

THE **ABS**
CAPACITY
DEVELOPMENT
INITIATIVE



L'INITIATIVE DE
RENFORCEMENT
DES CAPACITES
POUR L'**APA**

National Study on ABS Implementation in **India** Information Document

Commissioned by
the **ABS Capacity Development Initiative**
in collaboration with
the **Government of India**

Carried out by



Research and Information System for Developing Countries
India Habitat Centre
New Delhi
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This brochure contains the following documents referred to in the Study Report:

- I. Provisions of the Biodiversity Rules, 2004 regarding Procedure for Access to Biological Resources Including for Applying for Intellectual Property Rights
- II. Proforma for Collaborative Research Projects as per Section 5, Biological Diversity Act, 2002
- III. Agreement on Access to Biological Resources and/or Associated Knowledge for Research/Bio-Survey and Bio-utilisation
- IV. Agreement on Access to Biological Resources and/or Associated Knowledge for Commercial Utilization
- V. Agreement on Transfer of Research Results
- VI. Agreement for Third Party Transfer of Bioresources and/or Associated Knowledge
- VII. Draft Benefit sharing Guidelines brought out by NBA
- VIII. From Draft Guidelines on Access and Benefit Sharing prepared by an NBA appointed expert

PROVISIONS OF THE BIODIVERSITY RULES, 2004 REGARDING PROCEDURE FOR ACCESS TO BIOLOGICAL RESOURCES INCLUDING FOR APPLYING FOR INTELLECTUAL PROPERTY RIGHTS

14. Procedure for access to biological resources and associated traditional knowledge

1. Any person seeking approval of the Authority for access to biological resources and associated knowledge for research or for commercial utilization shall make an application in Form I.
2. Every application under sub-rule (1) shall be accompanied by a fee of ten thousand rupees in the form of a Cheque or demand draft drawn in favour of the Authority.
3. The Authority shall after consultation with the concerned local bodies and collecting such additional information from the applicant and other sources, as it may deem necessary, dispose of the application, as far as possible, within a period of six months from the date of its receipts.
4. On being satisfied with the merit of the application, the Authority may grant the approval for access to biological resources and associated knowledge subject to such term and conditions as it may deem fit to impose.
5. The approval to access shall be in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant.
6. The form of the agreement referred to in sub-rule (5) shall be laid down by the Authority and shall include the following ; namely :-
 - general objectives and purpose of the application for seeking approval ;
 - description of the biological resources and traditional knowledge including accompanying information;
 - intended uses of the biological resources (research, breeding, commercial utilization etc.) conditions under which the applicant may seek intellectual property rights;
 - quantum of monetary and other incidental benefits. If need be, a commitment to enter into a fresh agreement particularly in case if the biological material is taken for research purposes and later on sought to be used for commercial purposes, and also in case of any other change in use thereof subsequently.
 - restriction to transfer the accessed biological resources and the traditional knowledge to any third party without prior approval of Authority;
 - to adhere to a limit set by the Authority on the quantity and specification of the quality of the biological resources for which the applicant is seeking access;
 - guarantee to deposit a reference sample of the biological material sought to be accessed with the repositories identified in Section 39;
 - submitting to the Authority a regular status report of research and other developments;
 - commitment to abide with the provisions of Act and rules and other related legislations in force in the country ;
 - commitment to facilitate measures for conservation and sustainable use of biological resources accessed ;
 - commitment to minimize environmental impacts of collecting activities ;
 - legal provisions such as duration of the agreement, notice to terminate the agreement,

- independent enforceability of individual clauses, provision to the extent that obligations in benefit sharing clauses survive the termination of the agreement, events limiting liability (natural calamities), arbitration, any confidentiality clause.
7. The conditions for access may specifically provide measures for conservation and protection of biological resources to which the access is being granted.
 8. The Authority may for reasons to be recorded in writing reject an application if it considers that the request cannot be acceded to.
 9. No application shall be rejected unless the applicant is given a reasonable opportunity of being heard.
 10. The Authority shall take steps to widely publicize the approvals granted, through print or electronic media and shall periodically monitor compliance of conditions on which the approval was accorded.

