

**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 7 read with Section 24 of the **Biological
Diversity Act, 2002** (hereinafter referred to as the ‘Act’) and Rule 16 of the
Gujarat Biological Diversity Rules, 2010 (hereinafter referred to as the
‘Rules’)

Between

Gujarat Biodiversity Board acting through and represented by (Name of the incumbent), Member Secretary being the authorized officer of the Board (hereinafter referred to as the ‘**GBB**’ or ‘**the Board**’) having its office at Aranya Bhawan ‘B’ Block, 5th Floor, Sector-10/A, Gandhinagar -382006.

And

Company Name (who is a citizen of India or a body corporate, association or organization which is registered in India, intending to undertake any activity referred to in section 7 of the Act) having its office at..... (hereinafter referred to as **Company Name**). Hereinafter, the GBB and COMPANY NAME shall collectively be referred to as “the Parties” and individually as “Party”.

WHEREAS:

GBB has been established by the Government of Gujarat under the powers granted to it by Section 22 of the Biological Diversity Act 2002 (Act 18 of 2003). Under the said Act, GBB is the authority to permit by order, prohibit or restrict, any person who is a citizen of India or a body corporate, association or organization which is registered in India, to obtain any biological resource for commercial utilization, or bio-survey and bio-utilization with the prior intimation and permission of the board.

COMPANY NAME, who is a citizen of India or a body corporate, association or organization which is registered in India, intending to undertake any activity referred to in section 7 of the Act, and having business interests in

accessing or collecting of the biological resources and/or associated knowledge for research or for commercial utilization or bio-survey or bio-utilization.

COMPANY NAME has made an application in Form I (to be attached with this agreement as Schedule-C), under Rule 16 (1) of the Gujarat Biological Diversity Rules, 2010 to seek approval from the GBB for access to or collection of Biological Resources for research or for Commercial Utilization or associated knowledge.

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 issued from time to time.

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

Bio-survey and Bio-utilization as defined under section 2 (d) of the Act and means survey or collection of species, subspecies, genes, components and extracts of biological resource for any purpose and includes characterization, inventorization and bio assay

Commercial Utilization means any use as described in section 2 (f) of the Act and limited to the actual use as described in **Schedule B** (details of the

commercial utilization to be furnished by COMPANY NAME) to this Agreement.

Purpose

The purpose of this agreement is to govern the terms and conditions for access or collection of biological resources and/ or associated knowledge occurring in State of Gujarat for commercial utilization or bio-survey or bio-utilization. In order to obtain approval from Gujarat Biodiversity Board, any person, who is a citizen of India or a body corporate, association or organization which is registered in India, intending to undertake any activity referred to in section 7 of the Act is required to apply in **Form I** and pay application fee of **Rs 500/- (Rupees five hundred only) for research purpose and Rs 5000/- (Rupee five thousand only) for commercial utilization** as per Rule 16 of The Gujarat Biological Diversity Rules, 2010. The Gujarat Biodiversity Board by order approves the access to biological resources for the commercial utilization in the form of an agreement duly signed by an authorized officer of the Board and the applicant or authorized person of the body corporate, association or organization, as the case may be.

The terms and conditions of this agreement 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 GBB hereby grants the approval, upon the requests made by COMPANY NAME for access to Biological Resources and/or associated knowledge as specified in Schedule A for the purposes of Commercial Utilization or Bio-survey and Bio-utilization, subject to the terms and conditions set forth in this Agreement.

For the purpose of the grant, GBB shall follow the procedure as laid down in Rule 16 of The Gujarat Biological Diversity Rules, 2010

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 COMPANY NAME 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.

2.4 Neither this Agreement nor the approval granted hereunder shall be transferred or assigned in whole or in part by COMPANY NAME to any person whether voluntarily or involuntarily, by operation of act or omission on the part of COMPANY NAME or otherwise.

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

3. Conditions for Access to Biological Resources

3.1 COMPANY NAME 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 GBB. 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 Central Government, State Government and GBB.

3.2 COMPANY NAME 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. COMPANY NAME undertakes to protect the Biological resources and/or associated knowledge 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.

3.3 COMPANY NAME undertakes to comply with the existing national laws, regulatory mechanisms and international agreements/treaties however subject to the Act and this agreement. COMPANY NAME shall also be abiding by the notifications/guidelines as issued/notified by the Government of India and Government of Gujarat for the access to biological resources and/or associated knowledge.

3.4 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 COMPANY NAME 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 and shall result in the termination of this Agreement.

However, before such termination, upon an application by COMPANY NAME, a reasonable time as deemed appropriate by GBB may be given to

COMPANY NAME to rectify the default and obtain required approval, permit, or licenses etc. within such time period so granted.

