

APPENDIX 5



REPUBLIC OF GHANA

**MINISTRY OF ENVIRONMENT, SCIENCE, TECHNOLOGY
AND INNOVATION (MESTI)**

**GHANA JOBS AND SKILLS PROJECT
Credit # 6716-GH
PROJECT ID: P166996**

DEVELOPMENT OF FRAMEWORK FOR TECHNOLOGY TRANSFER

MODEL COLLABORATIVE RESEARCH AGREEMENTS

Manufacturing Agreement

APRIL, 2023

THIS MANUFACTURING AGREEMENT (“Agreement”) is made this.....day of.....20-- BETWEEN (business / Academic Institution) of (address) and duly represented by (name and position of authorized representative), (hereinafter referred to as “the COMPANY” which expression shall where the context so requires or admits, include its lawful representatives and assigns) of the one part AND (name of manufacturing company/business/institution) of (address) and duly represented by (name and position of authorized representative), (hereinafter referred to as “the MANUFACTURER” which expression shall where the context so requires or admits, include its lawful representatives and assigns) of the other part. The Company and the Manufacturer each shall be referred to herein as a “Party” and together as the “Parties”.

WHEREAS,

A. The Company (state relevant objects of the business); the Company is the owner of (state subject matter of the technology transfer)

B. The Company desires to outsource the manufacture of its (state the product) (hereinafter referred to as “the Product” and more particularly detailed in the First Schedule) to a manufacturer which specializes in the manufacture of the Products.

C. The Manufacturer is a manufacturing company which specializes in the manufacture of and has capacity to manufacture the Product and is willing to manufacture the Product for the Company under the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein, the Parties agree as follows:

1) APPOINTMENT.

The Company herewith appoints the Manufacturer as its contract manufacturer with the purpose of manufacturing for the Company the Product and such other products as may be agreed to by the Parties from time to time and the Manufacturer hereby accepts such appointment.

2) MANUFACTURE OF THE PRODUCTS.

2.1. The Manufacturer shall carry out the manufacture of the Product utilizing raw materials and / or technology furnished by the Company (hereinafter referred to as the “Materials”).

2.2. Manufacturing of the Products shall be (provide detailed scope of work) for the Company.

2.3. (state any other obligations of the manufacturer)

3) TECHNOLOGY TRANSFER AND TECHNICAL ASSISTANCE.

3.1. The Company shall make available, for no consideration to the Manufacturer, the knowledge, technical and practical experience and all other know-how as well as the technical assistance services necessary to enable the Manufacturer to perform hereunder which said information provided shall constitute Confidential information.

3.2. The Manufacturer guarantees that the manufacture of the Products shall be carried out in strict compliance with the information and the quality guidelines of the Company.

4) PRODUCTION SCHEDULE.

(provide details of production schedule)

5) CONSIDERATION.

(provide consideration or payment of manufacturing service details)

6) SUPERVISION.

6.1. The Manufacturer shall allow the Company's personnel access during normal business hours to the facility or facilities in which the work contracted hereunder is being carried out in order for the Company's personnel:

- i. to provide the technical assistance indicated in clause 3;
- ii. to ascertain compliance on the part of the Manufacturer to all of the technical specifications and quality controls supplied by the Company in connection with the assembly and manufacturing process; and
- iii. to assure that the Materials provided to the Manufacturer by the Company are utilized properly and exclusively for the purposes stated herein.

6.2. The Manufacturer shall maintain accurate and complete records of all hours of direct labour employees engaged in the Manufacturing for which payment under this Agreement is to be made. These records shall be made on the basis of actual time registered and all other costs and charges of any kind payable by the Company under the Agreement. Such records shall be maintained in accordance with recognized general accounting practices so that they may be readily audited.

6.3. The Manufacturer shall permit the Company to examine and audit these records and all supporting records at all reasonable times.

6.4. Any payments made under this Agreement by the Company shall be subject to final adjustments as may be determined by such audit(s) as referred to in clause 6.2. above.

