

Draft Licence Agreement

LICENSE AGREEMENT

BETWEEN

NATIONAL RESEARCH DEVELOPMENT CORPORATION
'ANUSANDHAN VIKAS', 20-22, ZAMROODPUR COMMUNITY CENTRE
KAILASH COLONY EXTENSION, NEW DELHI 110048

और/AND

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LICENSE AGREEMENT

This LICENSE AGREEMENT made this day of 2021.

BETWEEN

NATIONAL RESEARCH DEVELOPMENT CORPORATION, an Enterprise of DSIR, Ministry of Science & Technology, Government of India, dealing within the meaning and registered under the Companies Act, 2013 having its Registered Office at 'Anusandhan Vikas' 20-22, Zamroodpur Community Centre, Kailash Colony Extension, New Delhi 110 048 (hereinafter called '**The Licensor**' which expression shall include its successor-in-interest and permitted assigns) of the **ONE PART**,

AND

Shri _____ S/o _____ R/o _____, _____ working in the name and style of _____ having its Office at _____ (hereinafter called '**The Licensee**' which expression shall include its legal heirs/representatives, successors-in-interest/business and permitted assigns) of the **OTHER PART**.

WHEREAS _____ is engaged in the promotion and development of _____ in India having its Office at _____ (hereinafter called '**_____**') and developed the KNOWHOW and PROCESS (as defined in Schedule II attached hereto) for manufacture of ARTICLE.

WHEREAS the Licensor is a Company established by the Government of India with the object, *inter-alia*, of development, promotion, licensing and commercial exploitation of technology, know-how and inventions, including the technical and engineering know-how.

WHEREAS the Licensor acquired from _____ the ownership and is now the absolute owner of the KNOWHOW pertaining to the PROCESS for manufacture of the ARTICLE (as described in Schedule-I attached hereto).

WHEREAS the Licensee, acknowledging and accepting such absolute ownership of the Licensor in the KNOWHOW, *Acknowledged commercial viability of know-how and satisfied that the know-how has commercial prospects*, has approached the Licensor for license to use, exploit and practice the KNOWHOW and the PROCESS of manufacture of the ARTICLE and to sell and vend commercially ARTICLE so manufactured.

AND WHEREAS the Licensor in furtherance of its objectives is agreeable to grant to the Licensee such License subject to covenants and conditions hereinafter contained.

NOW IT IS AGREED BY AND BETWEEN THE PARTIES AS FOLLOWS:

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1. INTERPRETATION

Subject to the context hereof, the following words and expressions shall be construed and interpreted, so as to have the following meanings.

- A. **“ARTICLE”** shall mean the article or substance or product (described in Schedule-I hereto) produced, made or manufactured by use, exercise and/or practice of the KNOW-HOW, wholly or partially, with the intent to sell and vend such article / substance / product commercially, and shall include any other article, substance or product which has as its component or part thereof the article made or manufactured by use/ exercise of the KNOW-HOW or which is an intermediate or derivative article, substance or product as well as modifications, developments, or improvements of any of them arising out of further development work.
- B. **“EFFECTIVE DATE”** shall mean the date of signing the License Agreement.
- C. **“IMPROVEMENTS”** shall mean all refinements, developments, and alterations of and in the KNOW-HOW and/or PROCESS and/or the ARTICLE capable of improving the technical economic and/or other characteristic(s) of any of them and “development” shall also be construed accordingly.
- D. **“KNOW-HOW”** shall mean the technology, technical know-how, the technical knowledge, information and data (described in Schedule–II hereto).
- E. **“PROCESS”** shall mean the process, method or manner of manufacture of production of the ARTICLE by use, exercise and practice of the KNOW-HOW and shall include any improvements, developments or modifications thereof.
- F. **“DESIGNATED PLANT”** shall mean a factory, facility, works or premises *of operating the sales of know-how* set up or used for any of the purposes of this License.
- G. **“REVIEW COMMITTEE”** shall consist of three members of the licensor i.e CTO, Manager (finance) and Incharge Legal who will review the status of license issued to licensee, royalty receipts received from the licensee and any other issue faced by the licensee in commercial exploitation of the know-how.

