

AGREEMENT

This Agreement is made on this _____ day of _____, 2014 at New Delhi BY and BETWEEN the Indo-German Science & Technology Centre (IGSTC), a registered society supported by Government of India and Government of having its office at Plot No. 102, Sector 44, Institutional Area, Gurgaon - 122003 hereinafter referred to as "**IGSTC**" (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 IGSTC in furtherance of its mandate operates a scheme entitled Indo-German Research Partnership of Industrial Relevance in 2+2 mode(hereinafter referred to as **IGSTC 2+2 Scheme**) having partnership with academia and industries from India and Germany for public support on a cost sharing basis for research and development of appropriate technologies in chosen thematic areas.

WHEREAS the Company has conceived a Project entitled "_____"

and has submitted a proposal with amendments (hereinafter called "the Project") - for grant-in-aid assistance under IGSTC 2+2 Scheme as per **Annexure 1**; The other partners in the project are (a)..... (b) (c)

AND WHEREAS **IGSTC** has approved the Project and agreed to provide assistance to the extent of Rs (in lakhs) in the form of grant-in-aid to the Company under **IGSTC 2+2 Scheme** on the terms and conditions contained hereinafter in this Agreement.

All Annexure(s) to this Agreement shall be integral part of this Agreement.

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. discharge its duties, responsibilities and execute its activities as set out in **Annexure 1** and shall conform to the specified objectives, outputs, milestones, and targets therein;
 - ii. Meet the expenditure for the Project activities to the extent as agreed to, through its own resources, as per details given in **Annexure 2**

- iii. Submit utilization certificates and statements of accounts duly audited and/or certified by a chartered accountant for the expenditure incurred towards the Project for every year period, 31st March, to IGSTC, within a month of closure of the accounts for the respective year, in the format provided by IGSTC;
 - iv. Submit a annual progress report to IGSTC as per the Project deliverables and participate in the meetings organized by IGSTC to review/ monitor the progress of the Project, as and when called for;
 - v. Permit IGSTC and Monitoring Committees to access to the premises, during regular business hours, where the Project is being/shall be implemented and provide all information and produce or make available the concerned records for inspection and monitoring of the Project activity, as required by IGSTC;
 - vi. Obtain all the necessary requisite approvals, clearance certificates, permissions and licenses from the Government/local authorities for conducting its activities/ operations in connection with the Project;
 - vii. Keep the grant-in-aid assistance in separate no-lien account in the name of the Company with a Scheduled Bank (as defined under the RBI Act, 1934), the withdrawals and payments from which account shall be subject to verification by IGSTC. It shall also obtain and furnish to IGSTC a letter from the concerned bank foregoing the right of set off or lien in respect of such account.
 - viii. Further, the interest earned on the grant-in-aid if any kept in the bank account should be reported to IGSTC in cases where the IGSTC funding has grant-in-aid component. The interest thus earned will be adjusted towards further installment of the fund.
 - ix. Utilize the funds sanctioned by IGSTC towards 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 grant-in-aid assistance;
 - x. Pay royalty to IGSTC in accordance with **Clause 6**;
 - xi. Abide by the decisions of IGSTC to modify the objectives, outputs, milestones, targets, funding as also the foreclosure of the Project or any of its components as may be arrived at after mutual discussion;
 - xii. Acknowledge the assistance of IGSTC while publishing or presenting in any manner the details of the Project, its progress or its success along with the “Disclaimer” that reference therein to any specific commercial product, process, views or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or assuming liability of any sort by the IGSTC.
- (b) The Company warrants that
- i. It shall not at any time within the Project Duration, without the written consent of IGSTC, enter into any Agreement or arrangement with any third party, national or international on the Project;
 - ii. It is under no contractual restrictions or legal disqualifications or any other obligations which would prohibit the Company from entering into this Agreement or which will interfere with the execution of this Agreement; and
 - iii. Each and every one of the statements and particulars herein contained in this Agreement and in the relevant and supporting documents to this Agreement are correct.

