

Appendix K: Licensing Agreement for Transfer of Technology (LAToT)



Between

LAB NAME, City

Defence Research & Development Organisation (DRDO), India

Ministry of Defence, Government of India

And

Company Name, City, Country (in Case of Foreign Company)

For

Transfer of Technology (ToT) of

Name of Technology

This Licensing Agreement for Transfer of Technology is entered into on the Day of Month in the Year(Two Thousand)

BETWEEN

The President of India, acting through and represented by the **Director, Lab Name, City** a constituent laboratory under the **Defence Research and Development Organisation**, Ministry of Defence, Government of India and the **Director, Industry Interface and Technology Management (DI²TM)** at DRDO HQrs, DRDO Bhawan, New Delhi – 110 011 (Hereinafter referred to as “**DRDO**”, which expression shall whenever the context so requires or admits, mean and include its successors in office and/ assigns) on the first part

AND

“**Name of the Company**”, a company formed in accordance with the laws of India and having their registered office at **Company Address** (Hereinafter referred to as “**Company Name**”, which expression shall whenever the context so requires or admits, mean and include their heirs/successors, respective executors, administrators, legal representatives, and/or permitted assigns) represented by, on the second part.

“**DRDO**” and “**Company Name**” are individually referred to as “**Party**” and jointly as “**Parties**”.

1. Preamble

- 1.1 WHEREAS DRDO, during the course of its research activities has developed a unique technology for **Application of Technology** (Hereinafter referred to as the “**Technology**” and more fully described in Technical Know-How) which is a “**Product**



Name”, (Hereinafter referred to as the **“Products”** and more fully described in Products Description).

- 1.2 WHEREAS **Company Name**, is desirous of utilising the developed “Technology” to manufacture in India/**“Country Name”*** and sell in ‘India” and/**“Countries Name”***(Hereinafter referred to as **Licensing Regions and morefully described in “Licensing Regions”**), the **“Products”**, there from.

2. Technical Know-How

DRDO shall transfer the complete details of the technical know-how and testing method for quality assurance to Company Name with requisite data on the functioning of the product.

3. Product Description

The “Product”is

4. Licensing Regions

- 4.1 By this Licensing Agreement for Transfer of Technology, DRDO grants a ***nonexclusive/restricted exclusive/exclusive Licence** to utilise the “Technology” by “Name of the Company” for the manufacture in **India** (referred as **“Licensing Region”**) **under the provisions contained in succeeding clauses of this Agreement.**
- 4.2 For sale of the product outside the licensing region “Name of the Company” shall seek prior written approval of DI²TM, DRDO Hqrs.

In pursuance of above, NOW IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

5. Grant of License

- 5.1 By this Licensing Agreement for Transfer of Technology, DRDO grants a ***nonexclusive /restricted exclusive/exclusive** license to utilise the “Technology” by **“Name of the Company”** for the manufacture in “_____” and for sale in the “licensing regions” for **“Period of License”** (described at Clause 14) from the date of this Agreement becoming effective.
- 5.2 DRDO shall have the March-in Rights to use the IP for its own use in the interest of Government of India without any restrictions, irrespective of the nature of license granted in this agreement.

6. Responsibilities of Parties

- 6.1 DRDO agrees to supply the “Technology” in the form of documents like drawings specifications, known sources of materials, samples for guidance and visualisation, testing details and specifications (which hereinafter will be collectively referred to as

* strike out whichever is not applicable

“Technology Transfer Documents TTD).

