

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

AGREEMENT

This Agreement is made on this _____ day of _____, 2010 at New Delhi BY and BETWEEN the President of India acting through the Department of Biotechnology, Ministry of Science and Technology, Government of India, having its office at 7th Floor, Block 2, CGO Complex, Lodhi -Road, New Delhi – 110003 hereinafter referred to as the “DBT” (which expression shall wherever the context so admits include its successors and assignees) of the **First Part**

AND

M/s _____, a Company incorporated under the Companies Act, 1956 having its registered office at _____, hereinafter referred to as “**the Company**” (which expression shall wherever the context so admits include its successors in interest, liquidators, administrators and permitted assignees) of the **Second Part**

WHEREAS all the parts are hereinafter referred to as “**Parties**”;

WHEREAS DBT operates a scheme entitled Biotechnology Industry Partnership Programme (hereinafter referred to as BIPP) having partnership with industries for public support on a cost sharing basis for path-breaking research and development of appropriate technologies in the field of biotechnology;

AND WHEREAS the Company has conceived a Project entitled “_____”

and submitted a proposal with amendments (hereinafter called “the Project”) - for loan and grants-in-aid assistance under BIPP as per **Annexure 1**;

AND WHEREAS DBT has approved the Project and agreed to provide assistance to the extent of Rs (in lakhs) in the form of loan and to the extent of Rs(in lakhs) in the form of grants-in-aid to the Company under BIPP on the terms and conditions contained hereinafter in this Agreement.

All Annexure to this Agreement shall be integral part of this Agreement.

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

WHEREAS DBT has entrusted M/s Biotech Consortium India Ltd., 5th Floor, Anuvrat Bhawan, 210, Deen Dayal Upadhyaya Marg, New Delhi – 110 002 as BIPP Management Agency (hereinafter called “**BMA**”) for necessary processing of the proposals, organizing various meetings for BIPP, implementation of the decisions taken, disbursement of funds, monitoring the physical and financial progress of the Project and to obtain reports and returns and clarifications as required from time to time from the Company. The functions of BMA may be assigned to any other organization by DBT.

NOW THEREFORE, in consideration of the promises and mutual covenants hereinafter contained, the Parties hereto agree as follows:

1. RESPONSIBILITIES OF THE COMPANY

- (a) The Company shall:
 - i. Carry out the activities of the Project and conform to the specified objectives, outputs, milestones, and targets;
 - ii. Meet the expenditure on the Project activities to the extent as agreed to, through its own sources, as per details given in **Annexure 2**;
 - iii. Maintain a separate no-lien account for the Project;
 - iv. Submit a utilization certificate and statement of accounts duly audited and certified by a chartered accountant for the expenditure incurred on the Project for the half year, ending 30th September and 31st March, to BMA, within a month of closure of the accounts for respective half year, in the format provided by BMA/DBT;
 - v. Submit a quarterly progress report to BMA/DBT as per the milestones and participate in the meetings organized by BMA/DBT to review the progress of the Project, as and when called for;
 - vi. Provide periodic inputs on technical and market intelligence as well as comparative analysis of technologies to BMA/DBT;
 - vii. Permit BMA/DBT access to the premises, during regular business hours, where the Project is being/shall be carried out and provide all information and produce or make available the concerned records for inspection and monitoring of the Project activity, required by BMA/DBT;

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

- viii. Obtain all the necessary requisite approvals, clearance certificates, permissions and licenses from the Government/local authorities for conducting its operations in connection with the Project;
 - ix. Keep the draws from the loan /grants-in-aid assistance in a special account in the name of the Company with a scheduled bank, the payments from which account shall be subject to verification by BMA/DBT. It shall also obtain and furnish to BMA/DBT a letter from the said bank foregoing the right of set off or lien in respect of such account.
 - x. Utilize the amounts sanctioned by DBT for the Project only for the purposes as specified in the Project and shall not entrust the implementation of the Project to another agency or divert the loan and grants-in-aid assistance;
 - xi. Pay royalty to DBT/BMA in accordance with **Clause 6**;
 - xii. Abide by the decision of DBT/BMA to modify the objectives, outputs, milestones, targets, funding as also the foreclosure of the Project or of its components after mutual discussion;
 - xiv. Acknowledge the assistance of BIPP of DBT while publishing or presenting in any manner the details of the Project, its progress or its success.
- (b) The company warrants that
- i. It shall not enter into any agreement or arrangement without the consent of DBT in writing on the Project with any other party, national or international for the Project duration ;
 - ii. It is under no contractual restrictions or legal disqualifications or other obligations which will prohibit the Company from entering into this agreement or which will interfere with the execution of this agreement;
 - iii. Each and every one of the statement and particulars herein contained in this agreement and in the relevant and supporting documents to this agreement are correct; and
- (c) The Company acknowledges and agrees that:
- i. The duties, responsibilities and functions assigned or entrusted to it as specified in the Project document shall be deemed to be the duties, responsibilities and functions assigned and entrusted under this Agreement and unless for reasons beyond control under normal circumstances any undue delay, failure or default in performance of the duties, responsibilities and functions as specified in the Project shall be deemed to be a default under this Agreement;

