

(2 sets of Royalty Agreement to be printed on Rs. 200/- Non Judicial stamp paper each)

ROYALTY AGREEMENT-UNDER BIPP SCHEME

ROYALTY AGREEMENT

This Royalty Agreement (“Agreement”) is made on this _____ day of _____, 2022 (“Effective Date”) at New Delhi BY and BETWEEN the Biotechnology Industry Research Assistance Council, a Government of India Enterprise incorporated under the Indian Companies Act, 2013, having its office at MTNL Building, First Floor, 9 CGO Complex, Lodhi Road, New Delhi-110003 hereinafter referred to as “**BIRAC**” (which expression shall wherever the context so admits include its successors and assignees) of the **First Part**

AND

----- a Company incorporated under the Companies Act 1956/Companies Act, 2013, 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 BIRAC has approved sanction of funding support to Project entitled “-----” (“Project”) conceived by the Company in furtherance of its mandate under Biotechnology Industry Partnership Programme (“BIPP”);

WHEREAS BIRAC has issued Grant-in-aid Award Letter (GLA) dated..... for funding assistance amounting to **Rs. ----- - Lakhs (Rupees ----- only)** and the Company has executed the corresponding Acceptance and Undertaking (Schedule 1 to the GLA) on_____.

WHEREAS the Company has agreed to pay Royalty as essential condition of Grant-in-aid assistance, in the manner as provided herein this Agreement

WHEREAS the GLA provisions shall be integral part of this Agreement and shall be included by reference

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. Disclose initiation of commercialization of the Product at the earliest. "Product" shall mean products, services, processes, technologies, materials, software or other innovations resulting from this Project which would generate commercial income.
- ii. Submit the Annual Net Sales Account of the Product verified and certified by its Internal Auditor for the corresponding financial year till full satisfaction of Royalty liability as provided under Clause 3. 'Net Sales' for this purpose shall mean gross sales by the Company/ its licensee/ its sub-licencee excluding applicable taxes, as certified by the Chartered Accountant.
- iii. The Company shall submit audited Annual reports along with the audited balance sheets and profit & loss accounts to BIRAC within six months of the completion of the financial year ending 31st March till full and final settlement of all Royalty dues to the satisfaction of BIRAC

B. Company acknowledges and agrees that:

- i. It shall, at all times, indemnify and keep indemnified BIRAC against all claims/damages etc. by any infringement of any Intellectual Property Rights (IPR) while carrying out its responsibilities/work under the Project and this Agreement; and
- ii. It shall notify BIRAC of any material change in its incorporation status, shareholding, Project Coordinator or any such change that would impact on performance of its obligations under the Project and this Agreement.
- iii. The Company shall not assign or transfer the Product's interests/ rights to any third party directly or indirectly without prior written consent from BIRAC till full and final settlement of all dues to the satisfaction of BIRAC.

2. PAYMENT OF ROYALTY

- i. The Company shall pay royalty to BIRAC at the rate of 5 (five) per cent on annual Net Sales of the product(s) developed with BIRAC's assistance. Payment of royalty shall fall due beginning with the first sale of the product(s) and the liability to pay royalty will terminate upon the first of any of the following two events to occur: - a) 5% royalty has been paid to BIRAC till the royalty amount paid becomes equal to the amount of the Grant-In-Aid disbursed and that was not returned to BIRAC as unutilized funds; or (b) in case of Foreclosure or Termination of Project as per the terms of GLA.
- ii. Royalty for each financial year shall be payable to BIRAC within 60 (sixty) days of close of corresponding financial year.
- iii. If the Company gets Grant-in-aid assistance for more than one Project that will culminate into the same Product(s), then the Company shall pay royalty to BIRAC at a cumulative rate of 7 (seven) per cent on annual Net Sales of the product(s) developed with BIRAC's assistance in the same manner as provided above under sub section (i).
- iv. If the Company gets Grant-in-aid assistance for more than one Project that will culminate into the distinct Product(s), then the Company shall pay royalty to BIRAC at the rate of 5 (five) per cent on annual Net Sales of each such distinct

Product(s) developed with BIRAC's assistance in the same manner as provided above under sub section (i).