- 6.2 During the Technology Transfer period (i.e., the time period required for transferring the technology as per TTD from “DRDO” to “Name of the Company”), DRDO shall depute free of cost to “Name of the Company” experts/ personnel for a period not exceeding ____ man-days to provide technical assistance for manufacturing products for the first order.
- 6.3 For any technical assistance given beyond this Technology Transfer period (____ mandays), if required, “Name of the Company” shall pay to DRDO Rs 20000/- (Rupees twenty thousand only) per manday of the DRDS and Rs 10000/- (Rupees ten thousand only) per manday of the non-DRDS/staff. For deputation abroad “Name of the Company” shall pay the consultation charges of \$ 500 (Five Hundred US Dollars) per manday to DRDO. **“Name of the Company”** shall also bear the transport and lodging costs of the scientists and staffs, as per Government rules.
- 6.4 **“Name of the Company”** undertakes to manufacture the “Product” in accordance with the specifications contained in the TTD supplied by DRDO. Any changes/ deviations shall be mutually agreed upon in writing.
- 6.5 During the **“Period of Validity of License”** (refer Clause 14), DRDO reserves the right to stage inspect all materials and processes in the manufacture, at such intervals and under such conditions as may be felt necessary by DRDO. During such inspection should the materials and/or stage-products fail to meet the specification(s) as per the TTD, the rejects will be to the account of **“Name of the Company”**. After rectification, if the product still does not meet the specifications, DRDO may revoke the licence conferred on **“Name of the Company”**.
- 6.6 Further, on prior written approval from DRDO, **“Name of the Company”** can manufacture the said **“Technology”** & **“Product”** overseas subject to the **‘government rules/policies on the subject’**. Also, for export of raw material, machine and tools from India to the country of manufacture abroad shall be subject to the Policy of the Government of India and **law relating to import/export** in both the countries, compliance of which shall be sole responsibility of **“Name of the Company”** alone.
- 6.7 It shall be the sole responsibility of **“Name of the Company”** to ensure maintaining the quality of the **“Technology”** and **“Products”** and in case of any complaint/claim in the quality of the **“Technology”** and **“Product”** produced by **“Name of the Company”** is received, DRDO shall in no way be held responsible in any manner, whatsoever, for such rejection/claims, etc. DRDO’s responsibility shall be limited to providing technical assistance to **“Name of the Company”** on the above terms and conditions. If DRDO’s assistance is required by any sub-licensee of **“Name of the Company”** in India or abroad, the same shall be provided on the terms to be discussed and agreed separately.
- 6.8 **Mutual Indemnification:** Subject to the above provisions DRDO agrees, to indemnify and hold harmless the **“Name of the Company”** against any liabilities, damages and cost, to the extent of money received by DRDO as ToT Fees. The **“Name of the Company”** agrees to the fullest extent permitted by law, to indemnify and

hold harmless DRDO from any liabilities, damages and costs (including reasonable attorneys fees and cost of defense) to the extent caused by the negligent acts, errors or omissions of the **"Name of the Company"** or anyone for whom **"Name of the Company"** is legally responsible.

- 6.9 **"Name of the Company"** undertakes and assures that it will always follow best Corporate Practices.

7. Sale

- 7.1 **"Name of the Company"** undertakes to launch the "Products" within a period of ___ months from the date of signing of this Agreement, failing which the license will be revoked and the **"Name of the Company"** will have no claim whatsoever on upfront ToT Fees given to DRDO and shall be forfeited.
- 7.2 If there is any delay in the launch of the product then **"Name of the Company"** will seek prior written approval for extension of period from DRDO HQrs, through Director, DI²TM.
- 7.3 **"Name of the Company"** undertakes to spend sufficient fund for promoting/ branding/ marketing the said **"Products"**.
- 7.4 **"Name of the Company"** shall inform DRDO of the sale of the product on a yearly basis (financial year). A copy of this information will also be sent to DI²TM, DRDO.
- 7.5 For enquiries received from abroad for the product, **"Name of the Company"** shall seek prior written approval from DI²TM, DRDO.

8. Financial Arrangements

- 8.1 **"Name of the Company"** shall pay to DRDO a Total **Technology Transfer Fees** of _____ (Amount in Figure and Words) as per the payment schedule mentioned below :
- 8.1.1 _____ (Amount in Figure and Words) of the **Technology Transfer Fees** payable at the time of signing of Agreement for entering into the Licensing Agreement for Transfer of Technology.
- 8.1.2 The balance amount of _____ (**Amount in Figures and Words**) of the **Total Technology Transfer Fees** shall be payable as per mutually agreed terms and conditions mentioned at Annexure –1 to Appendix 'K'.
- 8.1.3 The "Name of the Company" shall also pay service tax (if applicable) over and above ToT Fee. ToT Fee and service tax shall be payable by two different bank drafts.
- 8.2 The Annual Royalty payable to DRDO by **"Name of the Company"** shall be as follows:
- Royalty on Net Sales to Central Govt. Estt, Armed Forces (including Government Tenders) ____ % of value assessable for Central Excise purposes.
 - Royalty on Net Sales to Indian Market (Except Central Government

Establishment, Armed Forces and Government Tenders, etc.) _____ % of value assessable for Central Excise purposes.

- Royalty on Net Sales to Export Market _____ % of invoice value declared to Customs authorities.

