

Appendix J: Material Transfer Agreement (MTA)



Between

Name of the Lab, City, Country

Defence Research & Development Organisation (DRDO), India

And

Name of the Company, City, Country

For

Name of the Technologies

This MATERIAL TRANSFER AGREEMENT (the "Agreement"), 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 – 110011 (Hereinafter referred to as "PROVIDER", which expression shall whenever the context so requires or admits, mean and include its successors in office and/ assigns).

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 "**RECIPIENT**", 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).

Pursuant to signing of the **Confidentiality & Non Disclosure Agreement** dated _____ between the PROVIDER and the RECIPIENT, the RECIPIENT has shown keen interest in further Testing and Validation on the products and technologies of – **Name of the technologies (Hereinafter together referred to as the "MATERIAL")** already developed in India by the PROVIDER. The PROVIDER has, therefore, agreed to provide to the RECIPIENT with materials and protocols proprietary to PROVIDER in order to allow such institutions and investigators in India through the RECIPIENT to conduct Testing and Validation relating to the 'MATERIAL', subject to the terms and conditions set forth below.



1. **Material; Testing and Validation**

Subject to the terms and conditions of this Agreement, PROVIDER agrees to provide RECIPIENT with mutually agreed quantities of the materials specified on Exhibit A (the "Material") as are reasonably available for the sole purpose of allowing RECIPIENT to undertake the Testing and Validation described on Exhibit B (the "Testing and Validation") RECIPIENT shall be responsible for the cost of transporting Material shipped to it by PROVIDER pursuant to this Agreement.

2. **Other Limitations**

RECIPIENT agrees: (i) to use prudence and reasonable care in the use, handling, storage, transportation, disposition, and containment of the Material, due to its experimental nature; (ii) not to administer or use the Material in humans under any circumstance; (iii) not to use the Material for any commercial purpose; (iv) not to use the Material in any research other than the Testing and Validation (as described on Exhibit B) without first obtaining PROVIDER's written consent.

3. **Control of Material. RECIPIENT AGREES TO RETAIN CONTROL OVER THE MATERIAL AND NOT TO TRANSFER MATERIAL TO ANY THIRD PERSON OR ENTITY WITHOUT FIRST OBTAINING PROVIDER'S PRIOR WRITTEN CONSENT.**

PROVIDER reserves the right to distribute the Material to others and use the Material without restriction for its own purposes. Upon the earlier to the PROVIDER's notice or the completion of the Testing and Validation, RECIPIENT agrees to notify PROVIDER of any quantities of Material remaining upon completion of the Testing and Validation and, at PROVIDER's option, shall (i) return any remaining Material to PROVIDER, or (ii) destroy such material on the request of the PROVIDER and on destruction of such remaining Material, the RECIPIENT shall provide a '**Certificate of Destruction**' to the PROVIDER clearly mentioning therein the quantities of the Materials destroyed and the method used for destruction.

4. **No Warranty. THE MATERIAL BEING SUPPLIED BY THE PROVIDER UNDER THIS AGREEMENT IS FOR THE TESTING AND VALIDATION PURPOSE ONLY ON "AS IS WHERE IS" BASIS AND IT SHALL NOT CARRY WARRANTIES OF WHATSOEVER NATURE, EITHER EXPRESSED OR IMPLIED AND THE PROVIDER HEREBY SPECIFICALLY AND EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE MATERIAL FOR A PARTICULAR PURPOSE.**

PROVIDER makes no representation or warranty that the use of Material will not infringe the proprietary rights of any third party.

5. **Confidentiality**

All oral or written communications received by RECIPIENT relating to Material are, and shall remain, proprietary and confidential to PROVIDER. RECIPIENT agrees to hold all such information in strict confidence and not to disclose such information to any third party or use it for any purpose other than to conduct the Testing and Validation, except that RECIPIENT shall not be required to maintain the confidentiality of information that:



- (a) Is already known to RECIPIENT at the time of its disclosure by PROVIDER, as evidenced by written records of RECIPIENT,
- (b) Has become publicly known and generally available through no wrongful act of RECIPIENT, or
- (c) Has been received by RECIPIENT or from a third party authorised to make such disclosure, as evidenced by written records of RECIPIENT.

