

MATERIAL TRANSFER AGREEMENT

Agreement No.

Definitions

1. Provider means the National Science and Technology Development Agency (NSTDA) by National Center for Genetic Engineering and Biotechnology (BIOTEC), 113 Thailand Science Park, Phahonyothin Road, Klong Nueng, Klong Luang, Pathumthani 12120, Thailand.
2. Recipient means any person or any organization acquiring Material from the Provider.
3. Material means:
 - 3.1. all biological materials, living or dead, originated from or within the Kingdom of Thailand as (indicate unique identifier or material name) ; and
 - 3.2. any cells, substances, products or DNA molecules replicated or derived therefrom; or
 - 3.3. associated know-how and data that will be provided by the Provider for the Recipient.
4. Research Purposes means use of the Material by the Recipient for research use and expressly excludes use for Commercial Purposes. Research Purposes are divided into two categories as follows:
 - 4.1. Academic Research means use of the Material by only not-for-profit organizations only for academic purposes.
 - 4.2. Non-Academic Research means use of the Material not for Commercial Purposes by for-profit organizations, under collaborative research between not-for-profit organizations and for-profit organizations or under sponsored research agreement financially supported by for-profit organizations to not-for-profit organizations.
5. Commercial Purposes means use of the Material by the Recipient for any commercial purpose, including without limitation: for license or sublicense to third parties; for the provision of services to third parties; for production or manufacturing of products for sale; for research activities that target at any of the above conditions.

Terms and Conditions

The Recipient to this agreement is categorized to use the Material for (check in the box):

- Academic Research. Terms and Conditions in Part I and III apply.
- Non-Academic Research. Terms and Conditions in Part II and III apply.

Part I. Academic Research

1. The Recipient shall use the Material for academic purposes only. Unless having received prior written consent from the Provider, the Recipient shall not use the Material for any purpose(s) other than academic purposes, nor shall it distribute, release, sale, sublicense, transfer or in any way disclose the Material and/or assign its rights under this agreement to any third party.
2. The Recipient may permit its employees, consultants and/or any third party who have a direct need to use the Material, under the Recipient's direct supervision only, within the Recipient's laboratory(s) and only for academic purposes. The Recipient shall have a right to permit a usage of the Material outside its/his laboratories, only receiving prior written consent from the Provider. No one is permitted to take or send this Material to any other location, unless prior written permission is obtain from the Provider.

Part II. Non-Academic Research

1. The Recipient shall use the Material for the specific purposes as (indicate purpose below or refer to related document)

 (hereinafter referred to as "the Purpose"). Unless having received prior written consent from the Provider, the Recipient shall not use the Material for any purpose(s) other than the Purpose, nor shall it distribute, release, sale, sublicense, transfer or in any way disclose the Material and/or assign its rights under this agreement to any third party.

As a government agency, NSTDA reserves the right to prevent the other party from publicly referring to NSTDA as its contractual party or to disclose any content of the memorandum of understanding or of the contract. Nonetheless, NSTDA, at its discretion, may issue a certification letter that a person or an organization has a legal relationship with NSTDA.

2. The Recipient may permit its employees, consultants and/or any third party who have a direct need to use the Material, under the Recipient's direct supervision only, within the Recipient's laboratory(s) and only for the Purposes. The Recipient shall have a right to permit a usage of the Material outside its/his laboratories, only receiving prior written consent from the Provider. No one is permitted to take or send this Material to any other location, unless prior written permission is obtained from the Provider.
3. The term of the agreement shall be 60 (sixty) MONTHS from the date the Recipient submits order to the Provider. On expiration or termination of the agreement, the Recipient shall promptly destroy or return the Material and all related documentations to the Provider, whether originals or copies, or shall take any action as requested in writing by the Provider. If the Recipient desires to extend the use of the Material for the Purpose, the Recipient shall inform the Provider in writing and obtain prior written permission from the Provider before extending the use.
Notwithstanding the first paragraph, the obligation of the Recipient under the provisions of terms and conditions Part II clause 3, and Part III clauses 4, 5 and 6 shall survive any expiration or termination of the agreement.