15. Revocation of access or approval . -

1. The Authority may either on the basis of any complaint or suo moto withdraw the approval granted for access under rule 15 and revoke the written agreement under the following conditions ; namely:-
 - on the basis of reasonable belief that the person to whom the approval was granted has violated any of the provisions of the Act or the condition on which the approval was granted ;
 - when the person who has been granted approval has failed to comply with the terms of the agreement ;
 - on failure to comply with any of the conditions of access granted;
 - on account of overriding public interest or for protection of environment and conservation of biological diversity;
2. The Authority shall send a copy of every order of revocation issued by it to the concerned State Biodiversity Board and the Biodiversity Management Committees for prohibiting the access and also to assess the damage, if any, caused and take steps to recover the damage.

16. Restriction on activities related to access to biological resources. -

1. The Authority if it deems necessary and appropriate shall take the steps to restrict or prohibit the request for access to biological resources for the following reasons ; namely :-
 - the request for access is for any endangered taxa ;
 - the request for access is for any endemic and rare species;
 - the request for access may likely to result in adverse effect on the livelihoods of the local people;
 - the request to access may result in adverse environmental impact which may be difficult to control and mitigate;
 - the request for access may cause genetic erosion or affecting the ecosystem function;
 - use of resources for purposes contrary to national interest and other related international agreements entered into by India.

17. Procedure for seeking approval for transferring results of research.-

1. Any person desirous of transferring results of research relating to biological resources obtained from India for monetary consideration to foreign nationals, companies and Non Resident Indians (NRIs), shall make an application to the Authority in the Form II.
2. Every application under sub-rule (i) shall be accompanied by a fee of five thousand rupees in the form of a Bank draft or Cheque drawn in favour of the Authority.
3. Every application under sub-rule (i) shall be decided upon by the Authority, as far as possible within a period of three months from the receipt of the same.

4. On being satisfied that the applicant has fulfilled all the requirements, the Authority may grant the approval for transferring the results of research subject to such terms and conditions as it may deem fit to impose in each case.
5. The approval for transfer shall be granted in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant. The form of the agreement shall be such as may be decided by the Authority.
6. The Authority may for reasons to be recorded in writing reject an application if it considers that the application cannot be allowed;
7. Provided that the application shall be rejected unless the applicant has been given a reasonable opportunity of being heard.

18. Procedure for seeking prior approval before applying for intellectual property protection. -

1. Any person desirous of applying for a patent or any other intellectual property based on research on biological material and knowledge obtained from India shall make an application in Form III.
2. Every application under sub-rule (1) shall be accompanied by paying a fee of five hundred rupees.
3. The Authority after due appraisal of the application and after collecting any additional information, on the basis of merit shall decide on the application, as far as possible within a period of three months of receipt of the same.
4. On being satisfied that the applicant has fulfilled all the necessary requirements, the Authority may grant approval for applying for a patent or any other IPR subject to such terms and conditions as it may deem fit to impose in each case.
5. The approval shall be granted in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant. The form of the agreement may be decided by the Authority.
6. The Authority may reject the application if it considers that the request cannot be acceded to after recording the reasons. Before passing order of rejection, the applicant shall be given an opportunity of hearing.

19. Procedure for third party transfer under sub-section (2) of Section 20.-

1. The persons who have been granted approval for access to biological resources and associated knowledge, intend to transfer the accessed biological resource or knowledge to any other person or organization shall make an application to the Authority in Form IV.
2. Every application under sub-rule (1) shall be accompanied by a fee of ten thousand rupees in the form of Bank draft or cheque drawn in favour of the Authority.
3. The Authority shall after collecting any additional information, decide upon the application as far as possible within a period of six months of receipt of the same.
4. On being satisfied that the applicant has fulfilled all the necessary requirements, the Authority may grant approval for third party transfer subject to such terms and conditions it may deem fit to impose in each case.
5. The approval as may be granted under sub-rule (4) in the form of a written agreement duly signed by an authorized officer of the Authority and the applicant.
6. The form of the agreement shall be such as may be decided by the Authority.
7. The Authority may for reasons to be recorded in writing reject the application if it considers that the request cannot be acceded to provided that no application shall be rejected unless the applicant has been given an opportunity of being heard.