6.5. The Manufacturer shall retain all such records for a period of not less than
(state duration) following the completion of this Agreement.

6.6. The above assistance, inspection and auditing activities shall be carried out by those employees or agents of the Company, which the Company considers appropriate. The individuals involved in carrying out such functions shall, at all times, be employees or agents of the Company.

6.7. The Company shall indemnify the Manufacturer from any liabilities relating to any salaries or other benefits of any other amount that it may be required to pay to such personnel or to third parties as a result of a final court decision, deriving from the activities of such employees or agents.

7) OWNERSHIP OF MATERIALS AND PRODUCTS.

7.1. The Manufacturer shall under no circumstances be considered to have any proprietary interest in the Materials which the Company may deliver to the Manufacturer for the purposes indicated in clause 2 above, unless otherwise agreed by the parties.

7.2. Once the Products have been manufactured by the Manufacturer they must be returned by the Manufacturer to the Company and, at the latter's cost, to such places and destinations as the Company may indicate to the Manufacturer.

8) INSURANCE.

(state agreed insurance policy arrangement between the Parties)

9) SAMPLES.

Any samples of the Products officially requested by a competent authority may be delivered only upon the written authorisation of the Company, and provided that an official receipt is obtained from the requesting agency or department.

10) PROPRIETARY INFORMATION AND CONFIDENTIALITY.

10.1. The Manufacturer shall regard and preserve as confidential all Information related to the Company's business, whether revealed to or learned by the Manufacturer from any source as a result of this Agreement.

10.2. Except to the extent that it is absolutely necessary and essential to the process of training employees for the manufacture of the Products, the Manufacturer shall not disclose nor disseminate, nor permit to be disclosed or disseminated, any customer list, cost structure, pricing, methods, formulation, technical information, know-how, patents, trademarks, processes, programs, practices, or other material or data conceived, designed, created, developed, used, assembled or manufactured by the Company.

10.3. The Manufacturer further undertakes during the continuance of this Agreement and thereafter, in perpetuity as long as same remains a trade secret:

i. to treat all and any such Confidential Information as confidential and secret and not use any of such Confidential Information for any purpose other than the purpose of evaluating such Confidential Information in connection with the manufacturing of the Product, including the cost structure, formulation and other proprietary information;

ii. to take all reasonable steps to protect the confidentiality of such Confidential Information;

iii. not to disclose any of such Confidential Information in whole or in any part to any third party without the prior written consent of the Company save to its Authorised representatives who need to know the same for the purpose of evaluating such Confidential Information in connection with the Products;

iv. to ensure each Authorised Representative to whom it discloses such Confidential Information is made aware of the provisions of this agreement before such Authorised Representative receives any such Confidential Information and agrees in writing to be bound by obligations of confidentiality and non-disclosure to third parties in respect of such Confidential Information and to return or destroy such Confidential Information on request.

10.4. The obligations of Confidentiality and the prohibition against use undertaken in this Agreement by the Manufacturer shall not apply to any Confidential Information which the Manufacturer can show by clear and convincing evidence:

i. is already known to the Manufacturer on a non-proprietary basis at the time it is disclosed to the Manufacturer or subsequently comes into the public domain otherwise than as a result of any breach of this Agreement by the Manufacturer or any of its Authorised Representatives;

ii. is already known to the Manufacturer prior to disclosure which prior knowledge the Manufacturer can clearly demonstrate;

iii. has been rightfully received by the Manufacturer from a third party without restriction on disclosure and without a breach of an obligation of confidentiality running directly to the Company; or has been approved for public release by written authorization by the Company.

10.5. Each party to this Agreement shall keep confidential and ensure that its respective employees and agents keep confidential, all confidential information which it or they may acquire in relation to the Company or its business or affairs of every other party to this Agreement.

11) INTELLECTUAL PROPERTY RIGHTS.

11.1. Nothing in this Agreement shall be construed to grant the Manufacturer any right or license any patent, know-how, trademark, copyright, industrial design or other Intellectual Property Right of the Company.

OPTION 1 – Company owns all generated IP

11.2. To the extent permitted by the law, the entire right, title, and interest, including copyright, in all original works of authorship and in any tangible medium of expression created by the Manufacturer in the course of this Agreement for the Company or furnished to the Company hereunder, is hereby transferred to and vested in the Company.

11.3. The Manufacturer, at the option of the Company, shall endeavour to apply for and obtain a patent covering any improvement or further invention and when it is obtained, shall execute all instruments and do all acts or things necessary to vest such patent and the full exclusive benefit of it in the Company.

11.4. For any such improvement or further invention specified in clause 11.3. for which the Manufacturer applies for a patent which becomes vested in the Company, the Company shall pay the Manufacturer a further sum of (state price) or the cost value of the IP and the total cost of obtaining the patent, whichever sum is lower. The said amount may be discharged at the option of the parties by a payment of money or in kind or both.

OPTION 2 – Manufacturer owns all generated IP

11.1 The Manufacturer shall own any New IP generated.

11.2 The Manufacturer shall disclose any New IP to the Company. Such New IP shall be Manufacturer's Confidential Information and shall be held in confidence by Company and not used for any purpose without prior approval of Manufacturer.

11.3 The Manufacturer grants to the Company a right of first refusal, exercisable within three months after the notification in clause 6.2, to negotiate an exclusive, worldwide, royalty-bearing license to commercialise the New IP upon terms that the parties may negotiate in good faith.¹

OPTION 3 – Company and Manufacturer jointly own all generated IP

11.1 The Manufacturer shall disclose any New IP to the Company. Such New IP shall be Confidential Information of both parties and shall be held in confidence by each party for the benefit of the other party.

¹ Delete this clause if it is not intended to grant an option to negotiate a license.

11.2 The Manufacturer hereby assigns to Company an equal, undivided, fifty percent (50%) interest in any New IP and in any intellectual property therein. Manufacturer shall sign all documents reasonably necessary to confirm this assignment.

11.3 The Company and the Manufacturer shall cooperate in obtaining intellectual property protection for any New IP and shall share equally in the cost thereof.

11.4 Each of Party may exploit any New IP in its respective business without accounting to the other. If either party grants a license to a third party under any New IP, it shall give notice to the other party and shall remit to the other party one-half of all consideration received for such license. Neither party may assign its interest in any New IP to any third party without the prior approval of the other party.

12) OBLIGATION OF THE MANUFACTURER.

12.1. The Manufacturer shall comply with all applicable laws and regulations so as to hold all Materials or finished Products, which are owned by the Company, free of any liens, claims or charges.

12.2. The Manufacturer shall use the Company's transferred technology and raw materials exclusively for the Company's Products only.

12.3. The Manufacturer shall not re-engineer the Company's technology and any other trade secret as delivered by the Company to the Manufacturer in clause 2 above.

13) RELATIONSHIP BETWEEN THE PARTIES.

13.1. The Manufacturer is an independent contractor and consequently it shall carry out the manufacture of the Products and, in general, it shall perform this Agreement using its own personnel and under its own direction and control.

13.2. The Manufacturer shall not be the agent, representative or attorney-in-fact of the Company and consequently it shall have no authority whatsoever to act in the name of or on behalf of the Company or to bind the Company in any way.

13.3. None of the provisions of this Agreement shall be interpreted as indicating the intent of the Parties to form a company, association or joint venture.

14) DURATION AND TERMINATION.

This Agreement may be terminated upon the occurrence of any of the following events:

14.1. If there is a breach by a party of any of its obligations under this Agreement and such breach, if capable of remedy, is not remedied within ... (state period) after notice thereof is given to the party in breach; or

14.2. If a party goes into liquidation, whether voluntarily or compulsorily, or has a receiver and manager appointed over any part of its business or assets; provided that there shall be no termination if liquidation is for a bona fide reconstruction or amalgamation and the other party gives its prior consent in writing.

15) DISPUTE RESOLUTION

15.1. Any dispute arising directly under the express terms of this Agreement or the grounds for termination thereof shall be resolved as follows.

i. First, within days after either Party identifies the existence of a dispute, each party shall appoint a representative with authority to resolve the identified dispute and such representatives, within days after their appointment, shall meet to attempt to resolve such dispute.

ii. If the representatives cannot resolve the dispute, either Party may make a written demand for formal dispute resolution. Within days after such written demand, the Parties shall meet for one day with an impartial mediator solely to consider dispute resolution alternatives other than litigation, which may include further negotiations, mediation, conciliation, arbitration, litigation, and expert determination.

iii. If an alternative method of dispute resolution is not agreed upon within days after the one-day mediation, either Party may begin litigation proceedings.

iv. Each Party agrees not to file for or otherwise initiate a litigation or arbitration directed to the dispute being discussed by the Parties under this clause before or during such discussions.

v. Each Party further agrees that the discussions under this clause shall be “Without Prejudice” and it will retain in confidence any information disclosed by the other Party during such discussions (except for information already in the public domain).

16) FORCE MAJEURE.

16.1. In this Agreement, force majeure means an event which could not reasonably have been foreseen or avoided by the diligence of either party in any circumstance, which is beyond the reasonable control of either party and which renders performance of the obligations of either party impossible or so impracticable as reasonably to be considered impossible. Force majeure includes but is not limited to earthquakes, fires, adverse weather conditions, a health pandemic and other acts known as acts of God, as well as war, riots, civil disorder, confiscation or other adverse action by the Government or any of its agencies.

16.2. In the event of the occurrence of force majeure, a party to this agreement shall, notwithstanding anything to the contrary in this Agreement, not be liable for any delay or failure in carrying out or performing any of its obligations contained in this Agreement.

16.3. Force majeure shall not include any of the following:

- i. Any event caused by the negligence or intentional action of either party, its agents, employees or subcontractors; or
- ii. Insufficiency of funds or the inability of a party to pay any sum of money required to be paid under this Agreement.

16.4. A party affected by force majeure shall take reasonable measures with a minimum of delay, to remedy its inability to fulfill its obligations by reason of such force majeure.

16.5. A party affected by an event of force majeure shall give notice of such event to the other party as soon as reasonably practicable and in any event not later than seven (7) days after the occurrence of such event and shall provide full particulars of the nature and cause of such an event and where normal conditions are restored, give prompt notice thereof to the other party.

16.6. The period during which an event of force majeure persists shall be taken into account in computing the time within which a party may do anything or perform any act under this Agreement and such time shall be extended by the period by which the event of force majeure continues. Provided that if the event of force majeure persists for more than [days] [weeks] [months], either party may terminate this Agreement by giving [days] [weeks] [months] notice to the other of its intention to do so.

17) MISCELLANEOUS PROVISIONS.

17.1. Communication.

Any notice, consent or agreement required to be given under this agreement shall be in writing and sent by registered mail, electronic mail or facsimile numbers as either party hereto may from time to time notify to the other party or by hand to the said addresses.

17.2. Ratification

Each of the parties herein undertakes to ensure that as soon as practicable after the signing of this agreement, all necessary steps will be taken on acts done to obtain ratification thereof in accordance with the party's regulations or articles and where such ratification requires the amendment of the said regulations or articles, to procure such amendment.

18) GOVERNING LAW.

This Agreement is made and entered into in the Republic of Ghana. Parties agree to submit themselves to the exclusive jurisdiction of the laws of Ghana.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their respective hands and seals the day and year first above written.

SIGNED for and on behalf of the Company

By the above-named Representative

.....

Signature

In the presence of:

.....

Name & Signature

Name:

Address:

Occupation:

SIGNED for and on behalf of the Manufacturer

By the above-named Representative

.....

Name & Signature

In the presence of

.....

Signature

Name:

Address:

Occupation:

FIRST SCHEDULE (Product description)