Part III. The following terms and conditions apply to both Academic Research and Non-Academic Research.

1. The Recipient acknowledges that the Material is or may be the subject of petty patent, patent, petty patent application or patent application. Except as provided in the agreement, no express or implied license or other right is granted to the Recipient under any patent or petty patent, petty patent application or patent application, trade secrets or other intellectual property rights and other proprietary rights of the Provider, including any altered forms of the Material made by the Provider for Commercial Purposes.
If the Recipient desires to use the Material for Commercial Purposes, the Recipient shall obtain a license from the Provider before the beginning of the commercial use.
2. The Recipient may use the Material in compliance with relevant national and international laws and regulations.
Any Material delivered pursuant to this agreement is understood to be experimental in nature and may have hazardous properties and that its use may require acquisition of rights from third parties. **THE PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF THE MATERIAL, ITS SOURCE, MERCHANTABILITY, TRANSFER OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.**
Except to the extent prohibited by law, the Recipient assumes all liability for damages which may arise from its use, storage, disposal or transfer of the Material. The Provider will not be liable to the Recipient for any loss, claim or demand made by the Recipient, or made against the Recipient by any other party
3. Use of the Material may be subject to specific restrictions which are mentioned in the catalog or other documents provided to the Recipient and are hereby acknowledged by the Recipient.
4. If the Recipient desires to file patent/petty patent application(s) claiming inventions made by the Recipient through the use of the Material, the Recipient shall receive prior written consent from the Provider before filing such application(s). The parties shall agree in writing both on the management thereof, and the sharing of any benefit arising therefrom.
5. "Confidential Information" means any information, including information of a third party, which is disclosed by the Provider to the Recipient and the Provider desires the Recipient to keep as confidential information and/or trade secret of the Provider. Such information relating to the Material includes but not be limited to all data, specifications, materials, technical information, processes, document and other information relating to the Material.
The Recipient shall keep all disclosed Confidential Information strictly confidential, not disclose any Confidential Information to any third party and shall use appropriate measures to secure the Confidential Information received from the Provider. The exception is that the Recipient may disclose the Confidential Information:
 - 5.1. after receiving the prior written consent from the Provider; or
 - 5.2. to the extent permitted by applicable law.
6. The Recipient may publish information which is not Confidential Information of the Provider, provided that the Recipient acknowledges the Provider and other sources which are mentioned in the catalog or other documents provided to the Recipient as the source of the Material and data in all publications based on or relating to the Material, including any replica, derivatives, and any research thereof.

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7. If the Recipient breaches any terms of the agreement, the Provider shall have the right to promptly terminate the agreement and claim for all damages from the Recipient.
8. The validity, interpretation, enforceability, and performance of the agreement and all questions relating hereto shall be governed by and construed in accordance with the laws of the Kingdom of Thailand without regard to the principles of conflict of laws, and shall be subject to the jurisdiction of the courts of the Kingdom of Thailand.
9. Miscellaneous
 - 9.1. The agreement may be amended, supplemented, or otherwise modified only by means of an amendment signed by the authorized person and affixed the official seal (if any) of the Provider and the Recipient.
 - 9.2. In case of amalgamation, merger, acquisition or other act related to transferring of share which results in change of the power to conduct the business of the Recipient, the Recipient shall promptly notify the Provider in writing.
 - 9.3. At the later stage, in case that any provision of the agreement is held to be invalid or prohibited under applicable law, such provision shall be ineffective only to the extent of such invalidity or prohibition without affecting the validity of the remainder of such provision and the remaining provisions of the agreement shall remain in full force and effect.
 - 9.4. A waiver of any rights or remedies available to the Provider shall not be valid and effective unless expressed in writing and executed by the duly authorized representative(s) of the Provider. Such waiver by the Provider shall not be construed as a waiver in respect of any other breach, antecedent or future.

For the Recipient

Signature:

Name:

Position:

Organization:

Address:

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Date:

For an authorized person who represents the Recipient's organization

Signature:

Name:

Position:

Organization:

Address:

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Date:

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