PROFORMA FOR COLLABORATIVE RESEARCH PROJECTS AS PER SECTION 5, BIOLOGICAL DIVERSITY ACT, 2002

- (1) Name of the Ministry :
- (2) Name and Address of the Department :
- (3) Name of the country with whom Collaborative Research is intended / signed :
- (4) Name and Address of the Foreign Institution with whom Collaborative Research is intended / signed :
- (5) Period of Collaborative Research :
- (6) Type of Bioresource with details :
- (7) Quantity of Bioresource to be sent / transferred :
- (8) Remarks and Comments by NBPGR / other scientific agencies under the Ministry on the Bioresource (Enclose a copy) : Yes / No
- (9) Purpose of the Bioresource request :
- (10) Whether the Collaborative Research project complies with biological diversity act, 2002 and notification {s.o. 1911 (e) Dt.08-11-2006} on guidelines for Collaborative Research Project issued by the Ministry of Environment & Forests, Govt. of India : Yes / No
- (11) Name and Designation of the person authorised by the Ministry for sending the Bioresources :
- (12) Name and Designation of the authorised person for receiving the Bioresources :
- (13) Details of agreement signed :

between the Ministry and the
Recipient Country

(14) Any other relevant information :

Signature with Seal

**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:

.....

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

**AGREEMENT ON ACCESS TO BIOLOGICAL RESOURCES AND/OR ASSOCIATED KNOWLEDGE
FOR COMMERCIAL UTILIZATION**

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

XYZ..... (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 who can be a Manufacturer/Company/Institute a firm, society, trust, educational institution or University incorporated/established and existing under the laws of (name of the Country and concerned Act/Law) or an / Individual, Trust etc) 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 (Act 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.

XYZ 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 who is a Manufacturer/Company/Institute/ Individual/Trust etc)and having business interests in the manufacturing of products which requires certain biological resources and/or associated knowledge as a raw materials.

XYZ 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 to access the biological resources and/or associated knowledge for the purposes of Commercial Utilisation of the same.

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 (No.18 of 2003) and includes the Rules/Regulations/guidelines/notifications/regulations made under it.

Biological Resources: means the biological resources as defined in section 2(c) of the Act and includes any associated knowledge, which XYZ desires to access for the purposes of Commercial Utilisation and which is as described in **Schedule A** (details of the biological resources and/or associated knowledge to be furnished by XYZ) to this Agreement.

Commercial Utilisation means any use as described in the Act and limited to the actual use as described in **Schedule B** (details of the commercial utilization to be furnished by XYZ) to this Agreement.

Purpose

The purpose of this agreement is for access to biological resources and/ or associated knowledge occurring in India for commercial utilisation. In order to obtain approval from National Biodiversity Authority 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 for commercial 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 XYZ requests for approval and the NBA hereby grants the approval for access to Biological Resources and/or associated knowledge as specified in Schedule A for the purposes of Commercial Utilisation subject to the terms and conditions set forth in this Agreement.

2.2 Any activities/use involving the Biological Resources and/or associated knowledge that are not expressly authorized by the provisions of this Agreement and any annexure hereto shall be deemed to be expressly prohibited.

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 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 traditional 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 XYZ to any person whether voluntarily or involuntarily, by operation of act or omission on the part of XYZ or otherwise. Failure of XYZ to obtain the prior written consent of the NBA to any such transfer or assignment shall be deemed to be a material breach of this Agreement and result in the immediate termination of this Agreement, without notice in addition to any other

actions that may be taken against XYZ for the violation of the Act, along with application of provisions of Section 56 of the Act on penalty for contravention of directions.

3.2 This Agreement is strictly personal to XYZ and will be treated as terminated in the event of any substantial changes in the management or shareholding of XYZ, that alters the control structure of XYZ 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

4.1 XYZ shall have access only to (quantity) of Biological Resources and/or associated knowledge as specified in Schedule A of this Agreement 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 for Access and Benefit sharing as issued by NBA or Central Government.