2. GRANT OF LICENSE

In consideration of the payment of Rs _____ (Rupees _____) along with GST as applicable by the Licensee to the Licensor on or before the execution of these presents as and by way of premium hereinafter provided and in further consideration of due and faithful observance and performance by the Licensee of the covenants and conditions hereinafter contained, the Licensor hereby grants to the Licensee the License to use and practice the KNOWHOW and the PROCESS to manufacture the ARTICLE and to sell and vend the article commercially on the terms and conditions herein provided.

3. DURATION OF THE LICENSE

This license shall come into force on the EFFECTIVE DATE and subject to covenants and conditions herein contained and will remain in force for a period of __ YEARS from the effective date or for a period of __ YEARS commencing from the accrual of the Licensee’s obligation to pay Royalty to the Licensor, in terms of Clause 5 (ii) hereof, whichever is later. *The license agreement shall be renewed or extended for the use of the*

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Know-How before six (6) months from the lapse of above said period with prior approval from the licensor and if the licensee doesnot want to renew or extend the said license than the licensee has to give an undertaking for not using the said Know-how to licensor.

4. COVENANTS

- A. The License hereby granted is and shall always be strictly non-exclusive in its nature and the LICENSOR may at its discretion grant to any other person a License or permission to use and practice the KNOW-HOW in any manner and at any time.
- B. The Licensee shall not use and practice the KNOW-HOW and/or the PROCESS for manufacture of the ARTICLE *outside the DESIGNATED PLANT in any circumstance and in case the licensee is found so then the licensee shall be liable to indemnify the licensor for the loss for which it would suffer.*
- C. *The Licensee use the know how in its own designated plant and before establishing its new plant the Licensee shall seek written permission from Licensor and for which the team of the Licensor shall visit the said new plant on the expenses of the Licensee and after permission of the Licensor the licensee shall be allowed to use the know how. This license should extend to whole of India and that will only be for the purpose of the manufacture and sale of the ARTICLE. That the Licensee shall be entitled to export The ARTICLE under written intimation to Licensor within 30 days of acceptance of each export order.*
- D. The Licensee or *its employee or ex employee, partners during the subsistence of the agreement shall not share/disclose* the process of KNOW-HOW to any third party or person, without prior written consent of the Licensor and shall take all possible precautions against any such disclosure *and in case the Licensor found violation of the present clause the Licensee shall be liable to indemnify the Licensor and to the extent of persons to whom the know how and process has been assigned transferred..*
- E. The Licensee shall not assign, transfer, encumber, mortgage, charge or sub-license or part with possession of the KNOW-HOW and/or PROCESS, wholly or *partially in any circumstances.*
- F. The Licensee shall not at any time hereafter deny or dispute the legality, validity or enforceability of this License or any of its obligations hereunder.
- G. The Licensee shall not at any time hereafter claim any independent, exclusive or any other right to the KNOW-HOW and/or PROCESS, including the absolute property of the Licensor.
- H. The Licensee shall have the right to manufacture of the Article in accordance with the KNOW-HOW and the benefits of all technical information and experience acquired by it in terms of this License Agreement after expiry of its validity, only after the RENEWAL of validity of this License Agreement on the terms and conditions as may be decided by the licensor. Without the renewal of the license agreement the Licensee shall not have the right to continue manufacturing and sale of the Article under the process know-how of the _____.
- I. *The Licensee has to commence manufacture of the ARTICLE in its Designated PLANT / FACTORY within **TWELVE MONTHS** from the EFFECTIVE DATE or in event the Licensee is unable to set up production within stipulated period viz., due to unavoidable circumstances and causes beyond the*

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control of the Licensee, the Licensee shall make a request in writing for extension of time limit before the expiry of the date, giving detailed reasons. This request will be carefully examined and considered by the Licensor and then decided on by the Licensor. The decision of the Licensor in this regard shall be final and binding on the Licensee.

