

AGREEMENT ON TRANSFER OF RESEARCH RESULTS

This Agreement is entered into as of the day of, 2009 in accordance with Section 4 read with Section 19(1) of the **Biological Diversity Act, 2002** (Hereinafter referred to as “The Act”) and Rule 17 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

XYZ (is any person, who intends to transfer the results of any research relating to any biological resources and/or associated traditional knowledge occurring in, or obtained from, India for monetary consideration or otherwise to 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 which can be a Company/Institute established and existing under the laws of (name of the country) and Act having its office at (Hereinafter referred to as “**XYZ**”).

Hereinafter, the NBA and XYZ 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 the research results of any biological resources and/or associated knowledge found within the territory of India.

XYZ is any person, who intends to transfer the results of any research relating to any biological resources and/or associated traditional knowledge occurring in, or obtained from, India for monetary consideration or otherwise to 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 who is a Company/University/Individual, Trust etc, who/which is desirous of transferring results of research relating to Biological Resources and/or associated knowledge occurring in or

obtained from India as described in Schedule B (Hereinafter '**Results of Research**' to be furnished by XYZ with this Agreement) to the person as described in Schedule C (details of the '**Transferee**').

XYZ has made an application in Form II (to be attached with this Agreement as **Schedule D**), under Rule 17 of the Biological Diversity Rules, 2004 to seek approval from the NBA to transfer the results of research to the Transferee.

The formats of this Agreement on transfer of research results have been prepared strictly 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:

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

Biological Resources: means biological resources as defined in the Act (and includes any associated knowledge) and more fully described in **Schedule A** (details of the biological resources and/or associated knowledge to be furnished by XYZ) to this Agreement.

Commercial Utilisation means as defined in the Section 2(f) of the Act.

Purpose

The purpose of this agreement is for transfer of research results and biological resources and/ or associated knowledge occurring in India for further research or for commercialisation. 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 intends to transfer the results of any research relating to any biological resources and/ or associated traditional knowledge occurring in, or obtained from, India for monetary consideration or otherwise to 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 II** and pay application fee **Rs 5000/=** (Rupees Five thousand only) as per Biological Diversity Rule 17 (sub rule 1, 2). The National Biodiversity Authority by order approves the transfer of research results relating to any biological resources and/or associated traditional knowledge 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 XYZ requests for approval and the NBA hereby grants the approval to transfer the Results of Research specified in **Schedule B** subject to the terms and conditions set forth in this Agreement.

2.2 The NBA makes no warranties as to the safety of the Results of Research or the Biological Resources and/or associated knowledge involved in it, nor as to the accuracy or correctness of any research conducted on the Biological resource and/or associated knowledge. XYZ assumes full responsibility for complying with the rules and regulations for a legal transfer of the Results of Research.

2.3 XYZ 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 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 the transfer of research results under the Act.

3. Assignment and Transfer

3.1 In the event of any assignment or transfer of this Agreement in whole or in part by XYZ to any transferee whether voluntarily or involuntarily, by operation of law or otherwise, all obligations under this Agreement shall accrue on such assignee or transferee. XYZ undertakes to include this Agreement as an appendix to the instrument making the assignment or transfer of this Agreement with prior written intimation to NBA.

3.2 All Licenses and sub licenses granted by XYZ or Transferee shall ensure the flow of benefits to the benefit claimers and other stakeholders in India as determined by NBA according to the provisions of the Act.

4. Conditions for the Transfer of Research Results

4.1. XYZ undertakes to comply with the existing national laws, regulatory mechanisms and international agreements/treaties however subject to the Act and this agreement. XYZ shall also be abiding by the notifications/guidelines as issued/notified by the Government of India for the transfer of research results concerning to the biological resources and/or associated knowledge.

4.2. XYZ undertakes to provide the details of the purpose of transfer of research results with this agreement. The research results intended to be transferred shall be limited to the purpose for which it is accessed as specified in Schedule B of this agreement. Any breach of this condition shall result in the immediate termination of this agreement by NBA.

4.3. The transferee undertakes that it shall not transfer the research results obtained with the approval of NBA to any third party in any manner without entering into a fresh agreement with the NBA.

