

3. AGREEMENT ON TRANSFER OF RESEARCH RESULTS

This Agreement is entered into as of the day of, 2005 in accordance with Section 4 of the Biological Diversity Act, 2002 and Rule 17 of the Biological Diversity Rules, 2004

Signed Between

National Biodiversity Authority (Hereinafter referred to as "the **NBA**") having its office at 475,9th South Cross Street, Kapaleeswar Nagar, Neelankarai, Chennai – 600041, India (www.nbaindia.org) .

and

..... (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 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 the person as described in Schedule C (hereinafter the '**Transferee**').

XYZ has made an application in Form II, 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 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 (and includes any associated knowledge) and more fully described in Schedule A to this Agreement.

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

2. Grant of Approval

2.1 XYZ requests for approval and the NBA hereby grants the approval to transfer the Results of Research 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 certain actions 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.

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.

4. No Transfer of Biological Resources or Associated Knowledge

4.1 The Biological Materials will 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.

4.2 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 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.

5. Royalty and other Benefit Sharing

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

6. Confidentiality

6.1 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.

6.2 Notwithstanding clause 6.1, 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.

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

6.4 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.

6.5 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

7. Liabilities and Indemnification

7.1 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 for any such claims by third parties.

7.2 XYZ shall indemnify and save harmless NBA 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 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.

7.3 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. Term and Termination

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.

9. Notice

9.1 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, 475, 9th South Cross Street, Kapaleeswarar Nagar, Neelangarai, Chennai – 600041

e-mail:nba_india@vsnl.net fax:91 +44 24491390

To the XYZ:

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9.2 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.

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

10. Dispute Resolution

10.1 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.

10.2 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 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.

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

11. Governing Law and Jurisdiction

16.1 This Agreement is governed by and is to be construed in accordance with the laws of the Republic of India without regard for conflicts of laws principles. The Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the courts in Chennai, India and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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

Schedule B: Details of the Results of Research

Schedule C: Details of the Transferee

Schedule D: Application made by XYZ in Form II

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

This Agreement has been executed in Duplicate. 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

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]