6. **Reports**

During the term of this Agreement, RECIPIENT agrees to (i) periodically, but in no event less than annually, furnish PROVIDER with a written report summarising the results of the Testing and Validation to date, and (ii) within thirty (30) days of the completion of the Testing and Validation, furnish PROVIDER with a final written report detailing the results of the Testing and Validation. The final report may be in the form of a manuscript, abstract, or other publication submission. Such report shall be submitted in English language.

7. **Publications**

PROVIDER recognises that RECIPIENT may wish to publish scientific articles, abstracts, or posters, or make oral presentations relating to the results or Testing and Validation, and RECIPIENT recognises that publication or other public disclosure of the information relating to the Results or Testing and Validation can jeopardize proprietary rights, including patent rights, relating thereto of the PROVIDER. Therefore, RECIPIENT specifically agrees not to publish in any form and/or disclose to a third party or to public at large or make oral presentation relating to the Results or Testing and Validation, without specific and categorical written consent and approval of the PROVIDER in advance. It is clearly understood that if the RECIPIENT publishes and/or discloses or makes oral presentation stated above, without prior written consent and approval of the PROVIDER, RECIPIENT shall render itself liable to damages to the PROVIDER for breach of the Agreement. For the purpose of obtaining such advance consent and approval of the PROVIDER, the RECIPIENT shall provide to the PROVIDER with an advance copy of such proposed publication, oral presentation, poster, or other disclosure intending to disseminate any or all of the results at least thirty (30) days prior to submission for publication, presentation, or other disclosure. At PROVIDER's request, RECIPIENT agrees to delete confidential information of PROVIDER, and, if requested by PROVIDER within such thirty (30) day period, to delay submission for publication, presentation, or other disclosure for up to an additional sixty (60) days to permit the filing of one or more patent applications in respect of Developments. In the event PROVIDER determines that Results or Developments are more appropriately protected by a form of intellectual property other than patent rights, RECIPIENT agrees to delete the same from the publication, presentation, or other disclosure. In accordance with scientific custom, the contribution of PROVIDER will be expressly noted in all written or oral public disclosures made by RECIPIENT which relate to the Testing and Validation or results, by acknowledgment or co-authorship, as appropriate.



8. **Ownership**

It is understood by RECIPIENT that PROVIDER and its Affiliates will retain full ownership of the Material(s). Both parties will explore the possibility of a further collaboration, including the business terms thereof, in good faith if the results of the Study under this MTA warrant the same. In the event of breach by the RECIPIENT, PROVIDER shall remain the exclusive owner of all materials and know-how exchanged between PROVIDER and the RECIPIENT.

9. **Term; Termination**

The term of this Agreement shall extend until _____ unless the same is extended in writing by the Parties. Any right or obligation which accrues hereunder and Clauses 3, 5-9, 14, and 17 of this Agreement prior to the effective date of termination shall survive such termination.

10. **Notice**

Any notice to be given pursuant to this Agreement shall be made and deemed effective if sent to the party to whom such notice is required or permitted at the party's address first listed above, attention: **Director, Directorate of Industry Interface and Technology Management (DI²TM)**, if to PROVIDER, and attention: **Name of Recipient – Designation, Name of the Company**, if to RECIPIENT. Notice may be given via courier, registered mail, postage prepaid, and the like.

11. **Relationship**

The relationship created by this Agreement between PROVIDER and RECIPIENT shall be that of independent contractors without the authority given to either party to bind or act as agent for the other or its employees for any purpose.

12. **Compliance with Law**

RECIPIENT shall ensure that it shall comply with all applicable Government laws, regulations, and rules while carrying out the Testing and Validation and for any violations thereof, the RECIPIENT alone shall be fully liable.

13. **Indemnification**

RECIPIENT shall indemnify, defend, and hold PROVIDER, its directors, officers, employees, and agents harmless from and against any liability or cost, arising from any claim, suit, or proceeding arising as a result of or in connection with RECIPIENT's use, handling, storage, transportation, disposition, or containment of the material or conduct of the Testing and Validation or use of the Results, except to the extent due to the gross negligence of PROVIDER.