4.4. XYZ and the transferee undertakes to deposit the voucher specimen(s) of the biological resource(s) relating to transferred research results with the designated national repository in accordance with the Section 39 of the BDA, 2002.

4.5 The approval given under this agreement is without prejudice to any other approvals/permissions that may be required to be taken by XYZ for the purpose of transfer of research results concerned with the 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 XYZ, a reasonable time as deemed appropriate by NBA may be given to XYZ to rectify the default and obtain required approval, permit, or licenses etc. within such time period so granted.

4.6 In case the biological resource referred at 4.5 above has any special status under any law in force in India or any international agreement, the details of the same shall be provided, including necessary clearances from competent authority.

4.7. In case the transfer of research results involves transfer of dead specimen(s) and/or herbarium(s) of India on loan or on any other terms, for further research as required by bona-fide scientists/researchers of recognized Universities and Government Institutions of India who are engaged in technology development, XYZ hereby undertakes to transfer the research results through concerned Departments / Ministries of the Government of India.

4.8. In case the results of research transferred are likely to lead to Intellectual Property Rights (IPR), XYZ and the transferee shall seek prior approval of the NBA as per section 19(2) of the Act and enter into a fresh agreement with NBA to ensure sharing of benefit in accordance with provisions of section 6 of the Act and also according to the guidelines of the Central Government for seeking intellectual property rights and benefit sharing.

4.9. XYZ hereby undertakes to provide complete information/evidence of commercial or non-commercial nature of the research results as well as the expected outcomes of the further research.

4.10. Commercialization of the transferred research results and/or any traditional knowledge associated with biological resource(s) from India shall be done with the approval of NBA.

4.11. XYZ hereby undertakes to submit half yearly report specifying the number of agreements entered in to for the commercial utilisation, the amount of royalty received as a

result of such agreements, any products manufactured, or improvements made on it and made available in the market and also any other information sought by NBA including the net sale proceeds for determining the benefit sharing

4.12. If the transferee to this agreement is a person as described in Sec.3(2) of the Act, then the Publication of research paper(s), book(s), bulletin(s), registered accession(s) and output(s) based on the transfer of research results thus obtained, shall be with the consent of the Indian collaborator(s).

4.13. Both the transferee and XYZ hereby undertake to seek fresh approval from NBA in the event of any modification(s) including value addition leading to further commercialization.

4.14. XYZ undertakes to seek approval by NBA for the usage of traditional knowledge associated with biological resources during the course of further research of the research results transferred for the purpose of facilitating benefit sharing according to the guidelines/notifications/regulations issued/notified by the Central Government on Benefit sharing.

4.15. If XYZ is a person falling under the Subsection 2 of Section 3 of the Act, then XYZ undertakes to provide the Agreement entered by him with NBA approving his access to biological resources and/or associated knowledge for the purpose mentioned therein and a copy of the agreement shall be annexed to this agreement as Schedule E. Failure to provide this agreement will automatically nullify this agreement.

5. No Transfer of Biological Resources or Associated Knowledge

5.1 The Biological Materials and/ or associated knowledge shall not be distributed to any person for any purpose without the prior written consent of NBA obtained under the provisions of the Act. Nothing contained in this Agreement shall be construed as an authorization from the NBA for the transfer of Biological Resources or any associated knowledge by the XYZ.

5.2 If the Transferee/any other person obtaining the Results of Research as a direct or indirect result of this Agreement, desires to use the Biological Resources and/or associated knowledge for Commercial Utilisation, or indirectly in research designed to identify or produce materials with commercial value, the Transferee/such person agrees to make an application under the appropriate provisions and forms under the Act for access to Biological Resources.

6. Royalty and other Benefit Sharing [will change on a case by case basis and will be regulated by the Benefit Sharing guidelines]

6.1 In the event of the transferee intending to use the results of research transferred to him for commercial use, he shall seek prior approval of the NBA.

6.2 In the event of the transferee intending to use the results of research transferred to him for commercial use, he shall pay to the National Biodiversity Authority, annually,

during the term of this Agreement a royalty of.....% as agreed of the total sales of the Product derived from the use of the Biological Resource accessed.