- J. The Licensee shall not represent or threaten to pass off the KNOW-HOW/PROCESS as its own technology or KNOW-HOW/ Process to any body *and it shall be liable to indemnify the loss.*
- K. It will not be open to the Licensee to claim any exemption from or reduction in the payment of royalty accruing under Clause 5 on the plea of having used their own KNOW-HOW or having effected any improvement upon the said KNOW-HOW and PROCESS or on the plea that the article to be manufactured under the said KNOW-HOW and PROCESS have been manufactured by using a different KNOW-HOW/PROCESS and the Licensee shall be liable for the payment of the royalties for all the articles manufactured by them and covered by this agreement irrespective of any plea whether the same have been manufactured by the said KNOW-HOW / PROCESS or otherwise.
- L. *The License Agreement shall be reviewed after every two (2) years from the date of signing of the license agreement by the review committee of the licensor and if the licensee found violating any terms and conditions of the agreement then the license agreement may be terminated and licensee shall be liable to indemnify the Licensor*
- M. The covenants contained in this Clause 4 shall survive the expiry and or termination of this License Agreement.

5. PAYMENT OBLIGATIONS

In consideration of the License hereby granted to, the Licensee shall pay to the Licensor:

- (i) Premium of a sum of **Rs _____ (RUPEES _____ ONLY)** along with *Goods and Service Tax (GST)* as applicable on or before the execution of license agreement.
- (ii) **Royalty @_____** on the ex-factory sale price along with *Goods and Service Tax (GST)* as applicable for the time being of the ARTICLE, on the first day of April and on the first day of October every year regularly and punctually and in any event not later than the first day of May and first day of November immediately following, in every such year. PROVIDED that the liability of the Licensee to pay royalty under and in terms of this sub-clause (ii) shall accrue upon *the commencement of the manufacture of the ARTICLE at the DESIGNATED PLANT including for any usage of the article by the Licensee* and shall continue for a minimum period of _____ **YEARS** from such commencement.
- (iii) Interest @18% per annum for the first six months and for the subsequent six months shall be @24% per annum and if default pursuits then shall be @30% per annum on all overdue amounts (including any interest in arrears) from the due dates of payments till realization/recovery of such amounts by the Licensor. Provided that interest on interest in arrear shall not be charged until the expiry of the period of 30 days from the dates of payment becoming due.

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- (iv) The interest enumerated in sub paragraph (iv) herein above shall be adjusted first by the Licensor against payment received from the Licensee and the residual amount shall then be adjusted against the royalties due.
- (v) *The Licensee will deposit advance royalty of..... % (between 10% to 30% on case to case basis) of the premium amount to the licensor before signing the license agreement. The said advance royalty amount will be refunded/adjusted in the future royalty payment without any interest to the licensee after two (2) years based on the recommendations of the Review Committee of the licensor*

EXPLANATION:**For the purposes of computation of royalty:**

- (v) “The manufacture of the ARTICLE” shall mean deem to commence or take place when such *ARTICLE is in a consumable/ usable state* (including the ARTICLE in storage or ready for the Licensee’s own use or otherwise).
- (vi) “Ex-factory sale price” shall deem to be the total price from time to time declared to, and accepted by, the authority under the Central Goods & Services Act, 2017, or any other authority of the Government of India, or, in the absence of such declaration, as published/communicated to the trade or the public in this behalf; the price relevant for the purpose of sub-clause (ii) of Clause 5 is deemed to be the highest price so declared/ published/ communicated during the six month period for which the royalty is to be calculated (without any deduction being made there from on account of any discount or rebate whatever).
- (vii) All payments due under this Clause 5 shall be made within 30 days from the stipulated dates and without any deduction, withholding or adjustment except to the extent required by law.
- (viii) The Royalty Returns *as annexed* shall be accompanied by Goods and Service Tax (GST) Returns for the period(s) under consideration.

6. REPRESENTATIONS AND UNDERTAKINGS**A. By Licensor:**

- (i) The Licensor shall within **180** days from the EFFECTIVE DATE disclose or cause to be disclosed, or provide or cause to be provided, as the case may be, to the Licensee, the information, data and documents concerning the KNOW-HOW and the related process provided that such information, data or documentation may be so disclosed/provided by the Licensor to the Licensee in different lots/installments but sufficient to enable the Licensee to use them for this purpose of the License.
- (ii) The Licensor shall at the request of the Licensee, demonstrate or cause to be demonstrated, as it considers appropriate, the working of the KNOW-HOW on the scale at which it has been developed.
- (iii) The Licensor shall disclose to Licensee in documented form to the maximum extent possible any improvements, developments or modifications if any made

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by the _____ to the KNOW-HOW or the PROCESS or the ARTICLE by the Licensor for the benefit of the Licensee as integral part of the KNOW-HOW and/or the PROCESS, subject to the agreement of _____ with the Licensor.