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

- ii. It shall, at all times, indemnify and keep indemnified DBT/BMA against any claims or suits in respect of any losses, damages or compensation payable in consequences of any accident, death or injury sustained by the employees of the Company or by any other third party resulting from or by any act, omission or operation conducted by or on its behalf;
- iii. It shall, at all times, indemnify and keep indemnified DBT/BMA against all claims/damages etc. by any infringement of any Intellectual Property Rights (IPR) while doing its responsibilities/work under the Project and this Agreement; and
- iv. It shall notify DBT/BMA of any material change in its status and/or shareholding, in particular where such change would impact on performance of the obligations under the Project and this Agreement. . DBT/BMA shall reserve the right to reconsider further funding assistance in such circumstances of change of control.

2. FINANCIAL ARRANGEMENTS

The financial arrangements under this Agreement are as here under

- i. The total estimated cost of the Project is Rs. _____ lakhs (Rupees _____) only. The contribution of DBT is Rs _____ lakhs (Rupees _____) as grants-in-aid. The amount put in by the Company is Rs _____ lakhs (Rupees _____) on the terms and conditions detailed in this agreement.
- ii. The detailed year-wise and head-wise breakup of the financial assistance by DBT and the amount put in by the Company are given in **Annexure 2**. All financial assistance by DBT will be released through BMA. BMA shall release the first installment after signing of the Agreement and subject to the fulfillment of the terms and conditions for such release. Further release of funds shall be subject to satisfactory progress against the objectives, outputs, milestones and targets specified in the Project as determined by DBT and on submission of statement of accounts/ audited statement of accounts and utilization certificates as provided for in **Clause 1(a) (iv)**;
- iii. The Company shall ensure that the funds of the Project are actually utilized only for the Project and as expressly provided in this Agreement. Re-appropriation of funds from one

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

budget head to another shall not be effected without the specific written approval of DBT/ BMA;

- iv. The Company shall refund immediately any funds out of loan and grants-in-aid disbursed to it for the Project remaining unutilized with it on completion of the Project to BMA/DBT along with detailed accounts of funds received, utilized and unutilized;
- v. The capital assets acquired for the Project through DBT's grant, shall remain the property of DBT, Government of India till full and final settlement of all dues to the satisfaction of DBT and they shall not be mortgaged (or) disposed of without the specific prior written permission of DBT till such settlement. The Company shall take adequate care to maintain such property at its own cost; and
- vi. The provision of loan and grants-in-aid by DBT does not create any liability, explicit or implicit, on BMA/DBT in respect of the manpower engaged in the Project.

3. PROJECT MONITORING COMMITTEE

A Project Monitoring Committee (PMC) comprising of eminent experts from the relevant field will be constituted by DBT to monitor the progress of the objective(s) of the Project. BMA shall be a part of the PMC.

The functions of the PMC shall be as follows:

- i. To monitor the progress of the Project in conformity with the outputs, milestones, targets and objectives as contained in the Agreement.
- ii. To keep track of funding from any other source for the particular Project.
- iii. To assess the global developments impacting the domain of the Project.
- iv. Based on the foregoing, to assess and suggest:
 - a. recommend the release of next installment or part release thereof by the DBT.
 - b. recommend revision of project duration
 - c. closing or dropping or modifying any of the components of the Project, within the overall approved objectives, budget and time-frame,
 - d. inclusion of additional industrial/institutional partner(s), if the Company request involvement of such partner(s), in the overall interest of the Project,
 - e. mentor(s) to assist in overcoming any technological problem faced in the Project implementation; and
 - f. revision of the financial assistance.

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

- v. To advise on issues related to securing of IPR; and
- vi. To advise on any other matter as referred to it by DBT/BMA and/or otherwise reasonably necessary for effective discharge of its duties and/or achievement of aims and objectives of BIPP Scheme.

4. RESULTS OF THE PROJECT

- i. The deliverables from the Project are defined and are included in the Project details at **Annexure 1**.
- ii. It is the responsibility of the Company to protect the New Intellectual Property (IP). It shall bear the expenditure involved in protecting the New IP. For the purpose of this Agreement, New IP means intellectual property generated during the conduct of the Project by the Company excluding the intellectual property generated by the Company before execution of this Agreement as set out in **Annexure 3** and any new IP generated outside the scope of this Agreement even during the term of this Agreement.
- iii. New IP shall be the joint property of the DBT and the Company till full and final settlement of all dues to the satisfaction of DBT. The Company will execute an appropriate Legal Assignment of the New IP in favor of DBT for the above period. During this period, the Company shall not assign or transfer the New IP to any third party directly or indirectly without prior written consent from DBT.

