Material Transfer Agreement

This Material Transfer Agreement governs the transfer of biological materials and linked data. It is designed for cases, where no cooperation agreement exists between the contractors.

1. Parties

The undersigned, the Provider Med-PSU Biobank, Faculty of Medicine, Prince of Songkla University, incorporated, organized and duly existing under the laws of Thailand, with its principal office at 8th floors Research Innovation and Medical Technology Transfer Building (RI-MeT), hereby legally represented by Faculty of Medicine, Prince of Songkla University,

and

Institution Y [fill in official name of legal entity that is authorized to enter into this agreement], a [fill in type of legal entity, e.g. foundation, corporation (ltd. Inc.)] incorporated, organized and duly existing under the laws of the [fill in appropriate jurisdiction], with its principal office at [insert address], hereby legally represented by [insert name of legal representative]

and/or

Company Z [fill in official name of legal entity that is authorized to enter into this agreement], a [fill in type of legal entity, e.g. corporation (ltd., inc.)], incorporated, organized and duly existing under the laws under the laws of the [fill in appropriate jurisdiction], with its principal office at [insert address], hereby legally represented by [insert name of legal representative], and/or [..]

Whereas, the Provider Med-PSU Biobank, Faculty of Medicine, Prince of Songkla University is a human biobank established with the aim to facilitate research on its collection of human biological samples; Institution Y (hereinafter: Recipient) is a [for profit or non-profit] research institute willing to conduct research on certain Samples from the provider; The Provider is willing to transfer certain Samples to the Recipient;

have agreed to be bound by the provisions set out in this Agreement.

2. Scope of Supply

The Provider provides to the Recipient the following samples/data: Biospecimens and Clinical data.

3. Provision of Biosamples

The Recipient acknowledges that the Samples and linked data are provided on an “as is” basis without any warranty of satisfactory quality or fitness for a particular purpose or use or any other warranty, express or implied.

The Recipient acknowledges that the samples may have unknown and/or hazardous characteristics and therefore agrees to use prudence and reasonable care in the use, handling, storage, transportation, disposition and containment thereof. Recipient shall store the Samples promptly in a frozen state and in compliance with all applicable statutes and regulations.

Recipient shall give the provider written notice of the transfer of its samples to [specified any other facility of Recipient], other than the facility to which they are initially delivered.

The Recipient acknowledges that the samples provided may contain viruses, latent viral genomes or other infectious agents. The Recipient undertakes to treat such Samples as if they are not free from contamination and to ensure that all Samples are handled by appropriately trained personnel under laboratory conditions that incorporate adequate biohazard containment. From the time of receipt, the Recipient is fully responsible for the safe and appropriate handling of the Samples.

The Recipient may not use the samples in human subjects. Recipient agrees not to transform the samples. Recipient shall refrain from performing any tests on the samples for any purpose except quality assurance and control and sample replenishment.

The Recipient confirms that the samples will be kept on the premises of the Recipient at the address specified in the Application or in this agreement and not transferred (in whole or part) to any other location without the prior written approval of the provider. The Recipient shall refer any request for the samples to the provider.

The Recipient confirms that he has obtained all necessary import licenses for receiving the samples in his country for purposes of this agreement.

4. Data Protection

Annex A summarizes the data and/or samples that the Provider will make available to the Recipient in accordance with their approved protocol [REC number]. The timeframe and methodology by which the data and/or samples will be dispatched is also set out in **Annex A.**

The Provider confirms that for the purposes of this MTA it is entitled to supply the samples/and or personal data to the Recipient and that consent covering the intended use has been obtained from the relevant donors/data subjects.

The Recipient will use the samples/data for purposes of the analyses set forth and within the limits set by the Research protocol only. The Recipient confirms that the Approved Research Project has been subject to independent scientific review by a recognized body in the manner described in the Application and that the planned use of the samples/data has approval of the appropriate ethics and scientific committees. The Recipient confirms that all work using the samples/data will be carried out in compliance with all applicable laws, regulations, guidelines and approvals. The Recipient will retain the samples in a secure location as regards Samples or a secure network system as regards data at such standard as would be reasonably expected for the storage of valuable and proprietary samples and/or sensitive/confidential data. Recipient shall refrain from tracing or identifying the identity of any donors who provided the samples. Recipient agrees to preserve, at all times, the confidentiality of information pertaining to identifiable donors. The Recipient agrees not to give access to samples/data, in whole or part, or any identifiable data derived from the samples, to any third party. The Recipient shall limit access to and processing of the samples/data to those employees or other authorized representatives of Recipient who: (i) need to process such Samples in order to conduct their work in connection with the samples/data and the Protocol and (ii) have signed agreements with the Recipient obligating them to maintain the confidentiality of the samples/data and any information to be derived thereof or disclosed to them.