- (c) The Company acknowledges and agrees that:
- i. The duties, responsibilities and functions assigned or entrusted to it as specified in the Project shall be deemed to be the duties, responsibilities and functions assigned and entrusted to it 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;
 - ii. It shall, at all times, indemnify and keep indemnified IGSTC 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 IGSTC 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
 - iv. IGSTC shall reserve the right to reconsider further funding assistance, governance of the New Intellectual Property and consider refund of the amount of grant-in-aid in such circumstances of change of control as mentioned the following paragraphs;
 - a) The Company shall not undertake or permit any merger, consolidation, reorganization scheme of arrangement or compromise with its creditors or shareholders or effect any scheme of amalgamation or reconstitution or substantial expansion without prior information of at least 30 days to IGSTC. The word 'substantial expansion' shall have the same meaning as under the Industries (development and Regulation) Act, 1951.
 - b) The Company shall inform IGSTC within 30 (thirty) days, if it has notice of any application for winding up having been made or any statutory notice of winding up under the provisions of the Companies Act, 1956, or any other notice under any other Act or otherwise of any suit or other legal process intended to be filed or initiated against the Company and affecting the title to the properties of the Company or if a receiver is appointed of any of its properties or business or undertaking.
 - c) It shall notify IGSTC 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.

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 IGSTC is Rs _____ lakhs (Rupees _____) as grant-in-aid towards the Project. 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 IGSTC and the amount to be put in by the Company are given in **Annexure 2**. IGSTC shall release the first installment of the financial assistance after execution of the Agreement and subject to 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 which progress shall be determined by IGSTC and on submission of audited/certified statements of accounts and utilization certificates as provided for in **Clause 1(a) (iii)**;
- iii. The Company shall ensure that the funds released for the Project are actually utilized only for the purposes of the Project and as expressly provided for in this Agreement. Re-appropriation of IGSTC funds from one budget head to another shall not be effected without the specific written approval of IGSTC;
- iv. The Company shall refund such part of grant-in-aid funds disbursed to it that remains unutilized with it upon completion of all the responsibilities, duties and functions specified in connection with the Project, within one month of such completion, to IGSTC along with detailed accounts of the funds received and utilized and of the unutilized balance returned;
- v. The Company at its own cost, shall take adequate care to maintain the capital assets acquired for the Project through IGSTC's Grant-in-aid. The capital assets acquired through IGSTC's Grant-in-aid shall not be disposed of without the specific approval of IGSTC till full and final settlement of all dues to the satisfaction of IGSTC; and
- vi. The provision of grant-in-aid funds by IGSTC does not create any liability, explicit or implicit, on IGSTC in respect of the manpower engaged in the Project.

3. PROJECT MONITORING COMMITTEE

Project Monitoring Committee (PMC) will be constituted by BIRAC to monitor the progress of the objective(s) of the Project. IGSTC shall have at least one representative in 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 objectives and other terms and conditions as contained in the Agreement.
- ii. To keep track of funding from any other source for the Project.
- iii. To assess the global developments impacting the domain of the Project.
- iv. Based on the foregoing, to assess and recommend:
 - a. the release of next installment or part release thereof by the BIRAC.
 - b. revision of Project Duration
 - c. closing, 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 requests involvement of such partner(s), in the overall interest of the Project; and
 - e. revision of the financial assistance.
- v. To advise on issues related to securing of IPR and mentor to overcome any technological problem faced in the Project implementation; and

- vi. To advise on any other matter as referred to it by IGSTC and/or otherwise reasonably necessary for effective discharge of its duties and/or achievement of aims and objectives of IGSTC 2+2 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 (New 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, but excluding the intellectual property generated by the Company before execution of this Agreement as set out in **Annexure 3** and any IP generated outside the scope of this Agreement even during the term of this Agreement.
- iii. New IP shall be the property of the Company and other project partners provided that the New IP shall be governed by IGSTC till full and final settlement of all dues to the satisfaction of IGSTC. 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 IGSTC.

5. PROJECT DURATION

The Company shall complete the Project within the stipulated period of _____ months from the execution of this Agreement ("Project Duration") i.e. on or before _____ subject to the order(s) issued by the IGSTC from time to time under this Clause.

6. PAYMENT OF ROYALTY AND LICENSING

The Company shall pay royalty to IGSTC at the rate of 5 (five) per cent on annual Net Sales of the product(s) developed with IGSTC'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 three events to occur:-** a) 5% royalty has been paid to IGSTC for a period of five (5) years; (b) the royalty amount paid to the IGSTC becomes equal to twice the amount of the grant-in-aid disbursed and that was not returned to IGSTC as unutilized funds; or (c) in case of foreclosure in accordance with **Clause 8**.

'Net Sales' for this purpose shall mean gross sales by the Company/ its licensee/ its sub-licencee excluding excise duty and sales tax, as certified by the Chartered Accountant. Royalty for each financial year shall be payable to IGSTC 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; and

"Product" for this purpose shall mean the product or process or services, which would generate commercial income.

