

กรณีที่มีความจำเป็นจะต้องมีการเปลี่ยนแปลง แก้ไข หรือเพิ่มเติมข้อกำหนด หรือเงื่อนไข จากที่ระบุไว้ในแบบมาตรฐานนี้ และ/หรือมีประเด็นอื่นใดที่จำเป็นจะต้องให้ฝ่ายกฎหมายพิจารณาเป็นกรณีเฉพาะ ขอให้ผู้ใช้บริการประสานงานกับฝ่ายกฎหมาย ก่อนดำเนินงานจัดทำร่างสัญญา
Please delete this part before signing.

MATERIAL TRANSFER AGREEMENT

No

This Material Transfer Agreement (hereinafter referred to as the "**Agreement**") is made and entered into on this day of, B.E. (A.D. 20....) (hereinafter referred to as "**the Effective Date**",) at Pathumthani, the Kingdom of Thailand, by and between

....., **National Science and Technology Development Agency**, located at Thailand Science Park, Phahonyothin Road, Khlong Nueng, Khlong Luang, Pathumthani 12120, the Kingdom of Thailand, represented by (the authorized person's title)...., (choose option A or B as applicable) (option A; In case president of NSTDA) who is authorized to enter into the Agreement according to the order of National Science and Technology Development Board number, dated on the day of, B.E. (option B; In case the authorized person acting for president of NSTDA) acting for President of National Science and Technology Development Agency, who is authorized to enter into the Agreement according to the order of National Science and Technology Development Agency number, dated on the day of, B.E. and number, dated on the day of, B.E. as specified in Appendix B attached herewith (hereinafter referred to as the "**NSTDA**"), as the one party, and

(hereinafter referred to as the "**Provider**"), as the one party, and

(choose option A or option B as applicable)

[(option A) ... (In case of juristic person)].....(the counterpart's name)....., a company/an organization established under the law of(country of the counterpart)...., having its principal place of business at(the counterpart's address)....., represented by(the authorized person's name).....,(the authorized person's title)....., who is authorized to enter into the Agreement as evidenced by dated on theday of..... A.D. (hereinafter referred to as the "**Recipient**"), as the other party.

[(option B) (In case of natural person).....] (the person's name)....., ... (age)... (.....) years, identification card/passport no....., issued by at on ... (issue date)... and to be expired on(expiry date)....., whose address is(the person's address)..... (hereinafter referred to as "**The Recipient**"), as the other party.

Whereas, the Provider is the sole proprietor and owner of rights in: (a) all biological materials, living or dead, originated from or within the Kingdom of Thailand as listed in the Agreement Documents in Appendix A, and (b) any cells, DNA molecules or any related biological materials replicated or derived therefrom or associated know-how and data that will be provided by the Provider for the Recipient (hereinafter referred to as "**the Material**").

Whereas, the Recipient requests the Provider to grant the Recipient the right to use the Material for research and education purposes to study

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(hereinafter referred to as “**the Purpose**”) and the Provider accepts such request, and the Recipient agrees to receive the Material subject to certain terms and conditions.

NOW THEREFORE, the parties hereby agree as follows:

1. The Recipient shall use the Material for the Purpose only. 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.
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 Purpose. 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.
3. 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 obtain a license from the Provider before the beginning of the commercial use.

4. The Recipient may use the Material together with other materials 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.

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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 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 (a) after receiving the prior written consent from the Provider; or (b) to the extent permitted by applicable law.
7. The Recipient may publish information which is not Confidential Information of the Provider, provided that the Recipient acknowledges the Provider 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. The term of the Agreement shall be (.....) month(s) from the Effective Date. 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.

Notwithstanding the first paragraph, the obligation of the Recipient under the provisions of clauses 5, 6 and 8 shall survive any expiration or termination of the Agreement.
9. 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.
10. 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.

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11. Miscellaneous

- 11.1 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 each Party.
- 11.2 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.
- 11.3 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.
- 11.4 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.

(In case of NSTDA charges the preparation and distribution costs, the following clause will be added)

11.5 Recipient agrees to pay the Provider United States Dollars (\$.... USD) excluding VAT for its preparation and distribution costs.

12. The following documents are attached to the Agreement and constitute an integral part of the Agreement, as though fully written out and set forth herein:

Appendix A: Details of the Material (..... page(s))

Appendix B: The order of National Science and Technology Development Agency, number, dated, B.E. 25..... and number, dated, B.E. 25... (..... pages)

Appendix C: The Recipient's Documents (..... pages)

(hereinafter referred to as the “**Agreement Documents**”). If the Agreement Documents are inconsistent with the Agreement, the Agreement shall prevail. In case there are inconsistencies among the Agreement Documents, the Parties shall jointly discuss the matter and determine a fair and expedient solution.

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IN WITNESS WHEREOF, the Agreement is executed in two identical counterparts. The Parties have read and understood all terms and conditions of the Agreement and have hereto appended their respective signatures and affixed their official seals (if any) and kept one identical of the Agreement.

.....
**National Science and Technology
Development Agency (.....):**

.....
(.....):

By:.....
(.....)

By:.....
(.....)

Title:
(.....)

Title:
(.....)

Witness:.....
(.....)

Witness:.....
(.....)

Title:

Title:

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หมายเหตุ : ข้อพิจารณาเพิ่มเติม

การให้ใช้วัสดุชีวภาพตามรูปแบบของสัญญาจะ ต้อง

1. ไม่ใช่วัสดุชีวภาพที่ขอรับความคุ้มครองตามกฎหมายทรัพย์สินทางปัญญาอยู่หรืออาจขอรับความคุ้มครองได้ และมีวัตถุประสงค์เพื่อการศึกษาและ/หรือการวิจัยเท่านั้น ไม่ใช่เป็นการอนุญาตให้สิทธิใช้ประโยชน์ในวัสดุชีวภาพเพื่อประโยชน์ในเชิงพาณิชย์
2. เป็นกรณีที่ไม่ใช่การให้ใช้วัสดุชีวภาพภายใต้ขอบเขตของความร่วมมือตามบันทึกข้อตกลง ระหว่าง สวทช. กับนิติบุคคลอีกฝ่ายหนึ่ง

กรณีที่นอกเหนือจากนี้ ให้จัดส่งเรื่องให้ฝ่ายกฎหมายพิจารณาจัดทำสัญญาตามรูปแบบที่เหมาะสมต่อไป

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