

APPENDIX-IV

Standard Form – IV

(On Rs. 10 Non-Judicial Stamp Paper)

MoU

between

**Department of Science & Technology and Biotechnology
(DSTBT),**

Government of West Bengal

and

University/Grantee Institution

for

Intellectual Property Rights Protection

This Memorandum of Understanding (MOU) is made on the xx (day) of xx (month) of xxxx (year), at Kolkata, West Bengal, between the Department of Science & Technology and Biotechnology, Government of West Bengal, hereinafter referred to as DSTBT established since 1988, represented by its Additional Chief Secretary/ Principal Secretary (which expression unless repugnant to or contrary to the context shall mean and include change in the official concerned, legal representatives, assigns, nominees, executors and administrators) of the FIRST PART,

AND

University / Grantee Institution represented by its Registrar /PI of R& D project supported to University

DSTBT & Registrar of University/PI of Grantee Institution are hereinafter collectively referred to as the “Parties” and individually as a “Party”.

WHEREAS Department of Science and Technology and Biotechnology, Government of West Bengal, Vigyan Chetana Bhavan, DD Block, Plot- 26/B, Sector I, Salt Lake, Kolkata- 700064, hereinafter referred to as DSTBT the **Party** of the **First Part**, AND (hereinafter referred to as University) of the Second Part, both of them hereinafter singularly referred to as “The Party” and collectively referred to as “The Parties”.

AND WHEREAS University (f) “*University*” means a *University* established or incorporated by or under a *Central Act*, a *Provincial Act* or a *State Act*, and includes any such institution as may, in consultation with the *University* concerned, be recognized by the Commission in accordance with the regulations made in this behalf under this *Act*. 3.

WHEREAS it is necessary to enhance understanding and relationship by protecting Intellectual Property and Technology Transfer in the area of Science, Engineering and Technology to build a Start up ecosystem in the State and to create a Technology based Business Environment with exchange and co-operation in the area of academics and capacity building of Science & Technology Start ups for building upon the technology based business environment for the State;

AND WHEREAS it is further necessary to strengthen technical co-operation between the Parties herein through sharing experiences, best practices and knowledge in the area of academics and capacity building of Science & Technology Start ups and Science/ Engineering/Technology students of the State ;

AND WHEREAS it is also necessary to recognize the need to share value of academic co-operation and having agreed to further continue their common interests in protecting the mutual cooperation in the area of Intellectual Property Rights.

NOW THEREFORE the Parties have reached the following Memorandum of Understanding:

Article 1: Objective

The objective of this Memorandum of Understanding (hereinafter referred to as the “MoU”) is to establish a healthy framework for co-operative institutional relation to protect co-operation in the area of Intellectual Property Rights and Technology Transfer for a period of project/research being live and thereafter in terms of IPR rules/mandate—needs re-formulation. This MOU reflects the Participants’ sincere and genuine intentions to collaborate in the IPR protection set out herein pertaining to the research and development.

Article 2: Area of Co-operation

The Parties herein will make an endeavour to carry out the following terms and conditions consisting of exchanges and co-operative activities under this MoU which consist of

1. Collaborate in the matter of Intellectual Property Rights protection for Technology Transfer for the instant Research project funded by DSTBT, GoWB.
2. Documentation of Research work and submission to DSTBT, GoWB for IPR protection
3. Identify the possible area of Intellectual Property Rights protection.
4. Carrying out patentability assessment/IPR assessment by Patent Information Centre operational under West Bengal State Council of Science and Technology, DSTBT-GoWB.
5. Each parties will find out nodal person to carry out the strategy for IP protection and Management
- 4 Setting aside the scope of financial arrangement for Intellectual Property Rights protection in the project fund.

Article 3: Intellectual Property Rights Protection

1. Each Party shall retain all right, title, interest and ownership of its (i) content, materials, software, data, databases, documents, processes, programs, systems, instructions, designs, concepts, know-how, tools, frameworks, models and information and (ii) patents, trademarks, service marks, design rights, copyright, database rights, domain names, trade

secrets and any other intellectual property rights (“**Intellectual Property Rights**”), created other than in the provision of the Services rendered herein (“**Pre-Existing Intellectual Property Rights**”). All Pre-existing Intellectual Property Rights of a Party must not be used by the other Party for any purpose without owning Party’s prior written consent or as expressly permitted by this MOU. However, the intellectual property right arising on account of any activity undertaken in pursuance of this MOU shall vest with WBSCST, Government of West Bengal.

2. Each Party represents and warrants that it is not infringing any intellectual property rights or other rights or privileges of any person or entity or party while performing its obligations in terms of this MOU. The defaulting Party agrees to indemnify and hold the other Party harmless from and against any and all claims, suits, actions, damages, settlements, losses, liabilities, costs, and expenses arising hereof.
3. The Parties agree that neither will use the name of the other Party or its employees in any advertisement, press release or publicity with reference to this MOU or any product or service resulting from this MOU, without prior written approval of the other Party.
4. The terms with respect to title to and exploitation of intellectual property (including trademarks and service marks, copyrights, patents designs and confidential information on the subject matter of intellectual property, inventions and innovations for Research project funded by DSTBT, GoWB) will be filed and exploited jointly in the name of DSTBT, GoWB AND University.
5. All Intellectual Property solely conceived and/or developed by DSTBT, GoWB and University shall be owned by themselves. Intellectual Property developed from Research project funded by DSTBT will jointly owned by DSTBT and University/Institution. For purposes of this Agreement, the term "Intellectual Property" shall mean any and all works and property including, but not limited to , all intellectual properties, ideas, inventions, concepts, products, improvements, innovations, discoveries, developments, methods, formulas, techniques, software, know- how and writings made, conceived, reduced to practice, developed, written, or prepared by University out of said funded research of DSTBT, GoWB.
6. IP conceived or first reduced to practice by both parties shall be Jointly Owned in accordance with applicable patent laws. “Jointly Owned” means either Participant may exploit IP jointly.