3.5 COMPANY NAME 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 prior informing GBB under the provisions of the Act.

Notwithstanding anything contained in the above mentioned provision, COMPANY NAME shall apply for Intellectual Property Right in accordance with the section 6 of the Act

4. Liabilities and Indemnification

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

4.2 COMPANY NAME shall indemnify GBB 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 COMPANY NAME, its employees or agents, (whether by reason of negligence or otherwise) in the performance by or on behalf of the COMPANY NAME 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.

4.3 All members, officers and other employees of GBB shall be deemed, when acting or purporting to act in pursuance of any of the provisions, of the Act and under this agreement, to be public servants within the meaning of section 21 of the Indian Penal Code.

4.4 No suit, prosecution or other legal proceedings shall lie against the GBB or any member, officer or employee of GBB for anything which is in good faith done or intended to be done under the Act or the rules or regulations made thereunder.

4.5 Notwithstanding anything contained in this clause, the GBB 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.

4.6 The COMPANY NAME undertakes to pay a sum of ----- for any material breach of this Agreement and further undertakes to pay such sum of ----- in addition to the amount as determined by GBB.

5. Terms and Termination

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

5.2 GBB shall terminate this Agreement by a written notice on the happening of any of the following:

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

(b) If COMPANY NAME becomes insolvent or shall have a petition in bankruptcy, winding up filed for or against it. Such termination shall be effective immediately upon GBB giving written notice to COMPANY NAME.

(C) The GBB shall revoke access or approval granted to COMPANY NAME if any of the circumstances mentioned in the Rule 17 of The Gujarat

Biological Diversity Rules, 2010 arises and on any one or more of the grounds stated therein, namely:

(i) If COMPANY NAME has violated any of the provisions of the Act or the conditions, on which approval was granted,

(ii) If COMPANY NAME has failed to comply with these terms of agreement,

(iii) If COMPANY NAME has failed 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, and protection of rights, livelihood, and knowledge of local communities.

5.3 Notwithstanding anything mutually agreed between the parties under this agreement, GBB may revoke or restrict access or approval granted to COMPANY NAME under this agreement, by exercising powers under Rule 18 of The Gujarat Biological Diversity Rules, 2010.

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

5.5 Upon termination of this Agreement, COMPANY NAME shall cease all use of the Biological Resources and shall, upon request, return or destroy (at the option of GBB) all Biological Resources under its control or in its possession. The costs in this regard shall be borne by COMPANY NAME

5.6 GBB shall not be liable for any loss or damage whatsoever caused to COMPANY NAME due to revocation of approval for access and/ or termination of this agreement on any ground whatsoever.

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

6.1 COMPANY NAME shall pay to the Gujarat Biodiversity Board, 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. Reports and Audit

7.1 COMPANY NAME shall submit to GBB 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)

(d) any other related information sought by the GBB by a written notice.

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

7.3 The records mentioned in clause 7.2 should be made available during normal business hours for audit by any person authorized by GBB, 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.

7.4 The audit by such authorized person shall be at the expense of GBB, except that if such audit shows an underreporting or underpayment in excess of five percent (5%) for any twelve (12) month period, then COMPANY NAME shall pay the cost of such examination as well as any additional sum that would have been payable to GBB had COMPANY NAME reported correctly, plus interest on said sum at the rate of ----- more than the

then prevailing rate of Interest in a nationalized bank per month from the date of the incorrect reporting.

8. Confidentiality

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

8.4 Notwithstanding anything contained in this clause, the GBB 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.

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 GBB:

To COMPANY NAME:

.....

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. Arbitration

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 Chairman, GBB. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996. The place of arbitration shall be ----- . 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

11.1 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 Gujarat, India

11.2 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.

12. Waiver

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

13. Severability

13.1 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

14.1 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.

15. Entire Agreement

15.1 The Parties acknowledge that there are no representations either oral or written, as regards the subject matter of this Agreement, between the GBB and COMPANY NAME 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

16.1 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 COMPANY NAME**)

Schedule B: Details of the Commercial Utilization (**To be attached by the COMPANY NAME**)

Schedule C: Application made by COMPANY NAME in Form I (**To be attached by the COMPANY NAME**) 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 GBB and the duplicate with COMPANY NAME. 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 Authorized Officer Signed by duly authorized representative of the Authority of COMPANY NAME, authorized vide resolution No. dated of the Board of Directors

For Gujarat Biodiversity Board

For COMPANY NAME

Witness

Witness

1. 1.

1. 1.

2. 2.

2. 2.

