



ONE STOP DESTINATION FOR
WORLD CLASS LEGAL SUPPORT SERVICES

SKJ Juris Services (P) Ltd.
2nd Floor, Kundan Chambers, Thube Park,
Shivajinagar, Pune 411 005, MH, India.
Tel: 020 – 30223654, Fax: 020 – 25536661
E. Mail: info@skjjuris.com
Web site: www.skjjuris.com

SHAREHOLDERS AGREEMENT - TEMPLATE

THIS AGREEMENT made at Pune on this day of, 2011 by and between:

1. **ABC Limited**, a company incorporated under the laws of the British Virgin Islands and having its registered office at British Virgin Islands (hereinafter referred to as “**ABC**,” which expression shall be deemed to mean and include its successors and permitted assigns);

AND

2. **DEF Pharmaceuticals Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at _____ Pune (hereinafter referred to as “**DEF**,” which expression shall be deemed to mean and include its successors and permitted assigns);

AND

3. **XYZ Biotech Limited**, a company incorporated under the Indian Companies Act, 1956 and having its registered office at _____ Pune (hereinafter referred to as “**the Company**,” which expression shall be deemed to mean and include its successors and permitted assigns).

AND

4. **Mr. P**, M.D., a Canadian national, aged ___ years, residing at West Vancouver, Canada, (hereinafter referred to as “**Mr. P**”, which expression shall be deemed to mean and include his permitted assigns and executors).

WHEREAS

1. DEF is in the business of manufacturing and dealing in healthcare products. ABC is in the business of research & development, process development and technology transfer for recombinant proteins for human and animal use.
2. Mr. P is the chief executive and principal shareholder of ABC. DEF and ABC have caused the Company to serve as their joint venture vehicle for manufacturing, import,

distribution, research and development, export and selling the Products in the Territory (“**the Project**”).

3. DEF and ABC have agreed that their respective rights and obligations as Shareholders in the Company shall be regulated by the provisions of this Agreement and the Articles.

IT IS AGREED as follows:-

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement (including the Recitals)

“**Act**” means the Indian Companies Act, 1956.

“**Agreement**” means this Shareholders Agreement and all the Annexures to this Agreement.

“**Articles**” means Articles of Association of the Company.

“**Affiliate**” means : (a) any entity, which controls, is controlled by, or is under the common control of any of the Parties and/or (b) any Relative or associate or acquaintance of any of the Parties. The term “**control**” being used in the sense of beneficial ownership, of more than 50% of the voting securities, and power to elect, appoint or remove either singly by itself or together with other Affiliates a majority of its directors or to direct and control the management of an entity whether through the ownership of voting capital, by contract or otherwise.

“**Agreed Form**” means, in relation to any document, the form of that document which has been mutually agreed between the Parties and initialed for the purpose of identification by or on behalf of the Parties.

“**Board**” means Board of Directors of the Company.

“**Board Meeting**” means meetings of the Board held pursuant to Clause 4.4

“**Business**” means manufacture, import, distribution, research and development, sale and export of the Products.

“Business Day” means a day on which banks are generally open for normal business in Pune

"Chairman" means the chairman of the Board ;

“Commencement Date” means the date of commercial production of the Products as notified in writing by the Company to DEF and ABC.

“Constitutional Documents” means the Memorandum of Association and Articles of the Company;

“Deed of Adherence” means the deed of adherence in the form and manner specified in Annexure C.

“Directors” means the directors on the Board.

“Equity Shares” means the equity shares of the Company, presently having a face value of Rs. 10 per equity share.

“Effective Date” means the date of execution of this Agreement.

“Facility” means the manufacturing plant and facility of the Company at _____ Pune and/or any other location decided by the Company at a later date for , research and development, manufacturing, storage, selling, marketing and distribution of the Products.

“Intellectual Property Rights” (IPR) includes trademarks, trademark registrations, tradenames, and applications therefor, service marks, service names, copyrights, copyright registrations and applications therefor, designs, patents, patent applications, inventions, database rights, trade secrets and know-how, software programs, right to creative or original works and/or any other intellectual property rights in relation to the Products, the Proprietary knowledge, and the Technical Knowhow.

“IPO” means the initial public offer and listing of the shares of DEF on a recognized stock exchange (s), wherein the term recognised stock exchange means a stock exchange including any international stock exchange recognised and/or regulated by any regulatory authority.

“Law” includes all statutes, enactments, acts of legislature or parliament, laws, ordinances, rules, bye-laws, regulations, notifications, guidelines, policies, directives and orders of any Government, statutory authority, regulatory agency, tribunals, board, court or recognised stock exchange.

“Material Breach” means any breach of this Agreement or the Related Agreements by any of the Parties and so determined and held by an arbitral tribunal or court or any other judicial or quasi-judicial authority.

“Parties” shall mean ABC, DEF, the Company and Mr. P collectively, and **“Party”** shall mean ABC, DEF, the Company and Mr. P singly.

“Person” includes any legal or natural person, any association thereof, partnership, firm, trust, company, government, local authority, department or other body (whether corporate or unincorporated).

“Products” shall mean bio-pharmaceutical preparations/biogenics based on recombinant proteins using biotechnology for Human and Animal Healthcare, as listed in Annexure D, which list may be amended from time to time by mutual consent of the Parties expressed in writing.

“Proprietary knowledge” shall mean the exclusive Technical Knowhow and full ownership rights of Mr. P and ABC, jointly and severally, in respect of the technology involved in composing and cultivating the cell line, production of proteins, purification and vialing for the following:

- i. TNK-ase/ Tissue Plasminogen Activator (TNK-tPA)
- ii. Granulocyte Macrophage Colony Stimulating Factor (GM-CSF)

“Registered Office” means the registered office of the Company as stated in Clause 2, or as may be changed from time to time in accordance with Law.

“Related Agreements” means the Licence Technical Knowhow and Supply Agreement executed between ABC, Mr. P and the Company.

“Management Policy” means the management policy, guidelines and practices of the Company as may be decided by the Board from time to time, by simple majority.

“Relative” means **“relative”** as defined by sub-section (41) of Section 2 of the Act.

“Secretary” means a person appointed as the company secretary by the Board.