- 8.2.1 **Sales figure will be determined based on the selling price declared for the purpose of payment of Excise duty.** Further sales figures for the purpose of royalty payment shall be based on a certificate derived from audited financial statements, duly certified by Chartered Accountant.
- 8.3 **The royalty** payment will be effected on pro-rata basis within 30 days of **publishing of the Annual Audited Financial Statements by Chartered accountants.** **"Name of the Company"** may quote the price to customers by including the royalty/ departmental charges payable to DRDO. However, Royalty payable to DRDO shall be calculated on the **Net Sale Price as described in clause 8.2 and 8.3.** In case of export, it shall be calculated on the F.O.B. price of the product. Against the sale of Products manufactured abroad by **"Name of the Company"**, the royalty to DRDO shall be paid in US Dollars.
- 8.4 In the course of its normal research and development, if DRDO come across facts, which lead to incremental improvement, the same will be shared with **"Name of the Company"**. However, should the nature of the product be changed to bring about a new product, the same shall be offered to **"Name of the Company"** by DRDO and the commercial aspects will be renegotiated to mutual acceptance.
- 8.5 Payment in respect of Technology Transfer Fee will be made through a Crossed Demand Draft drawn in favour of the "The Controller of Defence Accounts (R&D), New Delhi" payable at New Delhi and submitted to the Director, Directorate of Industry Interface and Technology Management (DI²TM), DRDO HQrs, 'B' Block, "DRDO Bhawan", Rajaji Marg, New Delhi – 110 011, under intimation to the Director, **Name of the Lab, City.** This procedure will be followed for remittance of Royalty as also in respect of export orders. Payment in respect of service tax, if applicable, shall be made as per the provisions of Service Tax, Finance Act 1994 (as amended from time to time) as applicable for the services provided by Government of India Departments.
- 8.6 For all commercial/ financial aspects, DI²TM, DRDO HQrs, New Delhi will be consulted by **"Name of the Company"**.
- 8.7 In the event or default in payment of royalty by due date, **"Name of the Company"** shall pay interest on amount due, in default, at the bank lending rate charge prevailing at the time in India.
- 8.8 **"Name of the Company"** will provide Certification of assessable value declared to Central Excise authorities and quantity of Production figures every year (Financial year) duly authenticated by their Chartered Accountant (CA) to **Director, Name of the Lab, City** with a copy to Director, DI²TM, New Delhi.

9. Marking

- 9.1 A DRDO product developed by DRDO and manufactured and marketed by **"Name of the Company"** shall have following markings **"Product Developed by DRDO"**, or words to this effect DRDO logo shall be visibly displayed.
- 9.2 **"Name of the Company"** shall indicate in all the technical documents/brochures including copies thereof furnished by DRDO and in a manner approved by DRDO that the design and technology contained in the documents are the properties of DRDO.

10. Security

- 10.1 **"Name of the Company"** shall not transfer, by resale or otherwise, the know how/ technology obtained from DRDO under this Agreement to any other party, in any manner, whatsoever, without the prior written approval of DRDO/ DI²TM irrespective of whether this Licensing Agreement for Transfer of Technology is in force or not. **"Name of the Company"** undertakes that it will take prior permissions from DRDO in case of sub-licensing the **"Technology"** and **"Products"** in the **"Licensing Regions"**.
- 10.2 **"Name of the Company"** shall take all necessary measures to ensure that the technology is not passed on, disclosed, or given access to, except to such of their Directors, Officers and employees and their subcontractors to whom it is necessary to pass on, disclose or give access to, for the purpose of execution or manufacture of the product under this Licensing Agreement for Transfer of Technology. **"Name of the Company"** hereby accepts full responsibility for any of their Directors, Officers and Employees and their subcontractors and undertakes to fully compensate DRDO in that regards.
- 10.3 Any product improvements carried out by **"Name of the Company"** shall be got approved from DRDO before the product is offered for sale and the same shall be the property of DRDO and will not be passed on by **"Name of the Company"** to any other parties irrespective of whether this Licensing Agreement for Transfer of Technology is in force or not.
- 10.4 **"Name of the Company"**, during the course of productionisation and/or commercialisation of the **"Product"** based on **"DRDO Technology"**, may want to effect improvements thereby causing a different **"Product"** to be formulated. All such differentials and 'variants' will be deemed as based on the **"DRDO Technology"** and all clauses in this Agreement will be fully applicable to such 'variants'. **Patent right on such new (improved) products/ variants shall be that of DRDO and DRDO may consider grant of an exclusive right to "Name of the Company" for that new variant, if "Name of the Company" so requests DRDO.**
- 10.5 **"Name of the Company"** shall keep royalty amounts and Technology Transfer fee and Royalty commercially confidential.

11. Title and Ownership of Design

The title to and ownership of the “Technology” including the improved technology and the “Products” including new variants and copyrights and intellectual property rights will rest exclusively with DRDO.