The Recipient shall not attempt to contact any donor/data subject.

Recipient shall take reasonable steps to destroy biosamples for a given subject when the provider deems that subject to have withdrawn his or her consent. The Recipient confirms that it will deal promptly and appropriately with any withdrawals by donors/data subjects which the Provider notify to the Recipient.

On the Completion of the Research Project or on the termination of this agreement, the Recipient will return the biosamples to the Provider or destroy the biosamples and confirm to the provider (in writing) that this has taken place.

On reasonable notice to the Recipient, and in order to confirm or investigate compliance with the provisions of this MTA, the provider may itself or via appropriate third parties:

• choose to inspect the premises and other relevant facilities of the Recipient, in order to review the security, storage or other arrangements for the biosamples;
• request such additional information about the Approved Research Project and/or its progress as the provider may, from time to time, reasonably require.
• the provider will bear the costs of such audits unless a samples default within the procedures and processes of the Recipient is discovered, in which case the Recipient will be obliged to reimburse the reasonable costs of the provider and any relevant third parties.

Any provisions of this agreement intended to protect the rights of human donors/data subjects shall survive the expiry or termination of this agreement.

5. Intellectual Property

Title to the samples/data is and remains in the ownership of the Provider and the samples/data are made available to the Recipient as a service to the research community. The Recipient shall be entitled to any inventions to the extent that these result from his own independent use of the samples/data. He shall grant the Provider a worldwide non-exclusive royalty-free irrevocable research license with respect to any such inventions. If the Recipient elects not to seek any intellectual property protection with respect to such inventions he shall transfer any such rights to the provider at no cost. To the extent that the Provider and the Recipient have each contributed to an invention with respect to the material, they shall jointly own any rights to such an invention. Inventions made solely by the employees or agents of one party shall be owned by that party. Except as expressly set forth in this Section 5, nothing herein shall be deemed to grant to either the Provider or Recipient any rights under the other party's patents, patent applications, trademarks, copyrights, trade secrets, know how (whether patentable or unpatentable) or other intellectual property rights.

6. Return and publication of Results

The Recipient agrees that the Provider will publish - at a time not before the date of publication of a paper that describes the results of any analyses of the Material - via the Provider's website:
• General information about the analysis to the public.
• Summary data about the results to registered users of the Provider's website.
• De-identified subject-specific data about the results to registered users of the Provider's website.

7. Credits

The Recipient agrees to acknowledge the source of the Samples in any publications or other public disclosures reporting use of it. The following form of words should be used: "The Study Received Tissue and/or Bio-fluid from Faculty of Medicine Prince of Songkla University Tissue and Bio-fluid Repository for Research".

8. Reports/Notification

The Recipient shall provide a copy of any report of its Results that derive from use of the Resource to the Provider in any format (e.g. paper journal, on-line report, meeting abstract).

Notices required under this MTA will be in writing and will be delivered by email to the addresses set out below or (in the event of a failure to deliver an email) by post to the Provider or the Recipient and will be deemed to be given, in the case of delivery by email, upon receipt at the Recipient 's email server (unless an automatic response indicating an undeliverable message is received) and, in the case of delivery by post, on the date of delivery (or, if not a business day, on the first business day thereafter).

9. Expiry/Termination

This agreement shall expire [fill in date], unless earlier terminated by the mutual written agreement of the parties.

The Provider will be entitled to terminate this MTA forthwith by written notice to the Recipient if:

• The Recipient commits any breach of a sample provision of this MTA and, in the case of a breach capable of remedy, fails to remedy the same within 20 days after receipt of a written notice giving particulars of the breach and requiring it to be remedied; a breach will be considered capable of remedy if the Recipient can comply with the provision in question in all respects other than as to the time of performance, provided that time of performance is not of the essence.

• The Recipient PI ceases to be employed (or otherwise engaged by) the Recipient Institution; or

• The Recipient Institution ceases, is likely to cease, or threatens to cease carrying on business.

The rights to terminate this MTA given by this clause will be without prejudice to any other right or remedy of either party in respect of the breach concerned, if any, or any other breach.

Upon expiry or termination of this Agreement:

• The grant of rights to the Recipient will be automatically terminated;

• The Recipient shall destroy the Data or otherwise render it inaccessible; and

• The Recipient shall, at the option of the Provider, destroy or return forthwith any unused biosamples.