5. PROJECT DURATION

The Company shall complete the Project within the stipulated period of _____ months, i.e., on or before _____. In case DBT feels that it is desirable to undertake further developmental work on the outcome of the Project which requires additional financial commitment and extension of the stipulated Project schedule, the Company may submit the extension request with full justification for consideration under BIPP. In case it is approved by BIPP, a supplementary agreement would be executed.

6. PAYMENT OF ROYALTY

The Company shall pay royalty to DBT at the rate of 5 (five) per cent on annual net sales of the product developed with DBT's assistance. Payment of Royalty shall be due beginning with the **first sale of the product and the liability to pay royalty will terminate upon the first of any**

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

of the following three events to occur:- a) 5% Royalty had been paid to DBT for a period of five (5) years; (b) The Royalty amount paid to the DBT becomes equal to twice the amount of the grant despatched or (c) in case of foreclosure in accordance with **Clause 9**.

'Net Sales' for this purpose shall mean gross sales excluding excise duty and sales tax, as certified by the Chartered Accountant. Royalty for each financial year shall be payable to DBT within 60 (sixty) days of close of corresponding financial year. In case of delay in payment of royalty, the Company shall be liable to pay simple interest at the rate of 12 (twelve) per cent per annum on the amount of default in payment of royalty for the period of delay.

7. CONFIDENTIALITY

- i. During the tenure of the Agreement, both the Parties, undertake to maintain strict confidentiality and refrain from disclosure thereof, of all or any part of the information and data exchanged/generated from the Project under this Agreement for any purpose other than in accordance with this Agreement. It shall be the responsibility of both the Parties to ensure maintenance of such confidentiality in respect of their behalf and on behalf of their employees, representatives and associates involved in the Project.
- ii. The Parties shall not have any obligation of confidentiality with respect to any information that:
 - a. is in the public domain by use and/or publication at the time of its disclosure by the disclosing party; or
 - b. was already in possession of the recipient prior to receipt from the disclosing party; or
 - c. is properly obtained by the recipient from a third party with a valid right to disclose such information and such third party is not under confidentiality obligation to the disclosing party; or
 - d. was disclosed to any third party on a non-confidential basis prior to commencement of the Project; or
 - e. was developed by the Company, as disclosed by acceptable written record with him, independently of the disclosure of information by the disclosing party; or
 - f. is required by public authority, by law or decree.

8. FORECLOSURE AND TERMINATION

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

- i. In case, during the tenure of the Project, it is found that the Project or any Project component is not likely to lead to successful completion, DBT/BMA may decide to foreclose the Project or the Project component as warranted. The decision of the DBT shall be final in all respects. The Company shall immediately refund any funds unutilized out of DBT's disbursements, after deducting the future committed expenses to third party vendors on pro-rata basis according to the quantum of DBT's funding, to DBT/BMA, along with detailed accounts of funds received, utilized and unutilized. The entire outstanding amount as on the date of foreclosure will become due and payable immediately. However, DBT/BMA may by a specific written order, prescribe a repayment schedule for the amount outstanding. If the Company likes to continue the Project at its own cost, it would be able to do so without restrictions from DBT/BMA after complying with these provisions.
- ii. The Company may, before the completion of the Project, terminate this Agreement by giving three months notice in writing to DBT/BMA. DBT/BMA may also terminate this Agreement by written notice to "the Company" committing breach of any term of this Agreement and either not rectifying it to the satisfaction of DBT/BMA or not satisfying DBT/BMA about its inevitability within a specified period. In the event of termination of the Agreement, no further disbursement shall be made by BMA/DBT and the Company shall be liable to return immediately the amount of grants-in-aid already availed of from BMA/DBT with simple interest at the rate of 12 (twelve) per cent per annum within 30 (thirty) days of termination of the Agreement. In case of failure to repay, without prejudice to any other rights under this agreement, the amount can be recovered by initiating any procedure available in Law.

9. FORCE MAJEURE

The Parties shall not be held responsible for non-fulfillment of their respective obligations in successful completion of the Project under this Agreement due to the exigency of one or more of the *force majeure* events such as but not limited to acts of God, war, flood, earthquakes, strikes not confined to the premises of the Party, lockouts beyond the control of the Party claiming *force majeure*, epidemics, riots, civil commotion etc. lying beyond the reasonable control of and not brought about at the instance of the Party claiming to be affected by such event and which has caused the non-performance or delay in performance; provided on the occurrence and cessation of any such event the Party affected has given a notice in writing to

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

the other Party within one month of such occurrence or cessation. If the *force majeure* conditions continue beyond six months, the Parties shall jointly decide about the future course of action on the Project. The validity of the claim of *force majeure* shall be determined by DBT after due enquiry and the decision of DBT in this regard shall be final.