- (iv) The Licensor may, at the request and at the cost of the Licensee train or arrange to be trained the owner(s) and/or the authorized employees of the Licensee possessing the requisite qualifications and experience as required at the _____.
- (v) The Licensor may at the request of the Licensee provide any further or other technical assistance to the Licensee for effective and expeditious implementation of this License upon mutually agreed terms and conditions.

B. By Licensee:

- (i) The Licensee shall during the continuance of the License and otherwise observe and perform the covenants and conditions of this License diligently and faithfully and to the satisfaction of the Licensor.
- (ii) The Licensee shall promptly disclose and provide to Licensor in documented form to the maximum extent possible, all improvements, developments and modifications in regard to the KNOW-HOW and/or PROCESS and/or ARTICLE or related or incidental to any of them. Any such improvements, developments and modifications such constitute an integral part of the KNOW-HOW and/or PROCESS and shall as such belong to the Licensor absolutely.
- (iii) The Licensee shall not keep the sale price of the Article unusually high.
- (iv) The Licensee shall always keep and maintain at its usual place of business, separate books of accounts relating to the royalties in such form and containing such information and particulars as may be required by the Licensor for all or any of the purposes of this License, including Clause 5 hereof.
- (v) The Licensee shall at all reasonable times, produce the books of accounts so maintained and all other relevant books of accounts, vouchers, documents, receipts and connected papers, if any, to the Licensor, its attorneys or duly authorized agent(s) and will permit the Licensor, its attorneys or duly authorized agent(s) to inspect the same, take copies of extracts there from and the Licensee shall give full information as may be required by the Licensor for determination of the amount of royalties payable hereunder as aforesaid. ~~#~~*The Licensor shall be entitled to inspect the designated plant and sale places without notice to the licensee for the purpose of actual position of manufacturing and sale of the articles and photograph the designated plant provided no PROCESS DETAILS or trade secrets are revealed in these photographs.*
- (vi) The Licensee shall, before first day of April and First day of October every year deliver to the Licensor, its attorneys or duly authorized agents, a true and complete statement of the ARTICLE manufactured, stored and marketed or used for its own purposes by the Licensee and ex-factory sale price of the ARTICLE during the period for which the royalties are payable to the Licensor, as well as a statement of calculations of the estimated royalties. The Auditor of the Licensee

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shall duly certify all such statements and their validity shall be proven and substantiated, if so required by the Licensor.

EXPLANATION:

Sale price for the articles used for own use or consumption by the Licensee shall be highest ex-factory price of the article if any sold or the price it would fetch if so sold in the market in the absence of merchant sale.

- (vii) The Licensee shall permit the Licensor, its attorneys its duly authorized agents and its authorized representative(s) at all convenient times to enter into and upon the DESIGNATED PLANT or any other premises of the Licensee in which the ARTICLE is stored or sold under this License for the purpose of inspection of the ARTICLE, the method of its manufacture and the manner of use and practice of the KNOW-HOW and/or the PROCESS so that it may be ensured that the provisions of this License are being complied with by the Licensee.
- (viii) The Licensee shall at its own cost affix a label or plate or inscribe in a conspicuous manner upon every article, box or packet containing the ARTICLE its components and spares the legend or inscription "**KNOW-HOW DEVELOPED BY _____ AND LICENSED BY NRDC, NEW DELHI**" and similarly, every advertisement, publicity material / customer literature / hoardings etc. in respect of the ARTICLE shall include the same legend in bold letters as aforesaid, at a conspicuous place in such advertisements/ publicity material / customer literature, hoardings etc. In case the Licensee puts any advertisement in any form which includes any notice, circular, label, wrapper, or other document and any announcement made orally or by any means of producing or transmitting light, sound or smoke, in respect to the Article / Product licensed as per this license agreement, the Licensee shall ensure compliance of all such Indian Laws, Rules and Regulations and Guidelines issued by the Supreme Court / High Courts / Subordinate Courts of India from time to time and there should not be any exaggerated claims in the advertisement. Under no circumstances for violation of any such Laws, Rules, Regulations and Guidelines as above mentioned by the Licensee, the Licensor or _____ shall be held responsible. The Article should not be clubbed or packaged with any other product of the licensee and shall be sold in the market exclusively.
- (ix) The Licensee shall notify to the Licensor the change, if any, in its Registered Office / DESIGNATED PLANT within 15 days of such change and shall also notify the change in the constitution of the Licensee within the aforesaid stipulated period.
- (x) The Licensee shall not in its own name or in the name of any third party, file any Patent Application for the grant of Patent of the KNOW-HOW hereby licensed and shall also not oppose at any time any Patent Application made by the Licensor or _____ either jointly or severally.
- (xi) The Licensee shall, in token of his being satisfied of the PROCESS, sign a certificate after successful demonstration of the PROCESS at _____.
- (xii) The Licensee shall permit authorized representative(s) of the Licensor/ _____ on Licensor's recommendation to visit the designated plant of the Licensee and