- v. If the Company intends to transfer or sell/ assign the Product's interests to any third party, it shall take prior written permission from BIRAC and BIRAC will recover the due Royalty amount or 5% of the resultant income excluding applicable GST & other taxes, as certified by the Chartered Accountant, whichever is less, before grant of such permission.

Provided, this Project is not determined as a "Nationally Important Project", to be governed through a specific Order of BIRAC. Such cases of "Nationally Important Project" shall have specific terms of licensing, pricing or March-in-rights for the purposes of public interest/ demand of Government of India.

3. DELAY IN PAYMENT OF ROYALTY AND NON-PAYMENT

- i. 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, not by way of penalty, on the amount of default in payment of royalty for the period of delay.
- ii. In case of non-payment of Royalty, without prejudice to any other rights under this Agreement, the amount can be recovered by initiating any procedure available in Law.

4. MODE OF PAYMENT OF ROYALTY

The amount of Royalty payable by the Company shall be paid by the means of and **account payee crossed cheque OR Demand Draft drawn in favour of "Biotechnology Industry Research Assistance Council" payable at "New Delhi"**

5. CONFIDENTIALITY

- i. During the tenure of the Agreement, all 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 purposes in accordance with this Agreement. It shall be the responsibility of the Parties to ensure maintenance of such confidentiality including 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 recipient, as established by acceptable written record, independently of the disclosure of information by the disclosing party; or

f. is required by public authority, by law or decree.

6. DISPUTE RESOLUTION AND 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 and in good faith by mutual consultation.

If such resolution is not possible, then the unresolved dispute or difference whatsoever arising between the Parties out of or relation to the construction, meaning, scope, operation or effect of this agreement or the validity the breach thereof or in respect of any defined legal relationship associated therewith or derived therefrom dispute shall be submitted for arbitration to International Centre for Alternate Dispute Resolution (ICADR), an autonomous organization working under the aegis of the Ministry of Law & Justice, Department of Legal Affairs, Government of India. The Authority to appoint the arbitrator(s) shall be the ICADR. The Arbitration under this Clause and provision of administrative services by ICADR shall be in accordance with the ICADR Arbitration Rules, 1996 read with The New Delhi International Arbitration Centre Act, 2019. The award made in pursuance thereof shall be binding on the Parties. The venue of arbitration shall be 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 foreclosed.

7. EFFECTIVE DATE AND TENURE OF THE AGREEMENT

- i. The Agreement shall be effective from the date of its signing by both the Parties. In the event the Parties affix their signatures to this Agreement on separate dates, the Agreement shall be effective from the date on which the last set of signature is affixed thereto.
- ii. The Agreement shall be valid till the full and final settlement of all dues to the satisfaction of BIRAC.
- iii. In case of Foreclosure/Termination of the Project as per terms of GLA, the Agreement shall be valid till the date of the Foreclosure/Termination Letter issued by BIRAC.
- iv. Two copies of the Agreement shall be signed by each of the Parties and one copy each shall remain in the custody of each Party.

8. AMENDMENTS TO THE AGREEMENT

No amendment or modification of this Agreement shall be valid unless the same is made in writing by the Parties or their authorized representatives specifically stating the same to be an amendment of this Agreement. The modifications shall be effective from the date on which they are made / executed unless otherwise agreed to.

9. 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 construed as if such invalid or illegal or unenforceable provision, or part of a provision, had never been contained herein.

10. 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 stated below.

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

**The Managing Director,
Biotechnology Industry Research Assistance Council,
MTNL Building
9 CGO Complex, First Floor
Lodhi Road
New Delhi-110003**

- ii. Subject to the provisions of **Clause 6** 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.

11. 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.

12. 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 BIRAC	
Signature	
Name	
Designation	
Company Common Seal	
Witnesses	
Signature	Signature
Name	Name
Address	Address

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

Signature	
Name	
Designation	
Company Common Seal	
Witnesses	
Signature	Signature
Name	Name
Address	Address