“Security” means mortgage, charge, (whether fixed or floating), pledge, lien, hypothecation, or assignment with provision for re-assignment and any other security

interest or arrangement having the same legal or economic or commercial effect as any of the foregoing.

“Shares” shall include Equity Shares of the Company.

“Shareholder” means the holder of any Equity Shares.

“Specified Matter” in the context of any action, decision or resolution by the Board or the Shareholders, means any of the matters listed in Annexure A hereto.

“Valuer” shall mean a reputed national or international firm of chartered accountants to be decided by the Board.

“Technical Knowhow” means the technical knowhow to be provided by Mr. P and ABC, jointly and severally, to the Company as set out in the Related Agreements;

“Territory” shall mean the countries enlisted in “Annexure B.”

1.2 Interpretation

Nothing contained herein shall be construed to provide, create, transfer or assign any benefit, rights, or privileges to any party not a party to this Agreement save and except as expressly provided for herein.

Words importing the singular include the plural; words importing the masculine shall import the feminine; and vice versa, unless contrary to the terms, conditions and context of usage.

Reference to days, months and years are to calendar days, calendar months and calendar years respectively.

The words "include" and "including" are to be construed without limitation, unless contrary to the terms, conditions and context of usage.

In addition to the terms defined in this Clause 1, certain other terms are defined elsewhere in this Agreement and whenever such terms are used in this Agreement they shall have their respective defined meanings, unless the context expressly or by necessary implication otherwise requires.

The Recitals and Annexures contained herein shall constitute an integral operative part of this Agreement.

2. REGISTERED OFFICE

The Parties agree that the registered office of the Company shall be _____ Pune, India.

3. THE BUSINESS OF THE COMPANY

3.1 The Company shall carry on the business of research and development, manufacturing, import, distribution, marketing, selling and export of the Products in the Territory.

3.2 The Parties agree to exercise their respective rights hereunder and as a Shareholder so as to ensure that:-

(a) the Company performs and complies with all obligations on its part under this Agreement and complies with the restrictions imposed upon it under the Articles.

(b) the Business is conducted in the best interests of the Company on sound commercial principles, in accordance with the Management Policy (or any amendment or modification of the same), in accordance with Law, on arm's length terms and in accordance with the highest standards of corporate governance.

4. THE MANAGEMENT OF THE COMPANY

4.1 Board of Directors

The Board shall be responsible for, establishing the policy, goals and organisational structure of the Company, for allocating resources and delegating authority to and monitoring the performance of the Company's management, to take appropriate actions and generally providing business direction to, and approving or disapproving the business strategy of the Company.

4.2 Number and Appointment of Directors

4.2.1 The Board shall comprise of seven Directors or such other number as may be decided by the Board from time to time.

- 4.2.2 As long as ABC continues to hold at least 25% of the Equity Shares of the Company, one-third of the total number of Directors (i.e. 2 Directors) shall be nominated by ABC.
- 4.2.3 The Articles shall provide for the appointment of remaining two-thirds of the total number of Directors (i.e. 5 Directors) by the Shareholders in a general meeting according to the principle of proportional representation by a system of cumulative voting, such that 5 nominees of DEF are so elected as Directors.
- 4.2.4 The appointment / nomination of all Directors pursuant to Clauses 4.2.2 and 4.2.3 above shall be for a period of 3 (Three) years from the date of the general meeting of the Company and will thereafter be repeated every three years.
- 4.2.5 DEF and ABC shall be entitled by notice in writing to the Company to remove or replace its nominee Director(s) appointed pursuant to Clauses 4.2.2 and 4.2.3. Any such appointment or removal shall take effect from the date it is notified to the Company in writing.
- 4.2.6 Any interim casual vacancies shall be filled in accordance with the provisions of Section 262 of the Act. It is clarified for the avoidance of doubt, that no Director shall be liable to retire by rotation.
- 4.2.7 DEF and ABC shall be entitled to nominate alternate directors to each of its Directors in the circumstances permitted by the Act and the Board shall ensure that such Persons are appointed as the concerned Directors' alternate directors.

4.3 Appointment of Chairman and Managing Director

- 4.3.1 A nominee of DEF shall be appointed as the Chairman of the Company. The Chairman shall draw such remuneration as is approved by the Board. The Chairman shall be ex-officio Chairman at the general meetings of the Company in accordance with applicable provisions of the Act and the Articles. At all Board Meetings if the Chairman is present he shall preside, and in his absence, the Board may elect one of them to be the chairman for that meeting.
- 4.3.2 Save and except if it relates to a Specified Matter, in the event of a tie, the Chairman shall have a casting or a second vote at any meeting of the Board or at any meeting of the Shareholders.
- 4.3.3 A nominee of DEF shall be appointed as the Managing Director/Chief Executive Officer (CEO) of the Company, and shall draw such remuneration as is approved by the Board.

4.4 Board Meetings

- 4.4.1 Board Meetings shall be held not less than four times in every year and at not more than three monthly intervals. Unless otherwise agreed by the Directors, 7 (Seven) days' written notice shall be given to each of the Directors of all meetings of the Board, at the address notified from time to time by each Director to the Secretary. Each such notice shall contain, inter alia, an agenda specifying in reasonable detail the matters to be discussed at the relevant meeting, and shall be accompanied by all relevant papers/documents for discussion at such meeting and shall be sent by courier or by telefax or any other form of recorded delivery. A matter shall not be taken up at any Board meeting unless expressly specified in the agenda accompanying the notice or unless three fourths of the Directors present at a meeting agree otherwise. Provided however, subject to applicable Law, any other matter arising out of emergency may be raised with the prior approval of the Chairman of the Company.
- 4.4.2 Any three Directors may require the Secretary to convene a Board Meeting.
- 4.4.3 The quorum for any Board Meeting shall be three Directors present at the commencement of, and throughout the meeting. If no quorum is present, then the meeting shall be adjourned to the same day of the forthcoming week, at the same place and at the same time.
- 4.4.4 All Board Meetings shall be held at such place as may be agreed by all the Directors from time to time and, failing such agreement, shall be held at the Registered Office of the Company. The venue of the Board Meeting shall be detailed in the notice referred to in Clause 4.4.1 above. Subject to Law, a Director may attend a Board Meeting via a videoconferencing or teleconferencing facility.
- 4.4.5 Notwithstanding anything to the contrary contained in this Agreement, any action, decision or resolution regarding the Specified Matters shall be passed either by the Board or at the Shareholders' meetings or by circular resolution only after ABC's affirmative consent have been obtained.
- 4.4.6 Subject to the provisions of the Act, the Board may pass resolutions by circulation. The Directors shall be required to convey their approval or disapproval of the circulated resolution to the Secretary within a period of five days. If no communication is received by the Secretary from any Director, within the said period of five days from the date of circulation of the resolution, such Director will be deemed to have approved the resolution.