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photograph the designated plant provided no PROCESS DETAILS or trade secrets are revealed in these photographs.

7. TERMINATION

- A. The Licensor may terminate this License forthwith on the occurrence of all or any of the following events:
- (i) The Licensee fails to pay the Licensor any of the amounts due and payable to it hereunder, including the royalties.
 - (ii) The Licensee commits any breach of other covenants and conditions to be observed and performed by the Licensee under this License and fails to rectify such breach within 15 days from its occurrence.
 - (iii) The Licensee enters into composition with its creditors or any proceeding for its liquidation or for appointment of a Receiver or for Attachment of its assets/properties is threatened or initiated in any Court of Law.
 - (iv) The Licensee fails to obtain and maintain the necessary permissions and sanctions from the appropriate authorities.
 - (v) The Licensee fails to commence manufacture of the ARTICLE in its DESIGNATED PLANT / FACTORY within **TWELVE MONTHS** from the EFFECTIVE DATE or in event the Licensee is unable to set up production within stipulated period viz., due to unavoidable circumstances and causes beyond the control of the Licensee, the Licensee shall make a request in writing for extension of time limit before the expiry of the date, giving detailed reasons. This request will be carefully examined and considered by the Licensor and then decided on by the Licensor. The decision of the Licensor in this regard shall be final and binding on the Licensee.
 - (vi) The Licensee suspends or discontinues manufacture of the ARTICLE for a period exceeding twelve months without obtaining prior written permission or extension in this regard from the Licensor.
 - (vii) The Licensee represents or threatens to pass off the KNOW-HOW / PROCESS(ES) and sells and vends the ARTICLE accordingly.
 - (viii) The Licensee fails to maintain quality of the product as per specifications stipulated by _____ where the know-how has been developed
 - (ix) *The licensor shall blacklist the licensee if the licensee violates any terms and conditions of the license agreement in any circumstances.*
- B. (i) The Licensee may also request to Licensor to terminate this license agreement by giving one month notice and specifying the reasons thereof provided that pending royalty amount together with overdue interest, if any, due and payable till the date of notice by the Licensee to the Licensor is fully paid and furnished an undertaking that the Licensee shall not use and practice the KNOW-HOW / PROCESS including any improvements, developments and modifications or incidental to any of them.

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- (ii) Upon termination of the License as herein provided, the Licensee shall cease to have any right to use and practice of the KNOW-HOW and the PROCESS (ES) and shall return to the Licensor or its nominee all information data or documentation within such time as may be specified by the Licensor provided that such termination shall not in any event, discharge the Licensee of its obligations and liabilities under and in terms of Clause 4 and Clause 5 (ii) hereof.
- C. Nothing in this Clause 7 shall annul or abridge other rights and remedies of the Licensor under this License Agreement or in law.

8. **WAIVER**

- A. Any indulgence shown by the Licensor to the Licensee in any manner shall not constitute waiver of its rights and remedies against the Licensee. The Waiver, if any, by the Licensor, of any right of the Licensor or of any breach by Licensee of any term, condition or obligation of the License shall not in any event be construed as a waiver of any subsequent right or remedy or breach as the case may be or of any other right or remedy or breach of the same or different nature.
- B. None of the parties hereto shall be construed as an agent or representative of the other party.
- C. The Licensee hereby waives any requirement of warranties and guarantees, in terms hereof, or arising by law or in contract or tort or otherwise, including any implied warranty or guarantee as regards the quality or merchantability of the ARTICLE or fitness, utility or the workability of the KNOW-HOW and/or the PROCESS for any purpose whatsoever.