4.2 XYZ 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. XYZ undertakes to protect the Biological resources and/or associated knowledge 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 XYZ 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 for the purpose of access to the biological resources and/or associated knowledge to be taken by XYZ from any other authorities under any other law in force in the territory of India. Failure to acquire such approvals/permissions shall be deemed as a material breach of this Agreement 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.

4.5 XYZ shall not distribute, transfer or obtain any form of IPR or part with the Biological Resources and/or the associated knowledge accessed under this Agreement in any manner without obtaining the prior written consent of the NBA under the provisions of the Act.

4.6. XYZ shall deposit the voucher specimen/Type specimen in the designated repositories of India in accordance with the guidelines and directions given by NBA.

4.7. 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, XYZ 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 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.

5.2 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.

5.3 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.

5.4 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.

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 XYZ made its first access to the Biological Resources and/or associated knowledge under this Agreement.

6.2. 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 becomes insolvent or shall have a petition in bankruptcy, winding up filed for or against it. Such termination shall be effective immediately upon NBA giving written notice to XYZ.

(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:

5. If XYZ has violated any of the provisions of the Act or the conditions on which approval was granted,
6. If XYZ has failed to comply with this terms of agreement,
7. If XYZ has failed to comply with any of the conditions of access granted,
8. 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.

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. XYZ 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.

6.4. Upon termination of this Agreement, XYZ shall cease all use of the Biological Resources 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 XYZ

6.5. 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.

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

7.1 XYZ 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.

7.2. NBA shall direct XYZ to share the benefits in all or any of the following manner 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

8. Reports and Audit

8.1 XYZ shall submit to NBA half yearly reports on the following:

- (a) the quantity of Biological Resources and/or associated knowledge accessed.
- (b) the total quantity of the Products produced by the use of the Accessed Biological Resource and/or associated knowledge.
- (c) the total billings of such Products (ex factory)
- (e) any other related information sought by the NBA by a written notice.

8.2 XYZ shall keep accurate records (together with supporting documentation) appropriate to determine all amounts due to NBA. Such records shall be retained for at least three (3) years following the end of the reporting period to which they relate.

8.3 The records mentioned in clause 8.2 should be made available during normal business hours for audit by any person authorised by NBA, for the sole purpose of verifying reports and payments hereunder. In conducting audits pursuant to this clause, such person shall have access to all records which he reasonably believes to be relevant to the calculation of royalties.

8.4 The audit by such authorized person shall be at the expense of NBA, except that if such audit shows an underreporting or underpayment in excess of five percent (5%) for any twelve (12) month period, then XYZ shall pay the cost of such examination as well as any additional sum that would have been payable to NBA had XYZ reported correctly, plus interest on said sum at the rate of three per cent (3%) more than the then prevailing rate of Interest in a nationalized bank per month from the date of the incorrect reporting.

9. Confidentiality

9.1 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.

9.2 Notwithstanding clause 9.1, 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.

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

9.4 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 situations, or national or public interest or for the revocation of any IPR granted/to be granted in violation of the Act , rules, approval and/or to this agreement.

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 XYZ:

.....
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 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 signatories.

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 Commercial Utilisation **(To be attached by the XYZ)**

Schedule C: Application made by XYZ in Form I **(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.
- 2.

- 1.
- 2.

Schedule A: Details of the Biological Resources

[To be filled in by XYZ]

Schedule B: Details of the Commercial Utilisation

[To be filled by XYZ]

Schedule C: Application made by XYZ in Form I

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 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 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:

- (g) grant of joint ownership of Intellectual Property Rights to NBA, or where benefit claimers are identified, to such benefit claimers.
- (h) Transfer of technology
- (i) Location of production, research and development units in such areas which will facilitate better living standards to the benefit claimers;
- (j) Association of Indian scientists, benefit claimers and the local people with research and development in biological resources and bio-survey and bio-utilization;
- (k) Setting up of venture capital fund for aiding the cause of benefit claimers.
- (l) 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:

9. If XYZ has violated any of the provisions of the Act or the conditions on which approval was granted,
10. If XYZ has failed to comply with the terms of agreement,
11. If XYZ has failed to comply with any of the conditions of access granted,
12. 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:

.....