4.5 Committees of the Board

- 4.5.1 The Board may delegate all or any of the Board's authorities and powers in relation to the day-to-day management of the Company (other than those (a) which it is prohibited by Law from so delegating and/or b) the Specified Matters) to a committee or committees consisting of either Directors or a combination of directors and management personnel.
- 4.5.2 All committees of the Board shall be constituted in the same proportion as the Board. All meetings of the Committee/s shall be held at the place agreed by the members from time to time and failing agreement at the registered office of the Company. A committee meeting may be held by teleconference/videoconference.
- 4.5.3 The Committee or Committees shall report to the Board at the times and in the manner from time to time required by the Board.

4.6 Recruitment and Organisation Structure

The Parties agree that they shall cause the Company to sign employment agreements with key employees in the Company, including the managing director specifying delivery of results and scope of accountability/responsibility.

5. SHAREHOLDER MEETINGS

- 5.1 Not less than 21 (twenty one) clear days written notice of every general meeting shall be given to all Shareholders. A meeting of the Company may be called by giving shorter notice in the manner provided in the Act.
- 5.2 Every notice convening a meeting of the Shareholders shall set out the agenda in full and with sufficient details of the business to be transacted thereat and no item or business shall be transacted at such meeting unless the same has been stated in full and in sufficient details in the notice convening the meeting. A copy of any documents to be reviewed or discussed at such meeting shall accompany such notice. Provided however, subject to applicable Law, any other matter arising out of emergency may be raised with the prior approval of the Chairman.
 - 5.2.1 The quorum for all general meetings of the Company shall include at least one authorised representative of DEF and ABC. If within half an hour of the time appointed for the meeting, a quorum is not present, the meeting shall be adjourned to the same day 2 (two) weeks later at the same time and place. If at any such adjourned meeting, a valid quorum is not present within half an hour of the time appointed for such adjourned meeting, the members present shall constitute a quorum.

6. FINANCIAL AND OTHER MATTERS

- 6.1 The Company shall maintain and prepare accounts in compliance with accounting standards as may be required under Law.
- 6.2 The financial year of the Company shall be April 1 of each year to March 31 of the following year.
- 6.3 The Company shall prepare and submit to all Directors within 4 (Four) weeks from the expiry of each calendar quarter, a profit and loss account, balance sheet and cash-flow statement.

7. FINANCE FOR THE COMPANY

7.1 Equity

- 7.1.1 The authorised share capital of the Company shall be INR 50 (fifty) million consisting of 5 (five) million Equity Shares of Rs.10 each. The issued subscribed and paid-up share capital of the Company shall be INR 40 (forty) million consisting of 4 (four) million Equity Shares of Rs.10 each, which shall be subscribed to for cash, at par, in the following manner:-

- a) DEF and its individual nominees 75% (seventy-five per cent) aggregating to 3 (three) million Equity Shares (“**DEF Shares**”).
- b) ABC and its individual nominees 25% (twenty-five per cent) aggregating to 1 (one) million Equity Shares (“**ABC Shares**”).

- 7.1.2 The Parties shall subscribe to the DEF Shares and ABC Shares for cash at par by making the necessary remittances to the Company on or before the expiry of 365 days from the Effective Date.

7.2 Project Finance

- 7.2.1 The Parties estimate that the total finance for the Project shall be INR. 500 (Five hundred) million as more particularly set out in Annexure F (“**Financial Outlay**”). It is clarified for the avoidance of doubt that DEF shall have the right to vary the Financial Outlay without prejudice to the quality, suitability and sustainability of the Project, in which event the Project Finance shall stand modified accordingly.

7.2.2 Subject to Clause 8.1, the Parties intend that the Project shall be financed by the Parties subscribing to the equity shares of the Company and by the Company issuing convertible / redeemable preference shares to DEF, with a dividend of 300 basis points below the prime lending rate of the State Bank of India, from time to time and on such other terms and conditions as shall be agreed by the Parties. In the event DEF fails to arrange for the Financial Outlay, the same shall constitute a Material Breach of this Agreement by DEF.

It is clarified for the avoidance of doubt that for any financing of the Project, ABC shall not be required to provide any security or guarantee. It is further clarified for the avoidance of doubt that any redemption of preference shares issued to DEF by the Company shall be as per applicable Law, internal accruals of the Company, IPO proceeds and/or by further equity funding.

7.3 ADOPTION OF ARTICLES

Within 30 days from the Effective Date, the Company will hold an EGM, where the Articles (substantially in the form of Annexure E) shall be adopted by the Shareholders.

8. INCREASE IN SHARE CAPITAL

8.1 Further Share Issues

Unless the Shareholders agree otherwise, the Company shall not issue or allot Shares (or any right to subscribe for, or convert securities into Shares in the Company) on any terms to any Person unless it has first made an offer to DEF and ABC to allot to them on the same or more favourable terms, those Shares or rights equal to the proportion of all the Shares held by them and the period during which any such offer may be accepted has expired or the Company has received notice of the acceptance or refusal of every offer so made. Such offer shall not include a right to renounce the Shares offered, provided however, DEF shall have the right to renounce the Shares in favour of its Affiliate. If a Shareholder does not subscribe to its entitlement, the Board shall offer the same to the other Shareholder(s), provided it has accepted its own entitlement in full, and if such other Shareholder(s) also does not accept such additional Shares, the Board may dispose of them in such manner as it thinks most beneficial to the Company. The Board shall not be entitled to delegate this power to any committee of the Board and such offer shall be kept open for at least 15 (Fifteen) days.

Such issue or allotment of shares would be subject to approvals of Foreign Investment Promotion Board (FIPB) and Reserve Bank of India, if any.

8.2 Position of party's rights on dilution

In case any Party is unable or unwilling to subscribe to its rights in such further issues of Shares within the stipulated period, then its percentage shareholding shall stand diluted accordingly. The Board may offer such Shares to the other Party or to any other Person as they deem fit.

9. TRANSFER OF SHARES/LOCK IN PERIOD

9.1 Unless all the Shareholders agree otherwise in writing, no Shareholder shall in any event do any of the following acts (the “**Transfer Acts**”) at any time for a period of 3 (Three) years from the Commencement Date (“**Lock-In Period**”):

- 9.1.1 create any Security in respect of or otherwise encumber its legal or beneficial interest in its Shares; or
- 9.1.2 sell, transfer or otherwise dispose of any of such Shares (or any legal or beneficial interest therein); or
- 9.1.3 enter into any agreement in respect of the voting rights attached to the Shares, or do any act or omission which results in any Person other than the Parties and/or their wholly owned subsidiaries acquiring any rights in respect of the Shares.
- 9.1.4 agree, whether or not subject to any condition precedent or subsequent, to do any of the foregoing.

Provided however, nothing contained herein shall apply (a) to DEF or ABC transferring any Shares in favour of its Affiliates or any such transfer inter se between its Affiliates. For the purposes of this Clause an Affiliate of ABC shall be a body corporate within the meaning of the Act.

In the event an Affiliate of either Party holding Shares of the Company ceases to be an Affiliate of either Party for any reason whatsoever, such Party shall ensure that such Affiliate re-transfers all its Shares to such Party forthwith.

9.2 Creation of Security and Transfer Acts

After the expiry of the Lock-in Period, ABC shall not do any of the Transfer Acts without first obtaining the prior written consent of DEF (which consent shall not be unreasonably withheld) unless it follows the procedure set out in Clause 10 below.

10. PRE-EMPTION RIGHTS

10.1 Transfer of Shares by ABC

10.1.1 Subject to Clause 9, if ABC (“**Transferor**”) wishes to sell or otherwise transfer any of its Shares (“**Sale Shares**”), but not exceeding 20% (Twenty percent) of the fully paid-up equity share capital of the Company, it shall offer the same to DEF by notice in writing (“**Transfer Notice**”) to DEF (“**Remaining Shareholders**”) of the number of Sale Shares proposed to be sold or transferred by the Transferor and the terms and conditions of the Transfer, including price (“**Offer Price**”).

10.1.2 Subject to Clause 10.2 ABC shall not sell or otherwise transfer its Shares in any manner that results in ABC holding less than 5% (Five Percent) of the fully paid-up equity share capital of the Company (“**Minimum Threshold**”).

10.1.3 Within 21 days of receipt of such Transfer Notice, the Remaining Shareholder may agree to or refuse to buy the Sale Shares at the Offer Price, and shall communicate the same to the Transferor. Failure by the Remaining Shareholder to communicate its decision to buy the Sale Shares within the said 21 days period shall be deemed to be a refusal to buy the Sale Shares. If the Remaining Shareholder fails to so communicate or otherwise communicate refusal to buy the Sale Shares, the Transferor shall be free and fully entitled to sell and transfer the Sale Shares to a third party at not less than the Offer Price. Such sale and transfer of the Sale Shares to a third party shall be completed within 60 days thereafter. The sale shall be subject to applicable approvals of Government of India, Reserve Bank of India, if applicable. In the event of a failure to so consummate the sale within the stipulated 60 days period or 10 days of the necessary approvals being obtained, whichever is later, the sale shall again be subject to the provisions of this Clause 10.

10.1.4 Within 21 days of receipt of such Transfer Notice, if the Remaining Shareholder communicates its agreement to buy the Sale Shares from the Transferor at the Offer Price, the sale of the Sale Shares should be completed by the Transferor within 60 days. The sale shall be subject to applicable approvals of Government of India, Reserve Bank of India, if applicable. The sale of the Sale Shares should be completed by the Transferor within 60 days or 10 days of the necessary approvals being obtained, whichever is later. At such closure, the Transferor shall deliver such lien free title to the Sale Shares being sold and the Remaining Shareholder shall pay the Offer Price in cash. In the event the Remaining Shareholder fail(s) to pay the Offer Price before the scheduled date of closure as aforesaid, the Remaining Shareholder shall be deemed to have refused to buy the Sale Shares and the

Transferor shall be free and fully entitled to sell and transfer the Sale Shares to a third party at not less than the Offer Price. Such sale and transfer of the Sale Shares to the proposed purchaser shall be completed within 60 days thereafter. In the event of a failure to so consummate the sale within the stipulated 60 days period or 10 days of the necessary approvals being obtained, whichever is later, the sale shall again be subject to the provisions of this Clause 10.

10.2 Transfer of Minimum Threshold

10.2.1 If ABC wishes to sell or otherwise transfer its Minimum Threshold, it shall offer the same to DEF by notice in writing ("**Transfer Notice**") to DEF ("**Remaining Shareholders**") of the number of Sale Shares proposed to be sold or transferred by the Transferor and the terms and conditions of the Transfer.

10.2.2 Within 21 days of receipt of such Transfer Notice, the Remaining Shareholder may agree to or refuse to buy the Sale Shares at the fair market value of the Sale Shares to be determined by the Valuer ("**Fair Market Price**"), and shall communicate the same to the Transferor. Failure by the Remaining Shareholder to communicate its decision to buy the Sale Shares within the said 21 days period shall be deemed to be a refusal to buy the Sale Shares. If the Remaining Shareholder fails to so communicate or otherwise communicate refusal to buy the Sale Shares, the Transferor shall be free and fully entitled to sell and transfer the Sale Shares to the proposed purchaser at not less than the Fair Market Price. Such sale and transfer of the Sale Shares to the proposed purchaser shall be completed within 60 days thereafter. The sale shall be subject to applicable approvals of Government of India, Reserve Bank of India, if applicable. In the event of a failure to so consummate the sale within the stipulated 60 days period or 10 days of the necessary approvals being obtained, whichever is later, the sale shall again be subject to the provisions of this Clause 10.

10.2.3 Within 21 days of receipt of such Transfer Notice, if the Remaining Shareholder communicates its agreement to buy the Sale Shares from the Transferor at the fair market value as determined by the Valuer, the purchase of the Sale Shares should be completed by the Transferor within 60 days thereafter. The purchase shall be subject to applicable approvals of Government of India, Reserve Bank of India, if applicable. The purchase of the Sale Shares should be completed by the Transferor within 60 days or 10 days of the necessary approvals being obtained, whichever is later. At such closure, the Transferor shall deliver such lien free title to the Sale Shares being sold and the Remaining Shareholder shall pay the Fair Market Price in cash. In the event the Remaining Shareholder fail(s) to pay the Fair Market Price before the scheduled date of closure as aforesaid, the Remaining Shareholder

shall be deemed to have refused to buy the Sale Shares and the Transferor shall be free and fully entitled to sell and transfer the Sale Shares to the proposed buyer at not less than the Offer Price. Such sale and transfer of the Sale Shares to the proposed purchaser shall be completed within 60 days thereafter. In the event of a failure to so consummate the sale within the stipulated 60 days period or 10 days of the necessary approvals being obtained, whichever is later, the sale shall again be subject to the provisions of this Clause 10.

10A **Transfer of Shares by DEF**

10A.1 Subject to Clause 9, if DEF (“**Transferor**”) wishes to sell or otherwise transfer any or all of its Shares (“**Sale Shares**”) it shall offer the same to ABC by notice in writing (“**Transfer Notice**”) to ABC (“**Remaining Shareholders**”) of the number of Sale Shares proposed to be sold or transferred by the Transferor and the terms and conditions of the Transfer, including price (‘**Offer Price**’).

10A.2 Within 21 days of receipt of such Transfer Notice, the Remaining Shareholder may agree to or refuse to buy the Sale Shares at the Offer Price and shall communicate the same to the Transferor. Failure by the Remaining Shareholder to communicate its decision to buy the Sale Shares within the said 21 days period shall be deemed to be a refusal to buy the Sale Shares. If the Remaining Shareholder fails to so communicate or otherwise communicate refusal to buy the Sale Shares, the Transferor shall be free and fully entitled to sell and transfer the Sale Shares to a third party at not less than the Offer Price. Such sale and transfer of the Sale Shares to a third party shall be completed within 60 days thereafter. The purchase shall be subject to applicable approvals of Government of India, Reserve Bank of India, if applicable. The sale of the Sale Shares should be completed by the Transferor within 60 days or 10 days of the necessary approvals being obtained, which ever is later. In the event of a failure to so consummate the sale, the sale shall again be subject to the provisions of this Clause 10A.

10A.3 Within 21 days of receipt of such Transfer Notice, if the Remaining Shareholder communicates its agreement to buy the Sale Shares from the Transferor at the Offer Price, the purchase of the Sale Shares should be completed by the Transferor within 60 days thereafter. The purchase shall be subject to applicable approvals of Government of India, Reserve Bank of India, if applicable. The purchase of the Sale Shares should be completed by the Transferor within 60 days or 10 days of the necessary approvals being obtained, which ever is later. At such closure, the Transferor shall deliver such lien free title to the Sale Shares being sold and the

Remaining Shareholder shall pay the Offer Price in cash. In the event the Remaining Shareholder fail(s) to pay the Offer Price before the scheduled date of closure as aforesaid, the Remaining Shareholder shall be deemed to have refused to buy the Sale Shares and the Transferor shall be free and fully entitled to sell and transfer the Sale Shares to a third party at not less than the Offer Price. In the event of a failure to so consummate the sale, the sale shall again be subject to the provisions of this Clause 10A.

10B. Notwithstanding anything contained in this Agreement, ABC shall not transfer or otherwise dispose its Shares to a third party that is directly or indirectly engaged in the manufacture or distribution of the Products or other similar products, unless the prior written consent of DEF is obtained for the same.

10C. The Company shall ensure that at all times the share certificates or other documents or evidence representing ABC Shares shall bear the following legend:

“Transfer of any of the Shares represented by this certificate shall be subject to the covenants and obligations stated in the Articles of the Company,

11. NEW SHAREHOLDERS

The Parties shall ensure that no person other than DEF, DEF's nominee's or ABC acquires Shares in the Company (whether by transfer or allotment) unless it covenants in writing with the other Shareholders (by executing the Deed of Adherence) to observe this Agreement and, in the case of a transferee, to perform all the obligations of the transferor under this Agreement, to the extent modified to reflect the revised shareholding of the Parties and the new shareholder and thereupon each such transferee or allottee shall be treated as a Shareholder for the purposes of this Agreement. Every Shareholder who is the beneficiary of any such covenant shall provide a copy thereof to the other Party.

12 PROTECTION OF PARTIES INTELLECTUAL PROPERTY RIGHTS

The Company acknowledges that DEF and ABC shall be making available to the Company, valuable Intellectual Property Rights by way of agreements or otherwise. The Company shall make its best endeavours to ensure that no unauthorised Person (including an employee who is not required to have such access on a 'need-to-know' basis) gains any access to such Intellectual Property Rights under any circumstances whatsoever. DEF and ABC have invested in the Company and agreed to make

available such Intellectual Property Rights to the Company relying expressly upon this assurance of the Company.

13. JURISDICTION

The courts of competent jurisdiction at Pune shall have jurisdiction in relation to this Agreement.

14. CALL OPTION

14.1 Grant of Option

In the event of a Material Breach by any of the Parties the non-breaching Party shall have an unrestricted right, but not an obligation, exercisable by the non-breaching Party within a period of 90 (Ninety) Business Days from the happening of such Material Breach, (“**Call Period**”) to purchase from the breaching Party, all (but not less than all) the Shares of the breaching Party, at the face value of such Shares (“**Option Price**”).

It is clarified for the avoidance of doubt that in this Clause, a breach by Mr. P shall be deemed to be a breach by ABC.

14.2 Option Notice

The Call Option may be exercised by the non-breaching Party at any time during the Call Period by a written notice to the breaching Party (the “**Option Notice**”). The Option Notice shall specify a date within 15 (Fifteen) Business Days from the date of receipt of the Option Notice (“**Exercise Date**”), for completing the purchase, the manner and the location of closing in respect of such purchase and sale of Shares.

14.3 Sale and Completion

14.3.1 Upon the receipt of the Option Notice, the breaching Party shall sell the breaching Party’s Shares to the non-breaching Party (or to such Person as the non-breaching Party may direct) on the relevant Exercise Date for the Option Price free from all Security, mortgages, liens, charges, encumbrances, pledges, options and adverse equities or interests of any kind and together with all rights and benefits attaching thereto including the right

to all dividends or distributions declared on or after the relevant Exercise Date.

14.3.2 Completion of the sale and purchase of the Shares pursuant to this Clause shall occur on the Exercise Date and at the time and place specified in the Option Notice subject to receipt of all required statutory and regulatory approvals (In the event of non-receipt of such approvals, the Exercise Date shall automatically stand extended to 7(Seven) Business Days from the date of receipt of the last of such approvals).

15. NON COMPETE

15.1 ABC and Mr. P undertake that they jointly or severally by themselves or through their Affiliates shall not directly or indirectly, jointly or severally, incorporate, promote or associate themselves or enter into a competing business engaged in the manufacture or distribution of the Products or similar products while ABC either jointly or severally are Shareholders and for a period of 5 years thereafter.

15.2 ABC acknowledges that during the term of this Agreement, the Company shall generate and create technical know-how and other valuable Intellectual Property Rights. ABC further acknowledges that in the event ABC or Its Affiliates directly or indirectly utilize such technical know-how and other Intellectual Property Rights of the Company or Intellectual Property Rights of DEF made available to the Company by DEF, in any manner not related to the business and affairs of the Company or DEF, DEF and/or the Company shall have the right to avail of injunctive reliefs against ABC , without prejudice to the other rights and remedies available to DEF and/or the Company under Law.

16 IPO

At anytime prior to the IPO, upon mutual agreement, the Parties shall formulate a suitable scheme of amalgamation between DEF and the Company, such that DEF is the amalgamated entity, subject to obtaining requisite approvals as may be required under Law. Upon the amalgamation of DEF and the Company, ABC will be allotted shares in the share capital of DEF based on the valuation of the Company and ABC's Shareholding in the Company carried out by a reputed (national) firm of auditors to be appointed by the Parties. The decision of the reputed (national) firm of auditors appointed by the Parties shall be final and binding on the Parties.

17. NON SOLICITATION

Notwithstanding anything contained in this Agreement, no Party shall without the prior written consent of the other Parties:

- (a) directly or indirectly in any manner whatsoever, employ, hire, appoint as agent, appoint as sub-agent, or appoint as employee or servant, any employee of the Company or DEF while ABC is a Shareholder and for a period of 7 years thereafter.
- (b) directly or indirectly in any manner whatsoever, approach, canvass, solicit, or otherwise entice using any incentive whatsoever, whether such incentive be in cash, kind or a composite of the same or in any other manner, any employee of the Company while ABC is a Shareholder and for a period of 7 years thereafter.

18. WARRANTIES AND UNDERTAKINGS

18.1 Each Party hereto represents and warrants to the other Party that (1) it has full power and authority to carry on its business; (2) the execution and delivery of this Agreement will not result in breach of any terms and conditions, or constitute default under applicable laws or other obligations to which it is bound or violate any rule, regulation or law of any government or any order, judgment or decree of any court or government body; and (3) the execution and delivery of this Agreement and the other acts/ covenants contemplated hereby have been duly authorised by all necessary board of directors and shareholders' actions, where applicable.

18.2 Additional Undertakings

Except as otherwise expressly provided herein, each Party undertakes with the other Party that so long as this Agreement remains in force and effect it will: -

18.2.1 promptly execute and deliver all such documents as are required, or reasonably requested by such other Party, arising out of, in furtherance of, or as are required by, the terms of this Agreement.

18.2.2 promptly notify the other Parties of all significant consents received by it in relation to any of the Company's business, assets or property.

18.2.3 use and exercise the voting rights controlled by it in respect of its Shares at all meetings of the Company (Board or Committee or Shareholders Meetings) in order to uphold and ensure the observance of the terms of this Agreement; and

18.2.4 perform and comply with all restrictions imposed on it under the Articles.

18.2.5 fully comply with all Laws.

19. EXIT AND TERMINATION OF AGREEMENT

19.1 This Agreement may be terminated by the consent of all the Parties expressed in writing.

19.2 This Agreement shall stand terminated at the option of DEF upon ABC's aggregate shareholding in the Company reducing below 15 per cent of the paid-up equity share capital of the Company.

19.3 This Agreement shall stand terminated upon DEF's shareholding in the Company reducing below 15 (Fifteen) per cent of the paid-up equity share capital of the Company.

19.4 If any of the Parties commit any act of insolvency and/or the Company goes into liquidation or dissolution or if the Company is placed in the hands of a receiver, trustee, custodian or liquidator, or if a winding up petition is admitted against it, then upon any Party giving written notice of termination, at the option of the Parties, this Agreement shall forthwith terminate.

19.5 This Agreement shall stand terminated in the event of a breach by any Party of any term or condition of this Agreement or the Related Agreements, which breach is not cured by the defaulting Party within 15 (Fifteen) Business Days of receipt of notice of such breach from the non-defaulting Party by such defaulting Party, which notice shall set forth in reasonable detail the facts and events forming the basis of the breach.

It is clarified for the avoidance of doubt, that upon the occurrence of a Material Breach, either Party's right to exercise its call option under Clause 14 of this Agreement shall survive the termination of this Agreement..

19.6 All rights which have accrued to a Party prior to the termination of this Agreement and the provisions contained in Clauses 13, 14, 15, 17, 23, 24 ,28, 30 shall survive the termination of this Agreement.

20. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of India

21. ARBITRATION

21.1 If any dispute arises between DEF and ABC in connection with the validity, interpretation, implementation or the purported termination of this Agreement, DEF and ABC hereto shall endeavour to settle the dispute amicably. The attempt to bring about an amicable settlement shall be considered to have failed as soon as one of DEF or ABC after reasonable attempts (which attempts shall continue for not less than 60 days), gives 15 days notice thereof to the other Party in writing.

21.2 In case of such failure, the dispute shall be referred to the arbitration of three arbitrators, one selected by each of DEF and ABC and the third selected by the London Court of International Arbitration (“**LCIA**”). The arbitration shall be held in Mumbai, in accordance with the Rules of the LCIA, which are deemed to be incorporated herein by reference. It is clarified, for the avoidance of doubt, that the Company shall not be entitled to appoint an arbitrator, even if the Company is joined as a party in the arbitration.

21.3 The successful Party in any arbitration proceedings shall be entitled to recover its costs (including, without limitation, its legal costs).

21.4 Judgment upon any award rendered by the arbitrators may be entered in any court having competent jurisdiction in relation thereto, or application may be made to such court for a judicial acceptance or recognition of the award and an order of enforcement (including specific performance), as the case may be.

22. DEADLOCK

22.1 In the event that either DEF or ABC in good faith considers that as a result of disagreement between DEF and ABC, no satisfactory decision or resolution relating to any of the Specified Matters can be achieved despite good faith negotiations for a period of 30 days (including, during such period, if either DEF or ABC so desires, non-binding mediation by a mediator to be appointed by mutual consent of DEF and ABC), from the date of commencement of such disagreement, a deadlock (a “**Deadlock**”) shall be deemed to have occurred. In the event of such Deadlock occurring, either Party may, at its option, serve upon the other Party a notice of termination (“**Notice of Termination**”).

22.2 Upon a Notice of Termination being served, DEF shall have the right, but not the obligation, to exercise its Call Option in the same manner as provided under Clause 14. Provided however the “Option Price” for the ABC Shares shall be the book value as shall be determined by the Valuer.

It is clarified, for the removal of doubt, that in the event of a Deadlock, and DEF not exercising its Call Option within 15 (Fifteen) days from the occurrence of the Deadlock, then either DEF or ABC shall be, at liberty, to refer such Deadlock as a dispute to arbitration in accordance with the arbitration provisions contained in Clause 21 herein.

23. EQUITABLE REMEDIES

The Parties acknowledge that in the event of a breach of the provisions of this Agreement, damages alone shall not be a sufficient remedy and, therefore, each Party shall be entitled to all equitable remedies, including injunctive reliefs and specific performance of this Agreement.

24. RIGHTS TO INFORMATION; CONFIDENTIALITY;

24.1 Rights to inspection and information

The Company shall permit ABC, at ABC's expense, to discuss the affairs, finances and accounts of the Company with the Company's officers and other principal executives at such time as may reasonably be requested, and all books, records, accounts, documents and vouchers relating to the Business and the affairs of the Company shall at such time be open to the inspection of ABC, who may make such copies thereof or extracts therefrom as he may deem appropriate. Any information secured as a consequence of such discussions and examinations shall be kept strictly confidential by ABC subject as provided in Clause 24.3.

24.2. Each Party shall treat as strictly confidential all information received or obtained as a result of entering into or performing this Agreement which relates to:-

- (i) the provisions of this Agreement;
- (ii) the negotiations relating to this Agreement
- (iii) the subject matter of this Agreement; or
- (iv) the other Parties.

24.3 Any Party may disclose information which would otherwise be confidential if and to the extent:-

- (i) required by law;
- (ii) required by any securities exchange or regulatory or governmental body to which such Party is subject or submits, wherever situated, whether or not the requirement for information has the force of law;

- (iii) required to vest the full benefit of this Agreement in such Party;
- (iv) (subject to the prior written agreement of any such Person to keep such information confidential except to the extent that (i), (ii) (v) or (vi) of this Clause applies to it) disclosed to the professional advisers and auditors of such Party;
- (v) the information has come into the public domain through no fault of such Party; or
- (vi) the other Parties have given prior written consent to the disclosure.

provided that any such information disclosed pursuant to paragraphs (i) or (ii) shall be disclosed only after consultation with the other Parties.

25. ANNOUNCEMENTS

- 25.1** Subject to sub-clauses 25.2 and 25.3, each Party undertakes not to make any announcement relating to the subject matter of this Agreement without the prior written consent of the other Parties.
- 25.2** Subject to sub-clause 25.3, the Company may make announcements from time to time relating to its Business without the prior written consent of the Shareholders. Whenever practicable, the Company shall provide a draft of each such announcement in advance to each Shareholder and shall consider any amendments thereto proposed by a Shareholder although the Company shall not be required to incorporate any proposed amendments or to obtain the prior written approval of any Shareholder to any such announcement.
- 25.3** Subject to sub-clause 25.4, the prior written approval of a Shareholder to an announcement by the Company shall be required if the announcement relates to such Shareholder thereof or if it contains information which the Company is aware is subject to restrictions on disclosure or requirements as to disclosure imposed by any applicable stock exchange or regulatory authority.
- 25.4** No consent shall be required in any provision of this Clause in relation to any announcement required to be made by a Party by any law or directive of any authority (including, without limitation, any relevant stock exchange or other regulatory authority) to which it is subject provided that before making any such announcement such Party shall, if practical, first consult with each other Party whose consent would otherwise have been required.

26. CONTINUATION OF OBLIGATIONS

The obligations of the Parties under Clauses 13, 14, 15, 17, 23, 24, 28, 30 shall

continue in full force and effect notwithstanding termination of this Agreement.

27. NOTICES

27.1 Notices In Writing

Any notice or other communication given or made under this Agreement shall, except where expressly stated otherwise, be in writing and in the English language.

27.2 Method of communication

Any such notice or other communication shall be addressed as provided in Clause 27.3, shall be sent by personal delivery, registered post, courier service, facsimile or any other means of recorded delivery and shall be effective upon actual receipt. If any notice or other communication is sent by facsimile, on confirmation of receipt of the same, the original shall be sent by personal delivery, registered post or courier service.

27.3 Address details

The relevant addressee, address and facsimile number of each Party for the purposes of this Agreement are:-

<u>Name of Party</u>	<u>Address</u>	<u>Facsimile No.</u>
ABC Limited		
DEF Pharmaceuticals Limited.		
DEF Biotech Limited		
Dr. P		

27.4 Change of Address

A Party may notify the other Parties of a change to its name, relevant addressee, address or facsimile number provided that such notification shall only be effective on:-

- (A) the date specified in the notification as the date on which the change is to take

- place; or
- (B) if no date is specified or the date specified is less than seven Business Days after the date on which notice is received, the date falling seven Business Days after notice of any such change has been received.