9. **NOTICES**

All notices required to be served on the Licensee under the terms of this License shall be deemed to be duly served if the same shall have been delivered to, left with or posted by Registered / Speed Post Mail to the Licensee at its last known place of business or the Registered Office.

10. **ENTIRE AGREEMENT**

This License shall be sole repository of the terms agreed between the parties and no amendment thereof shall take effect and will be binding on both the parties unless such amendment is authorized by the Chairman and Managing Director of the Licensor and is recorded in writing and signed by both Licensee and the Licensor. The Application Form for acquiring License from the Licensor shall form a part of this License Agreement.

11. **SAVING PROVISIONS**

- (A) Notwithstanding anything herein contained, the Licensor shall always have the right to disclose and provide to the Central Government or its authorized representative, agency or undertaking, the KNOW-HOW and/or the relative PROCESS, to use and practice the same for the purpose of experimentation and/or further research or development thereof, with the right to sell and vend the ARTICLE in such manner as the Central Government may, in its judgment decide, for "Government purposes", or otherwise in public interest.

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(B) The rights of the Licensor hereunder are cumulative and not mutually exclusive.

12. ARBITRATION AND JURISDICTION

- A. (i) If any dispute or difference arises between the parties hereto as to the construction, interpretation, effect and implication of any provision of this license agreement including the rights or liabilities or any claim or demand of any party against other or in regard to any other matter under these presents but excluding any matters, decisions or determination of which is expressly provided for in this license agreement, *such disputes or differences shall be referred to the Sole Arbitrator to be appointed out of the Panel of Arbitrators of National Research Development Corporation (NRDC) with the consent of both the parties failing which the aggrieved party shall be competent to refer the dispute to any of the arbitrators from the panel of Arbitrators of National Research Development Corporation for the appointment of Sole Arbitrator* in accordance with the Arbitration & Conciliation Act, 1996 (as amended / modified from time to time) and rules framed thereunder for the time being in force (the Act) and the reference to arbitration shall be deemed to be submission within the meaning of the Act.
- (ii) If however, the Licensee does not make any claim or demand or raise any dispute or difference in terms of this Clause within one year from the date on which such claim or demand arises, the Licensee shall be deemed to have waived and abandoned such claim or demand or the right to raise such dispute or difference against the Licensor.
- (iii) (a) *The venue of the arbitration shall be at New Delhi and the language of arbitration proceedings shall be English.*
- (b) Each party shall bear and pay its own cost of the arbitration proceedings unless the Arbitrator otherwise decides in the Award.
- (c) The provisions of this Clause shall not be frustrated, abrogated or become inoperative notwithstanding this license agreement expires or ceases to exist or is terminated or revoked or declared unlawful.
- B. The High Court of Delhi at New Delhi and Courts subordinate to it shall have exclusive jurisdiction in all matters concerning this agreement including any matter arising out of the Arbitration proceedings or any Award made therein.
13. The license agreement has been prepared in two originals so that each party may have one original for its reference and record.

IN WITNESS WHEREOF, the Licensor and the Licensee have set their respective hands and seals on this day, month and year first above written in the presence of following Witnesses:

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FOR AND ON BEHALF OF THE LICENSOR SIGNED BY

Cmde Amit Rastogi (Retd.)
Chairman & Managing Director, NRDC

(Amit Rastogi)

AND

Shri. R K Nangia
Company Secretary-(D)

(R K Nangia)

Witnesses:

1. Name and Signature
Occupation
Address

2. Name and Signature
Occupation
Address

**FOR AND BEHALF OF THE LICENSEE
SIGNED BY**

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Witnesses:

1. Name and Signature
Occupation
Address

2. Name and Signature
Occupation
Address

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SCHEDULE – I

NAME OF THE PROCESS: _____

DEVELOPED BY: _____

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Company Secretary (D)

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SCHEDULE – II

Process know-how manual for “_____” as developed by
_____.

- A. Laboratory scale process data as containing:-
- *Know-how Document (in NRDC format)*
 - *Regulatory Compliance if any*
- B. Training of representatives of the Licensee possessing prescribed qualifications and experience as suggested by _____ for a period not exceeding _____(_____) man days, at time and place convenient to _____.

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Company Secretary-(D)