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**

AGREEMENT FOR THIRD PARTY TRANSFER OF BIORESOURCES AND/OR ASSOCIATED KNOWLEDGE

This Agreement is entered into as of the day of, 2009 in accordance with sub section 2 of Section 20 of the **Biological Diversity Act, 2002** (Hereinafter referred to as " The Act") and Rule 19 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

The Transferor(any person, who intends to transfer any biological resource and/or associated knowledge from India) (Hereinafter referred to as "the **Transferor**")

Hereinafter, the NBA and the Transferor 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.

The Transferor is any person, who intends to transfer any biological resource and/or associated knowledge from India who can be a Company/ Trust established and existing under the laws of (name of the country and Act) individual/ etc.....and has accessed the Biological Resources and/or associated knowledge for the purposes of Commercial Utilisation/Research and now is interested in transferring the accessed Biological Resources to the Transferee.

The Transferor has made an application in Form IV (to be attached with this Agreement), under Rule 19 of the Biological Diversity Rules 2004 to seek approval from the NBA to transfer the accessed biological resources and/or associated knowledge to the Transferee for the purposes of Commercial Utilisation/Research.

The format of this Agreement on third party transfer of bioresources 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:

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, which the Transferor accessed for the purposes of Commercial Utilisation/Research as described in Schedule A to this Agreement.

Transferee: means the person/Company to which the Transferor intends to transfer the Biological Resources.

Purpose

The purpose of this agreement is for third party transfer of biological resources and/ or associated knowledge occurring in India for research/ biosurvey 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 intends to transfer any biological resource and/or knowledge associated thereto from India to a third party is required to apply in **Form IV** and pay application fee **Rs 10000/=** (Rupees Ten Thousand only) as per Biological Diversity Rule 19 (sub rule 1, 2). The National Biodiversity Authority by order approves the third-party transfer of 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 The Transferor requests for approval to transfer the Biological Resource and/or associated knowledge and the NBA hereby grants the approval subject to the terms and conditions set forth in this Agreement and compliance with all other laws in force in India.

2.2 The Transferor shall transfer the Biological Resources and/or associated knowledge only on the execution of a written agreement with the Transferee. The Agreement shall impose a mandatory obligation on the Transferee to comply with all the terms and conditions imposed on the Transferor by the approval agreement executed on Day of2005, which agreement shall be attached as an appendix to the written agreement between the Transferor and Transferee.

Provided that, in the absence of any agreement between the NBA and the Transferor, the Transferor shall attach the standard agreement (in accordance with the purpose of the transferee) as available with the NBA and all clauses therein shall be binding on the Transferee.

2.3 The Transferee shall have no rights to directly access the Biological resource and/or associated knowledge other than from the Transferor.

2.4 Transferor hereby undertakes to notify NBA immediately, if the Transferee or any third party makes any breach of this Agreement or the provisions of the Act comes to his knowledge.

2.5. If the transferor is a person falling under the Subsection 2 of Section 3 of the Act, then the Transferor 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 C (to attached with this agreement as Schedule C). Failure to provide proof of approval will automatically nullify this agreement.

2.6. The Transferor undertakes to provide the details of the purpose of third party transfer of the biological resource and/or associated knowledge in Schedule B (purpose of third party transfer (to attached with this agreement as Schedule B). The use of biological resource and/or associated knowledge intended to be transferred shall be limited to the purpose for which it is accessed as specified in Schedule B of this agreement. In the event of any commercialization, Transferor and the transferee undertakes to seek fresh approval of NBA for the access and shall share benefits arising out of such commercialization as determined by NBA according to the Act and guidelines, regulations/notifications of the Central Government. Any breach of this condition shall result in the immediate termination of this agreement by NBA

2.7. 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, the transferee 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 Central Government.

2.8. The transferor 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.

2.9. The approval given under this agreement is without prejudice to any other approvals/permissions that may be required to be taken by the transferor for the purpose of third party transfer of 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 immediate termination of this Agreement.

2.10. The transferee 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.

2.11 . The transferor 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

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

3.1 In the even the transferee intending for the commercial utilization of the transferred biological resources and/or associated knowledge, then the transferee 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 as determined by NBA according to Act, Rules and notifications/Regulations/guidelines issued/notified by the Central Government.

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

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

4. Terms and Termination

4.1 This Agreement, unless terminated as provided herein, shall remain in effect for a period of one year from the date on which the approval is given by the NBA to the Transferor for the transfer of the Biological Resources and/or associated knowledge.

4.2. The Transferor shall intimate the NBA in writing not later than one month prior to the date of first transfer.

4.3 The Transferor may terminate this Agreement by a written notice on the happening of any of the following:

(a) If The Transferor 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 The Transferor 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 Transferor 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:

13. The Transferor has violated any of the provisions of the Act or the conditions on which approval was granted,

14. The Transferor has failed to comply with the terms of agreement,

15. The Transferor has failed to comply with any of the conditions of access granted,

16. 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 Transferor in case if it is found that the Transferor 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.

4.4 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. Transferor may terminate this Agreement by giving sixty (60) days advance written notice of termination. Upon termination, the Transferor shall submit a final payment report to NBA and any outstanding payments shall become immediately payable.

4.5 Upon termination of this Agreement, the Transferor 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 the Transferor.

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

5. 5. Liabilities and Indemnification

5.1 The transferor shall be solely responsible for any claims by third parties arising from the transferor'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 The transferor 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 transferor, its employees or agents, (whether by reason of negligence or otherwise) in the performance by or on behalf of the transferor 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 Transferor 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. Notice

6.1 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 The Transferor:

.....

6.2 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.

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

7. Confidentiality

7.1 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.

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.

8. Arbitration

8.1. 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.

8.2. 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 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.

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

9. Governing Law and Jurisdiction

9.1. This Agreement is governed by and is to be construed in accordance with the laws of India. 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 Act. However, the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the High Court in Chennai, India

9.2. 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.

10. Waiver

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

11. 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.

12. 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.

13. 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 the transferor 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.

14. 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 and/or associated knowledge for the intended for the third party transfer **(To be attached by the Transferor)**

Schedule B: Details of the purpose of Third party Transfer **(To be attached by the Transferor)**

Schedule C: Copy of the Agreement between the transferor and the NBA if the transferor is a person falling under the Subsection 2 of Section 3 of the Act **(To be attached by the Transferor)**

Schedule D: Application in Form V **(To be attached by the Transferor)**

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 Transferor. 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 transferor, authorized vide resolution No.
dated of the Board of Directors

For National Biodiversity Authority

For Transferor

Witness

3.
4.

1.
2.

SCHEDULE A- Details of the Biological resources and/or associated knowledge for the third party transfer

SCHEDULE B - Purpose of third party transfer

SCHEDULE C – Copy of the Agreement between the transferor and the NBA if the transferor is a person falling under the Subsection 2 of Section 3 of the Act

SCHEDULE D: Application under Form V

DRAFT BENEFIT SHARING GUIDELINES BROUGHT OUT FOR COMMENTS BY THE NBA

The NBA has a duty to ensure that the terms and conditions subject to which approval is granted secures equitable benefit sharing. Such determination shall be given effect in all or any of the following manner:

Criteria to determine equitable benefit sharing:

The following criteria shall be borne in mind whenever benefit sharing is to be determined in an equitable manner. These criteria are not exhaustive and their application will depend on a case by case basis:

- a) Stages of research and development
- b) Market potential
- c) Investment in the research and development
- d) Application of technology
- e) The sector in which the research and development takes place
- f) Costs incurred by the applicant for accessing the bioresource and associated knowledge
- g) Likelihood of commercial success of research or product developed
- h) Timelines from initiation of research and development to product commercialization
- i) Intention to secure intellectual property rights on outcomes of the research and development
- j) Milestones in research and development
- k) Private or public institutions
- l) Annual turnover of the applicant
- m) Other kinds of benefit sharing already undertaken by the applicant

Based on the aforementioned criteria the following benefit sharing options in isolation or in combination shall be explored in accordance with mutually agreed terms between the applicant and the providers as appropriate. Benefit sharing options may include but not be limited to:

- a) Up-front one-time payment;
- b) Milestone payments;
- c) Equitable share of the royalties;
- d) Equitable share of the license fees;
- e) Contribution to National, State or Local Biodiversity Funds;
- f) Funding for research and development in India;
- g) Joint ventures with Indian institutions and companies;
- h) Joint ownership of relevant intellectual property rights;
- i) Sharing of research and development results with India;
- j) Strengthening of capacities for technology transfer and transfer of technology to India and/or collaborative research and development programmes with Indian institutions;
- k) Contribution to education and training in India;
- l) Location of production, research and development units in India and contributions to the local economy;
- m) Scholarships, bursaries and financial aid to Indians;
- n) Institutional capacity building;
- o) Access to scientific information relevant to conservation and sustainable use of biological diversity including biological inventories and taxonomic studies;

- p) Research directed towards priority needs in India including food, health and livelihood security;
- q) Payment of any other monetary compensation or non-monetary benefit as the NBA may deem fit.

Decisions regarding the nature and extent of benefit sharing will be justified based on the aforementioned criteria and options with an explanation for the same.

(Accessed from: nbaindia.org/uploaded/docs/BS_Guidelines_1.doc)

From Draft Guidelines on Access and Benefit Sharing prepared by an NBA appointed expert

3. User Obligations Prior to Access

3.1 The Users shall request for Access by using the appropriate Forms provided for in the Rules and shall, in addition to the details therein, disclose the following:

A. Biological Resources which are Plants, their parts or Genetic Material

- i. Whether cultivated or collected from natural areas
- ii. Whether BR procured from Private Land or Public Land
- iii. If Public Land, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

B. Biological Resources which are Animals, their parts or Genetic Material

- i. Whether domesticated or wild
- ii. Whether BR procured from Private owners or from Public Land
- iii. If Public Land, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

C. Biological Resources which are Micro organisms, their parts or Genetic Material

- i. Whether developed/maintained in controlled conditions or collected from natural areas
- ii. Whether BR procured from Private areas or Public areas
- iii. If Public Area, is it a protected Area, Forest, National Park etc
- iv. If the access is made directly from the source or there are Agents
- v. Whether the BR is endemic
- vi. Whether the BR is endangered species

D. Knowledge associated with Biological Resources

- i. Whether the knowledge is owned by individual, family, group, organisation or a community
- ii. What BR is associated with the knowledge?
- iii. What Benefit Sharing is proposed by the owners?

3.2 The Users shall submit a report on the possible impact to environment that may be caused by their relevant activities prior to Access. The User shall continue to report changes to this report as and when the User identifies any such changes at any stage during or after the Access.

Provided that in the event, the User reports a possibility of any adverse impact on environment, the report shall also mention the ameliorative measures in place and precautions taken to cause no damage to the environment or Biological Diversity. Any Access falling within this proviso will require the approval of the NBA prior to access and in the event the report is made during or after the Access, the User shall ensure that it shall stop any and all activities of Access.

3.3 The users are encouraged to make an audio video recording of the negotiations with the Providers and in the event such a recording is made, a copy of the same shall be deposited with the concerned SBB or the NBA.

4. User Obligations During and After Access

4.1 The Users shall after collecting the Biological Resources and Knowledge associated thereto, describe and record all relevant data and share the same with the nodal agency identified by NBA for the Purpose. Users shall respect customs, traditions and values of the Provider, if any during and after Access.

Provided that in the event of Knowledge associated with Biological Resources are accessed, the same shall be handled by the User in the manner requested by the Provider.

4.2 Users shall utilize Biological Resources and Knowledge associated thereto strictly for the purposes for which the Access was made obtained. Any change in the purpose shall be notified to NBA and NBA shall at its sole discretion allow such use or direct fresh application to be made under the Act.

4.3 Users shall conduct scientific study on the Accessed Biological Resources to ensure the conservation and sustainable use of the Biological Resources. The Users shall ensure that this knowledge shall be transferred free of cost to the Providers.

5. Provider Obligations

5.1 Once the Access is approved by the NBA, the Providers shall ensure that the Access is facilitated within the prescribed time.

5.2 If the Provider feels the need of professionals in assisting them with the negotiations with the Users, the Providers shall make a request for the same to the BMC, SBB or NBA and it shall be the responsibility of the BMC, SBB or the NBA as the case may be to provide the requested.