7. IP generated out of *Human and Animal, Microorganism Subjects in Research*. Participants agree that adequate safeguards shall be taken whenever using human or animal subjects in research, consistent with applicable laws and policies regarding the use of human and animal subjects, including training of such trainees, faculty, or staff, an institutional review committee, research ethics board, or animal care and use committee composed of members with varying backgrounds who will perform complete and adequate review of projects involving the use of such subjects. Informed consent shall be obtained in accordance with national laws and regulations, international research standards, and accepted guidelines on good research practices and ethics. Each Participant shall, to the extent necessary for the legal conduct of activities under this MOU.
8. Protection of Microorganism will be guided by the Indian Patents Act, 1970 wherein added microorganisms under the purview of patentability through the Patents (Amendment) Act, 2002, in compliance with the TRIPS. According to Section 3(j) of the Patents Act, 1970, a plant, animal, seeds and biological processes, apart from microorganisms are not patentable. Therefore, section 3(j) of the Indian patents act, allows patentability of microorganisms. Microorganism need to be deposited in International Authorised Repository. The provision for cost born out for Microorganism deposition be made separately in Project fund. Thus protection of Microorganism will be guided by India and subsequent International regulations.
9. Any IPR protected in India /International will be guided by the existing India and International IPR Laws and regulations. The party will abide by the laws and regulation for filing any IP.
10. Plant Variety protection among two applicant will be governed by Plant Variety protection Act in India.
11. If the application pertains to a biological material obtained from India, the applicant is required to submit the permission from the National Biodiversity Authority any time before the grant of the patent. Cost related to Biodiversity permission may be met out of Project fund

12. Royally generated for any IP will be shared equally. Royalty sharing among Universities and Inventor/Author of any IPR will be guided by Institutional IPR policy.

Article: 4

Implementation

1. The Parties shall hold periodical consultation amongst themselves as deemed necessary for implementing this MoU at Vigyan Chetana Bhavan , Salt Lake, West Bengal.
2. For the implementation of this MoU, the Parties shall designate one nodal person each within one month of the commencement of this MoU to draw up the procedures, plan and strategy of with a view to achieve the objective of the MoU
3. Specific details of procedures and programmes for exchange and co-operation activities will be decided in a manner to be separately agreed upon by the Parties in future.
4. The programmes for which this MoU is signed are to be known as
 - i. Assessing the IPR emanating out of Research Project
 - ii. Protection of IPR as per existing India /International Laws and Regulations

Article: 5

Settlement of Differences

If any provision of this Memorandum is held by any court or other competent authority to be illegal, void or unenforceable or in part this MoU shall continue to be valid as to the other provisions independent of the effectual provisions. Any differences arising out of the interpretation, application and implementation of this MoU shall be settled amicably through consultations and negotiations among the Parties themselves. However, in case if the dispute remains unresolved it shall be referred to the Chief Secretary, Government of West Bengal who, after considering the views of the Department of Science and Technology and Biotechnology, will take a decision which will be final and binding on both the parties.

Article: 6

Amendment

This MoU can be reviewed or amended at any time by mutual written consent by the Parties. Such reviews or amendments shall come into force on such date as may be determined by the Parties and shall form an integral part of this MoU.

Article: 7

Entry into Force, Duration and Termination

1. This MoU shall come into force on the date of its execution.
2. This MoU shall remain into force for a period for which projects are funded by DSTBT and its outcomes thereof.
3. Continuing projects will come under purview of MoU-.
4. Publications in joint name/ acknowledgement of DSTBT by the PI-to be checked in as terms and conditions of project funding as it applies.

Article 8

Governing Law and Dispute Resolution

1. This MoU shall be construed and interpreted in accordance with and governed by the Indian laws and Parties agree to be subject to the jurisdiction of Courts at Kolkata, West Bengal, India.
2. Any controversy or difference and dispute arising between the parties herein touching this MoU or interpretation of any of its terms, covenants and obligation and breach of the terms and claim of loss and damage of the Parties against each other arising therefrom, unless mutually resolved by consultation by the Parties within a period of ninety (90) days of written notification of the dispute by a Party, shall be referred before a single Arbitrator to be appointed by mutual consent of the parties for adjudication and passing of Award in accordance with the provision of the Indian Arbitration and Conciliation Act 1996, or any statutory modification / re-enactment thereof and rules made there under. The place of Arbitration shall be at Kolkata.

Signed, sealed and delivered by:
Department of Science & Technology and
Biotechnology, Government of West Bengal

Witness:

Signed, sealed and delivered by:
University:

Witness: