

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, Khlong Nueng, Khlong Luang, Pathum Thani 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. **Commercial Evaluation Purpose** means use of the **Material** by the **Recipient** for conducting the experiments and feasibility testing to evaluate the suitability of the **Material** and/or technology for commercial purposes.

The **Recipient** shall use the **Material** in the field of **Commercial Evaluation Purpose** only for the specific purpose as (indicate purpose below or refer to related document).....
.....(hereinafter referred to as “**the Purpose**”). Unless specified in this agreement or 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.

Term of Agreement

The term of the agreement shall be (.....) **YEAR** (s) 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.

Clauses 5, 6 and 7 of **Terms and Conditions** shall survive any expiration or termination of the agreement.

Additional Delivery

In addition to the **Material** set forth herein, in case the **Recipient** requests the **Provider**, with any reasonable causes, any additional delivery or replacement of the **Material** during the **Term of Agreement** hereunder by giving written notice in advance, the **Provider** shall prepare and deliver the **Material** to the **Recipient**; provided that, the **Recipient** shall be responsible for any costs incurred thereof (if any).

Payments

The **Recipient** shall pay all cost under this agreement to the **Provider** as follows:

1. **Upfront Fee**
A non-refundable upfront fee in the sum ofTHB
(.....), including VAT.
2. **Material Fee**
 - 2.1 The Material fee in the sum ofTHB (.....)
 - 2.2 The Shipment fee (*Choose option A or option B*)
(*Option A*) in the sum of.....THB (.....), including VAT.
(*Option B*) upon the price specified in the invoice from the **Provider**.
3. Payment of Upfront fee and Material fee shall not be refunded to the **Recipient** for any reason.

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.

4. Method of Payments

- 4.1 Payments of Upfront fee and Material fee shall be made payable by the **Recipient** to the **Provider's** account as specified in the invoice.
- 4.2 Payments of Upfront fee and Material fee shall exclude of all taxes, including but not limit to other government imposed fees or taxes, if applicable. The **Recipient** shall be responsible for the said taxes and fees.
- 4.3 Term of payments of Upfront fee and Material fee shall be specified in the invoice.

Terms and Conditions

1. 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**.
2. 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 Purpose**.

If the **Recipient** desires to use the **Material** for **Commercial Purpose**, the **Recipient** shall inform the **Provider** in writing obtain a license from the **Provider** or the owner or the proprietor of the **Material** (if any) before the beginning of the commercial use.

3. 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.

4. 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**.
5. 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** or the owner or the proprietor of the **Material** before filing such application(s). The parties shall agree in writing both on the management thereof, and the sharing of any benefit arising therefrom.
6. "**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**:

- 6.1 after receiving the prior written consent from the **Provider**;
- 6.2 to the extent permitted by applicable law; or

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- 6.3 to its employee(s), who have a direct “need to know” and are aware of and subject to a written agreement obliging them to maintain confidentiality of such **Confidential Information** at the same degree of care under the agreement.
7. 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.
 8. 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**.
 9. 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.
10. **Miscellaneous**
- 10.1 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**.
 - 10.2 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.
 - 10.3 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.
 - 10.4 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.
 - 10.5 The **Provider** may terminate this agreement if performance becomes difficult due to force majeure, including, but not limited to, natural disaster: fire, storm, flood, earthquake or act of God; war (declared or not), rebellion, revolution, riots, prohibitive governmental regulations or any cause beyond the reasonable control of the **Provider** or either of them renders the performance of this agreement impossible; provided, however, that the **Provider** shall give the **Recipient** immediate notice of the event.

For the **Recipient**

| | |
|--------------|--|
| Signature | |
| Name | |
| Position | |
| Organization | |
| Address | |
| Date | |

For an authorized person who represents the **Recipient's** organization

| | |
|--------------|--|
| Signature | |
| Name | |
| Position | |
| Organization | |
| Address | |
| Date | |

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