7. CONFIDENTIALITY

- i. During the tenure of the Agreement, all Parties (including all project partners), 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.

8. FORECLOSURE AND TERMINATION

- i. In case, during the Project Duration, it is found that the Project or any Project component is not likely to lead to successful completion, IGSTC may decide to foreclose the Project or the Project component as warranted. The decision of the IGSTC shall be final in all respects. The Company shall immediately refund any grant-in-aid unutilized out of IGSTC's disbursements to IGSTC, at its discretion, allow deduction of, the future committed expenses to third party vendors on pro-rata basis according to the quantum of IGSTC's funding. The Company shall submit detailed accounts of funds received, utilized and unutilized. However, IGSTC 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 IGSTC 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 IGSTC. IGSTC may also terminate this Agreement by written notice in the event of "the Company" committing breach of any term of this Agreement and either not rectifying it to the satisfaction of IGSTC or not satisfying IGSTC about its inevitability within a specified period. In the event of termination of the Agreement, no further disbursement shall be made by IGSTC and the Company shall be liable to return immediately grant-in-aid already availed of from IGSTC with additional 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 *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 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 IGSTC after due enquiry and the decision of BIRAC in this regard shall be final.

10. 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 shall be settled by arbitration in accordance with the Rules of Arbitration of the Indian Council of Arbitration and the award made in pursuance thereof shall be binding on the Parties. The venue of arbitration shall be New Delhi/Gurgaon 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.

11. 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. The Agreement shall be valid till the full and final settlement of all dues to IGSTC. It can be extended if agreed to by all the Parties.
- ii. 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.

- iii. Provisions of **Clause 4** of this Agreement as also any other Agreement arrived at between the Parties hereto regarding rights in the intellectual property shall survive expiry or termination of the Agreement.
- iv. Any failure or delay on the part of IGSTC to exercise any 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 the Parties or their authorized representatives specifically stating the same 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 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 stated 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 IGSTC shall be considered as duly served if the same shall have been delivered by registered mail to IGSTC at its address in Gurgaon (Haryana) as stated below:

**Director,
Indo-German Science & Technology Centre
Plot No. 102, Sector – 44
Institutional Area
Gurgaon – 122003 (Haryana)**

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

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 IGSTC	
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 Resolution No dated of its Board of Directors.

Signature	
Name	
Designation	
Company Common Seal	
Witnesses	
Signature	Signature

Name	Name
Address	Address

Annexure 1

Complete Project document with amendments 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.)

BUDGET DETAILS

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

Annexure 3

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

Resolutions at a meeting of the Board of Directors dated _____ for acceptance of the terms and conditions of Letter of Intent and execution of documents for grant assistance

The Chairman informed the Board that the Indo-German Science & Technology Centre (IGSTC), a Registered Society of Government of India has agreed, in principle, to provide a grant assistance to the company not exceeding Rs..... lakhs (Rupees lakhs) for the company's project titled "....." in joint partnership with XXX (Indian academic partner), YYYY (German academic partner) and ZZZZ (German industrial partner).

After some discussion, the following resolutions were passed:

RESOLVED

1. THAT the company do accept the offer of IGSTC for grant assistance not exceeding Rs..... lakhs (Rupeeslakhs only) on the terms and conditions set out in the standard form of Agreement received from IGSTC (copies whereof duly signed by the Authorised Signatory of the Board for purposes of identification, have been circulated to the Board/ placed on the table at the meeting) and also avail of disbursement(s) in part or full from time to time as may be allowed by IGSTC.
2. THAT the following directors, viz. Shri....., Shri..... and Shri..... be and are hereby authorised severally to convey to IGSTC acceptance on behalf of the company of the said offer for financial assistance on the terms and conditions contained in the Agreement referred to above and to execute such deeds, documents and other writings as may be necessary or required for this purpose including all amendments therein as may be suggested by and acceptable to IGSTC from time to time
3. THAT the Common Seal of the company be affixed to
 - a. the stamped engrossment(s) in duplicate of the Agreement (as per the Standard form with such modifications as may be agreed to between IGSTC and the company)
 - b. the stamped engrossment(s) of other documents as may be required to be executed under the Common Seal of the company in favour of IGSTC to secure the aforesaid facilities in the presence of any of the following directors viz. Shri....., Shri.....and Shri.....who shall sign the same in token thereof.

CERTIFIED TO BE TRUE EXTRACT OF THE MINUTES BOOK OF THE PROCEEDINGS
OF THE BOARD OF DIRECTORS

Chairman / CMD/ Secretary