12. Dispute Resolution

In event of any dispute or difference between the Parties hereto, such disputes and differences shall be resolved amicably by mutual consultation. If such resolution is not possible, then, the unresolved dispute and difference shall be referred to arbitration of the Sole Arbitrator to be appointed by the Secretary, Department of Defence Research & Development on the recommendation of the Secretary, Department of Legal Affairs (“Law Secretary”), Government of India. The provisions of Arbitration and Conciliation Act, 1996 (No. 26 of 1996) shall be applicable to the arbitration under this clause. The venue of such arbitration shall be at Delhi or any other place decided by the arbitrator and the language of arbitration proceedings shall be English. The arbitrator shall make a reasoned award (the “Award”), which shall be final and binding on the Parties.

13. Effective Date

This Agreement shall be effective on and from the date it is signed by both the parties.

14. Period of Validity of License

- 14.1 DRDO grants a ***non-exclusive/restricted exclusive/exclusive** license to utilise the “Technology” by “**Name of the Company**” for the manufacture in _____ and for sale in the “licensing regions” for ____ **years** (referred as “**Period of Validity of License**”) from the date of this Licensing Agreement for Transfer of Technology becoming effective.
- 14.2 Though the validity of the granted license is for ____ **years**, DRDO shall be at liberty to revoke the license in the following circumstances, without any liability of whatsoever nature, to either “**Name of the Company**” or to the new company/ owner/management and/ or to any other claimant.
- 14.2.1 If the company (“**Name of the Company**”) and/ or its sub-license* is Black-Listed by any India Government Agency and/or Government Organisation.
- 14.2.2 If the company (“**Name of the Company**”) and/ or its sub-license* fails to abide by the terms & conditions of this Agreement.
- 14.2.3 If it is found that “**Name of the Company**” and/or its sub-license* is involved in any unlawful acts.

* strike out whichever is not applicable

- 14.2.4 In the event of change of Management, ownership and/ or merger* of “**Name of the Company**” into some other company or sale/transfer* of the company to some other person by any mode; like purchase of shares, taking over of the company by any other means, without prior knowledge and consent of DRDO.
- 14.2.5 If the company (“**Name of the Company**”) becomes insolvent.
- 14.3 In the case of revocation of license, “**Name of the Company**” will have no claim whatsoever on ToT Fees, Royalty Fees given to DRDO before the Revocation.
- 14.4 This Licensing Agreement for Transfer of Technology shall be reviewed for further extension/termination before the expiration of validity of License offered through this agreement.

15. Force Majeure

- 15.1 Neither party shall be liable for any failure of performance under this Agreement, due to causes beyond such party’s reasonable control, including but limited to acts of God, fire, flood or other natural catastrophes; any law, order, regulation, direction, action of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lock-outs, work stoppages or other labour difficulties, provided however the party to which the force majeure has happened shall use commercially reasonable efforts to eliminate such an event.
- 15.2 Force Majeure shall also be deemed in the event of any regulatory decision or government order requiring the either party to suspend its service(s) or operation for any reason whatsoever.
- 15.3 If either party is unable to act(s) for a period of 90 (ninety) consecutive days as a result of continuing Force Majeure event, the other party may cancel/ terminate the Agreement.
- 15.4 However, “**Name of the Company**” will have no claim whatsoever on ToT Fees, Royalty Fees given to DRDO before the enforcement of Force Majeure event.

16. Entire Agreement

- 16.1 This Agreement constitutes the final agreement between the Parties and it supersedes all prior agreements, understandings and other correspondence/ communications between the Parties with respect to the subject matter hereof.

17. Amendments

- 17.1 No amendment/ modification/ alternation of any of the terms of this Agreement shall be valid till it is reduced to writing and duly signed by both the Parties. Any amendment of financial/commercial nature shall be subject to final approval by the Director, DI²TM, DRDO HQrs.

* strike out whichever is not applicable

IN WITNESS HEREOF, the parties have set their hands to it on the Day, Month and Year..... (Two Thousand)

Signed For and on behalf of the President of India	Signed by on and behalf of M/s “Name of the Company”, City, Country (if foreign company)
By :	By :
Name :	Name :
Title : Director, Name of Lab, City	Title :
Date :	Date :
By :	
Name :	
Title : Director, DI²TM, DRDO HQrs, New Delhi	
Date :	

In the presence of:

Witness	Witness
By : _____	By : _____
Name: _____	Name: _____
Title: _____	Title: _____
Organisation: _____	Organisation: _____
Date : _____	



Annexure to Appendix K: Schedule of Payments

1. **ToT fee payable at the time of signing of Licensing Agreement: (Amount in Figure and Words)**
2. **Stage payments/ Milestone* based payments**

(Amount in Figure and Words)

* strike out whichever is not applicable