10. ARBITRATION

In the event of any dispute or difference between the Parties hereto upon or in relation to or in connection with this Agreement, such dispute or difference shall be resolved amicably by mutual consultation or through the good offices of the Secretary, DBT. If such resolution is not possible, then the unresolved dispute or difference shall be referred to arbitration by an arbitrator to be nominated by the Secretary, Department of Legal Affairs ("Law Secretary"). The Arbitration and Conciliation Act, 1996 (No.26 of 1996) shall be applicable to the arbitration under this clause. The costs of arbitration shall be in the discretion of the arbitrator. The venue of arbitration shall be in New Delhi and the arbitration proceedings shall be conducted in English Language. The provision of this clause shall not become inoperative notwithstanding the Agreement expiring or ceasing to exist or being terminated or revoked.

11. EFFECTIVE DATE AND TENURE OF THE AGREEMENT

- i. The Agreement shall be effective from the date of its signing by both the Parties. The Agreement shall be valid for till full and final settlement of all dues to DBT/BMA. It can be extended if agreed to by both the Parties.
- ii. Two copies of the Agreement shall be signed by both the Parties and one copy each shall remain in the custody of each Party.
- iii. Provisions of **Clause 4** of this Agreement as also any other agreement arrived at between the parties hereto for the utilization of the intellectual property shall survive the termination of the Agreement.
- iv. Any failure or delay on the part of DBT to exercise the right or power under the Agreement shall not operate as waiver thereof.

12. AMENDMENTS TO THE AGREEMENT

No amendment or modification of this Agreement shall be valid unless the same is made in writing by both the Parties or their authorized representatives and specifically stating the same

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

to be an amendment of this Agreement. The modifications / changes shall be effective from the date on which they are made / executed unless otherwise agreed to.

13. SEVERABILITY

In case any one or more of the provisions or parts of a provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement; and this Agreement shall, to the fullest extent lawful, be reformed and construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein.

14. NOTICES AND JURISDICTION

- i. All notices and other communications required to be served on the Company including for violation of the terms of this Agreement shall be considered to be duly served if the same shall have been delivered by registered mail to the Company at its address as below.

(Name, designation and complete address including PIN code of the Chief Executive of the above party to be given here).

Similarly, any notice to be given to DBT shall be considered as duly served if the same shall have been delivered by registered mail to DBT at its address in New Delhi as below:

**The Secretary,
Department of Biotechnology
7th Floor, Block 2
C.G.O. Complex, Lodi Road
New Delhi-110 003**

- ii. Subject to the provisions of **Clause 10** hereof, the Courts at New Delhi shall have exclusive jurisdiction in all matters concerning this Agreement including any matter arising out of the arbitration proceedings or any award made therein.

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

15. NO JOINT VENTURE

Nothing contained in this Agreement will be construed as creating a joint venture, agency, partnership or employment relationship between the Parties hereto, nor will any party have the right, power or authority to create any obligation or duty, express or implied, on behalf of the other Party.

16. GOVERNING LAW

This Agreement shall be governed and interpreted in accordance with the laws of India.

IN WITNESS WHEREOF the Parties hereto through its duly authorized representatives have signed this Agreement on the day, month and year mentioned hereinbefore.

Parties

For and on behalf of the President of India	
Signature	
Name	
Designation	
Seal	
Witnesses	
Signature	Signature
Place	Place
Date	Date
Name	Name

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

Address	Address
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For and on behalf of M/s , **“the Company”** duly authorized vide Resolution No dated of its Board of Directors.

Signature	
Name	
Designation	
Seal	
Witnesses	
Signature Place: Date: Name Address	Signature Place: Date: Name Address

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

Annexure 1

Complete Project document with amendments (as mutually agreed between DBT and the Company) including work programme, milestones, timelines and corresponding budget shall have to be specifically mentioned.

(This document should be bound as part of the Agreement and labeled as Annexure 1 and should not be submitted as a separate document.)

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

Annexure 2

BUDGET DETAILS

The Budget details as agreed shall be Annexed giving detailed Break-up Year wise and Head wise clearly depicting the contribution by DBT and the Company under each Head)

BIOTECHNOLOGY INDUSTRY PARTNERSHIP PROGRAMME (BIPP)

Annexure 3

Intellectual Property (IP) generated by the Company before execution of this Agreement