such notice by the other Party, the Parties shall try to settle the Dispute amicably between them by negotiating in good faith within 30 days of the receipt of the notice of Dispute by the other Party.

9.2. If the Dispute is not resolved by such good faith negotiations within the period mentioned, the Parties agree to settle the Dispute through arbitration conducted by the sole arbitrator appointed by the Chairman,NBA. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996. The place of arbitration shall be Chennai, India. The language to be used in the arbitration proceedings shall be in English or as mutually agreed between the Parties.

9.3. The Parties hereto agree that the award and determination of the arbitrator shall be final and binding on both Parties hereto.

10. Governing Law and Jurisdiction

10.1. This Agreement is governed by and is to be construed in accordance with the laws of India without regard of the principles for the conflicts of laws subject to the provisions of clause 9 (arbitration). In the event of a dispute not settled through arbitration as specified in clause 9, the parties are free to exercise their right of appeal as provided under Section 52 of the Biological Diversity Act. However, the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the High Court in Chennai, India

10.2. As regards all other aspects not provided for in this agreement, they shall be governed by the provisions of the Act, rules, regulations and the order of approval.

11. Waiver

The Waiver by NBA, of any breach of any terms of this Agreement made by ABC shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

12. Severability

If any part of this Agreement is declared or held invalid by a court for any reason, the invalidity of that part will not affect the validity of the remainder which will continue in full force and effect and be construed as if the Agreement had been executed without the invalid portion.

13. Modification

No amendment or modification to this Agreement shall be valid or binding upon the Parties, unless agreed upon by both Parties, made in writing, and signed on behalf of each of the Parties by their duly and legally authorized signatories.

14. Entire Agreement

The Parties acknowledge that there are no representations either oral or written, as regards the subject matter of this Agreement, between the NBA and ABC other than those expressly set out in this Agreement. All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this document and are of no effect. This Agreement constitutes the entire understanding between the parties as to the subject matter of this Agreement. This Agreement sets forth all representations forming part of or in any way affecting or relating to the subject matter of this Agreement.

15. Representations

Either Party represent to each other Party that it has the legal right and power to enter into this Agreement and to perform its obligations under the terms of this Agreement and the execution, delivery and performance of this Agreement by it has been duly and validly authorized by all necessary corporate action or Government action on its part.

The documents attached hereto as Schedules forms an integral part of this Agreement as fully as if it were set forth herein *in extenso*, and consists of:

Schedule A: Details of the Biological Resources (**To be attached by the ABC**)

Schedule B: Details of Research (**To be attached by the ABC**)

Schedule C: Application made by ABC in Form I (**To be attached by the ABC**)

and any other Appendix that may be added subsequently under the provisions of this Agreement.

This Agreement has been executed in duplicate. The original is to lie with the NBA and the duplicate with ABC. Each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF this Agreement has been executed by duly authorized representatives of the Parties on the day and the year first mentioned

Signed by the Authorised Officer
of the Authority

Signed by duly authorized representative
of ABC, authorized vide resolution No.
dated of the Board of Directors

For National Biodiversity Authority

For ABC

Witness

1.

1.

2.

2.

Schedule A: Details of the Biological Resources

[To be filled in by ABC]

Schedule B: Details of Research

[To be filled in by ABC]

Schedule C: Application made by ABC in Form I