6.3. NBA shall direct the transferee to share the benefits in all or any of the following manners as per sub section 2 and 3 of Section 21 of the Biological Diversity Act, 2002:

- (a) grant of joint ownership of Intellectual Property Rights to NBA, or where benefit claimers are identified, to such benefit claimers.
- (b) Transfer of technology
- (c) Location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;
- (d) Association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilization;
- (e) Setting up of venture capital fund for aiding the cause of benefit claimers.
- (f) Payment of monetary compensation and non monetary benefits to the benefit claimers as the National Biodiversity Authority may deem fit

7. Confidentiality

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

7.2 Notwithstanding clause 7.1, 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.

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

7.4 XYZ undertakes to use its best endeavors to maintain the confidentiality of the Results of Research in such a manner that the benefits under this Agreement flows to the benefit claimers to the longest possible period.

7.5 All information exchanged between the Parties under this Agreement or during the negotiation of this Agreement, marked 'CONFIDENTIAL' by the Party, is confidential and may not be disclosed to any person except:

- (a) if it is necessary for the XYZ to disclose the information to a person in the course of negotiating a licence/Sublicence or other agreement concerning Commercial Utilization with the person, on condition that the person agrees to be bound by the terms of this clause; or

(b) to the Party's professional advisers on condition that they agree to be bound by the terms of this clause

8. Liabilities and Indemnification

8.1 XYZ shall be solely responsible for any claims by third parties arising from the XYZ'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.

8.2 XYZ 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 XYZ, its employees or agents, (whether by reason of negligence or otherwise) in the performance by or on behalf of the XYZ 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.

8.3 Notwithstanding anything contained in this clause, the NBA shall not be restricted to make any disclosure of any confidential information, if in its reasonable opinion such disclosures become important to deal with any emergency situation.

8.4 The XYZ 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.

9. Terms and Termination

9.1 This Agreement shall remain in force until XYZ transfers the Results of Research or further improvements on it to the Transferee and such Transferee enters into an agreement with the NBA according to the provisions of the Act and any regulations, notification, guidelines issued/notified by the Central Government.

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

(a) If XYZ 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 XYZ 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 XYZ 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 XYZ has violated any of the provisions of the Act or the conditions on which approval was granted,
2. If XYZ has failed to comply with the terms of agreement,
3. If XYZ 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 XYZ in case if it is found that XYZ 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.

9.3 As regards all other aspects and terms and 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, XYZ shall submit a final payment report to NBA and any outstanding payments shall become immediately payable.

9.4 Upon termination of this Agreement, XYZ 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 shall this regard to be borne by XYZ.

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

10. Notice

10.1 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 delivery 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 the XYZ:

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10.2 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.

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

11. Arbitration

11.1 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.

11.2 If the Dispute is not resolved by such good faith negotiation 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.

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

12. Governing Law and Jurisdiction

12.1. 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 11 (arbitration). In the event of a dispute not settled through arbitration as specified in clause 11, the parties are free to exercise their right of appeal as provided under Section 52 of the Act. However, the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the High Court in Chennai, India

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

13. Waiver

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

14. 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.

15. Modification

No amendment or modification of 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 representative officers.

16. 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 XYZ 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.

17. 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 XYZ)**

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

Schedule C: Details of the Transferee **(To be attached by the XYZ)**

Schedule D: Application made by XYZ in Form II **(To be attached by the XYZ)**

Schedule E: Copy of the Agreement entered by XYZ with NBA if XYZ is person falling under Sec.3(2) of the Act. **(To be attached by the XYZ)**

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 XYZ. 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 XYZ, authorized vide resolution No.
dated of the Board of Directors

For National Biodiversity Authority

For XYZ

Witness

1.

1.

2.

2.

Schedule A: Details of the Biological Resources

[To be filled in by XYZ]

Schedule B: Details of the Results of Research

[To be filled in by XYZ]

Schedule C: Details of the Transferee

[To be filled in by XYZ]

Schedule D:

Application made by XYZ in Form II

Schedule E: Copy of the Agreement entered by XYZ with NBA if XYZ is person falling under Sec. 3(2) of the Act