14. **No Implied Licences**

EXCEPT AS EXPRESSLY PROVIDED HEREIN, PROVIDER DOES NOT, BY IMPLICATION OR OTHERWISE, GRANT TO RECIPIENT ANY LICENCE OR OTHER RIGHT WITH RESPECT TO MATERIAL, DEVELOPMENTS, RESULTS, OR ANY INTELLECTUAL PROPERTY RELATING TO ANY OF THE FOREGOING.



15. **No Conflicting Obligations**

The Materials will not be used by the RECIPIENT in any research that is subject to consulting licensing or similar obligations to any third party without the prior written consent of the PROVIDER. In no event will the RECIPIENT use the results to file or support patent applications or patents in its name or in the name of any third party, without the prior written consent of the PROVIDER.

16. **Grants**

Applying for Grants in connection with the subject of this Agreement is not allowed without the prior written consent of PROVIDER. For this, RECIPIENT shall disclose to the PROVIDER all the terms and conditions of the intended grants.

17. **Assignment**

RECIPIENT shall not assign its interest in this Agreement without the prior written consent of PROVIDER to any third party. However, PROVIDER may assign its interest in this Agreement and its rights hereunder to any other person.

18. **Dispute Resolution/Arbitration**

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.

19. **Governing Law**

This Agreement and the relationship of the parties in connection with the subject matter of this Agreement with each other shall be governed and determined in accordance with the laws of the Republic of India.

20. **Amendments**

No amendment, modification, alteration or waiver of any of the provisions of this Agreement shall be effective unless reduced in writing and signed by both the parties.

21. **Force Majeure**

This Agreement is subject to usual Force Majeure clause preventing the Parties to discharge their obligations which includes incidents by fire, Act of God, riots or other civil commotion, enemy action and/or other causes not within the control of the parties and in such cases neither party shall be liable to pay any compensation, claims to the other party. In the event either of the parties is affected by any circumstance



covered under this Force Majeure Clause, the other Party to the Agreement shall be informed of such circumstance within 15 days from the date of arising of such situation. If the situation preventing the affected Party to discharge its obligation, under the Agreement persists for more than three months continuously, either Party shall be at liberty to terminate this Agreement, subject of other clauses in this Agreement especially Clause 3.

22. **Non-Exclusivity**

This Agreement has been signed between the parties on non-exclusive basis and the PROVIDER is at liberty to have similar arrangement with other organisations in India and abroad during the validity of this Agreement.

23. **Entire Agreement**

This Agreement with its Exhibits set forth the entire agreement between the parties with respect to the subject matter contained herein and supersedes any previous understandings, commitments, or agreements, whether oral or written, with respect to the subject matter of this Agreement.

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

By : _____

Name: _____

Title: _____

Organisation: _____

Date :

Witness

By : _____

Name: _____

Title: _____

Organisation: _____



Exhibit A: Material and Protocols

1. For purposes of this Agreement, "Material" shall mean:
 - **Quantity of Product(s)**

Exhibit B: Testing and validation



By Testing and Validation it would mean the process of checking/tests/experiments conducted to prove the claim or confirm the performance, validity of data, or validate the processes as claimed by the mentioned technology/ material/ product.

It could also include all such tests/experiments that are required to be conducted for getting the necessary statutory approvals for introducing the product/technology in the market. List of such tests is to be provided by the recipient to the provider in writing and necessary approval has to be taken from the provider in writing.

It Prohibits:

- Its use for carrying out the tests/experiments for the purpose of reverse engineering or for any other purpose with an intention to exploit the findings for Business Development activities without entering into license agreement through transfer of technology from the provider.
- Its use for publishing papers, without the prior written consent and approval by the Provider. However, publishing of the products/material provided by the Provider in the papers for advertising purposes with an object to market the product, are not prohibited.
- Its citation and its discussion at various forums, seminars or conferences, without the prior written consent and approval by the Provider. For this, the Recipient as per the provisions of Clause 7 of the Agreement shall give to the Provider at least thirty (30) days advance notice and wait for his approval and/or objection/suggestion.