10. Assignment and sub-contracting

Neither party will be entitled to assign this MTA or any of its rights or obligations hereunder without first having received the written approval of the other party, which approval not to be unreasonably withheld or delayed. The Recipient will not sub-contract the performance of any of its obligations under the MTA or any part thereof without having first obtained the prior written consent of the Provider, such consent not be unreasonably withheld. In the event that consent is granted, the Recipient shall be responsible for the acts, defaults and omissions of its sub-contractors as if they were the Recipient's own, and any consent given will not relieve the Recipient of any of its obligations under this MTA.

11. Limitation of Liability and Indemnity

The Recipient will indemnify the Provider against all losses (whether direct or indirect, reasonably foreseeable or specifically contemplated by the parties), damages, costs, expenses (including but not limited to reasonable legal costs and expenses) that it incurs as a result of: (i) the use, storage or disposal of human biosamples/personal data by the Recipient; or (ii) any negligence or willful default of the Recipient, provided that the Provider agrees to use its reasonable endeavors to mitigate any loss.

BOTH PARTIES ACKNOWLEDGE AND AGREE THAT THE MATERIALS ARE BEING SUPPLIED WITH NO WARRANTIES, EXPRESS OR IMPLIED, AND BIOBANK EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR THAT THE SAMPLES WILL NOT DEGRADE IN RECIPIENT'S SAFE KEEPING. NEITHER PARTY MAKES ANY REPRESENTATION THAT THE USE OF THE MATERIALS WILL NOT INFRINGE THE PATENT OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WHETHER OR NOT THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR IS OTHERWISE ON NOTICE OF SUCH POSSIBILITY.

12. Force majeure

If any party is prevented from, hindered or delayed in performing any of its obligations under this MTA by reason of a Force Majeure Event, such party will promptly notify the other of the date of its commencement and the effects of the Force Majeure Event on its ability to perform its obligations under this MTA. If mutually agreed by the parties, then the obligations of the party so affected will thereupon be suspended for so long as the Force Majeure Event may continue. The party affected by a Force Majeure Event will not be liable for any failure to perform such of its obligations as are prevented by the Force Majeure Event provided that such party will use every reasonable effort to minimize the effects thereof and will resume performance as soon as possible after the removal of such Force Majeure Event. If the period of non-performance exceeds 28 days from the start of the Force Majeure Event then the non-affected party will have the option, by written notice to the other party, to terminate this MTA. For the purpose of this clause, Force Majeure Event means any event beyond the reasonable control of a party including, without limitation, acts of God, war, terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, fire, flood or storm. For the avoidance of doubt, strike, industrial action, failure of technology systems, third party insolvency and failure of the Provider or any other third party will not be considered to be Force Majeure Events. The provisions of this clause will not affect any other right which either party may have to terminate this MTA.

13. Applicable law and jurisdiction

This MTA will be governed by and construed in accordance with the laws of Thailand; parties agree that the Thai courts will have exclusive jurisdiction over any suit, action, proceedings or dispute arising out of, or in connection with, this Agreement.

14. General

This MTA governs the relationship between the parties to the exclusion of any other terms and conditions and, together with any other document referred to in this Agreement, constitutes the whole agreement between the parties in relation to the subject matter hereof.

If there is any conflict between the provisions of this MTA and any of the annexes and related documents (including, but without limitation, the provisions of the Access Procedures) then the provisions of this MTA will apply. A waiver, delay or forbearance by either party, whether express or implied, in enforcing or exercising any of its rights or remedies hereunder will not constitute a waiver of such right or remedy.

No provision of this MTA is intended to be enforceable by any person who is not a party to this Agreement and nor are any rights granted to any third party under statute or otherwise.

Nothing in this MTA will create a partnership, joint venture or relationship of agency between the parties.

All variations to this MTA must be agreed, set out in writing and signed on behalf of the parties before they take effect.

15. Attachments

This Agreement incorporates the attached terms and conditions (including any documents and/or samples that are referred to in them), the Annexes and where applicable the contents of the Preliminary and Main Application Forms [reference number].

Execution
Signed as an agreement

SIGNED for and on behalf of Faculty of Medicine Prince of Songkla University by its duly authorized officer:	**SIGNED** for and on behalf of the Recipient by its duly authorized officer:
……..…… Vice Dean in Research Affairs	……. Authorized Officer
(.....) Print name	(……..) Print name
…… Print title	…… Print title
……. Date	……. Date
In the presence of :	**In the presence of :**
……..	……..
(……) Witness (print name)	(……) Witness (print name)
……. Date	……. Date

In Witness whereof, the Parties have thoroughly read and understood that the statements contained herein are correct and in accordance with their intentions, and have affixed their signatures on (date above). This agreement is made in 2 copies for each Parties keeping.