28. REMEDIES

No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy which is otherwise available at law, in equity, by statute or otherwise, and each and every other remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, by statute or otherwise. The election of any one or more of such remedies by any of the Parties shall not constitute a waiver by such Party of the right to pursue any other available remedy.

29. SEVERANCE

If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

30. SURVIVAL OF RIGHTS AND OBLIGATIONS

Termination of this Agreement for any cause shall not release a Party from any liability which at the time of termination has already accrued to another party or which thereafter may accrue in respect of any act or omission prior to such termination.

31. COSTS

The Parties shall bear their respective costs and expenses in connection with the preparation, negotiation, execution and delivery of the Agreement.

32. ENTIRE AGREEMENT

32.1 This Agreement (together with the Schedules) and the Related Agreements, constitutes the whole and only agreement as at the date hereof between the Parties with respect to the subject matter described herein.

32.2 Except to the extent repeated in this Agreement, this Agreement supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties, promises, assurances and arrangements of any nature whatsoever,

pertaining to the subject matter of this Agreement, whether or not in writing, relating thereto, including the non-binding Memorandum of Understanding executed on 20th May, 2002, between the Parties..

- 32.3** Each Party acknowledges that in entering into this Agreement on the terms set out in this Agreement, it is not relying upon any representation, warranty, promise or assurance made or given by any other Party or any other person, whether or not in writing, at any time prior to the execution of this Agreement which is not expressly set out herein.

33. ASSIGNMENT

33.1 Successors and assigns

This Agreement shall be binding on the respective successors and permitted assigns of DEF and ABC and on the permitted assigns of Mr. P.

33.2 Restriction on assignment

None of the Parties shall be entitled to assign this Agreement or any of its rights and obligations hereunder except with the prior written consent of the other Parties.

34. COUNTERPARTS

- 34.1** This Agreement may be executed in any number of counterparts, by the Parties as separate counterparts, but shall not be effective unless each Party has executed at least one counterpart.

- 34.2** Each counterpart shall constitute an original of this Agreement but all counterparts shall together constitute but one and the same instrument.

35. PARTNERSHIP

Nothing in this Agreement shall be deemed to constitute a partnership between the Parties, nor save as may be expressly set out herein, constitute any Party as the agent of any other Party for any purpose.

36. CONFLICT WITH ARTICLES

- 36.1** The provisions of this Agreement shall be reproduced in the Articles, to the extent practicable. Such alteration of the Articles shall be effected at the EGM.

36.2 In the event of any conflict between the provisions of this Agreement and the Constitutional Documents, the provisions of this Agreement shall prevail as between the Parties. The Parties shall exercise all voting and other rights and powers available to them so as to give effect to the provisions of this Agreement and shall further (if necessary) procure any required amendment / alteration to the Constitutional Documents.

37. GENERAL

- (A) No amendment, variation or waiver of this Agreement or any provision of this Agreement shall be effective unless it is in writing and duly executed by or on behalf of all Parties.
- (B) In giving any opinion, approval, consent or waiver or refusing any opinion, approval, consent or waiver under this Agreement, each Director may act entirely at his discretion and shall have no liability or responsibility whatsoever to any person.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement the day and year first herein above written.

Signed and delivered for and behalf of DEF Pharmaceuticals Limited	Signed and delivered for and behalf of the Company	Signed and delivered for and behalf of ABC Limited	Signed and delivered by Mr. P
Name: _____ Title: Managing Director	Name: _____ Title: Director	Name: _____ Title: Chairman	Name: Mr. P

Annexure A

Specified Matters

1. Alteration of the Constitutional Documents.
2. Issue of new shares or instruments convertible into equity shares.
3. IPO
4. Declaration of Dividend.
5. Appointment of a Valuer.

CONFIDENTIAL

Annexure B

Territory

<u>Exclusive</u>	<u>Non-Exclusive</u>	
Bangladesh	Ethiopia	Philippines
India	Ghana	South Africa
Mauritius	Kenya	Iraq
Sri Lanka	Sudan	Cambodia
Pakistan	Tanzania	Indonesia
Italy	Uganda	Laos
	Zambia	Myanmar
	Zimbabwe	Malaysia
	Nigeria	Singapore
	East Timor	Brunei
	Vietnam	Thailand

Annexure C

Deed of Adherence

THIS DEED OF ADHERENCE is made this _____ day of _____ at _____.

BETWEEN:

1. _____, Indian inhabitant residing at _____(TRANSFeree) (hereinafter referred to as '**the Covenantor**' which expression shall be deemed to mean and include its nominees and permitted assigns) to whom shares of the Company have been transferred by _____ (THE TRANSFERRING SHAREHOLDER);

AND

2. **ABC Limited** a company incorporated under the laws of the British Virgin Islands and having its registered office at _____ British Virgin Islands (hereinafter referred to as "**ABC**," which expression shall be deemed to mean and include its successors and permitted assigns);

AND

3. **DEF Pharmaceuticals Limited**, a company incorporated under the Companies Act, 1956 and having its registered office at _____ Pune (hereinafter referred to as "**DEF**," which expression shall be deemed to mean and include its successors and permitted assigns);

AND

4. **XYZ Biotech Limited**, a company incorporated under the Indian Companies Act, 1956 and having its registered office at _____ Pune (hereinafter referred to as "**the Company**," which expression shall be deemed to mean and include its successors and permitted assigns).

AND

Annexure D

“Products”

CONFIDENTIAL

Annexure E

Form of Articles to be adopted at EGM by shareholders of the Company

CONFIDENTIAL

Annexure F

Financial Outlay

The initial estimated project cost based on current assumptions and barring any unforeseen escalation is estimated at _____ Million broadly as follows:-

Land	_____	Million
Buildings	_____	Million
Technical know-how fees	_____	Million (incl. Supply of functional cell line)
Utilities	_____	Million
Equipments	_____	Million
Developmental costs	_____	Million
Working Capital	_____	Million
<u>Cost Overruns</u>	_____	Million
Total	_____	Million