

LAMPIRAN I
KEPUTUSAN MENTERI KESEHATAN
NOMOR 657/MENKES/PER/VIII/2009
TANGGAL 14 AGUSTUS 2009

**MATERIALS TRANSFER AGREEMENT
(MTA TIPE LENGKAP)**

This Materials Transfer Agreement is made on this day,
_____ [date, month, year] by and between:

_____ [name of
institution], an Indonesian government / non-government institution existing
under the laws of the Republic of Indonesia, having its registered office at

[address]

Indonesia

_____ [name] in this matter acting in his
capacity as

_____ [position] and

_____ [name of Scientist], domiciled at

[address] (hereinafter referred to as "First Party")

with

_____ [name of
institution], a research / _____ institution
existing under the laws of _____ [country] having its
registered office at

[address]

represented by

_____ [name], in this matter acting in his
capacity as

_____ [position]

and

_____ [name of Scientist], domiciled at

[address] (hereinafter referred to as "Second Party").

In consideration of the Second Party's covenant and premises contained herein, the First Party agrees to provide the Materials to the Second Party for the sole purpose of the study and for specific assays as described in Research Plan/Protocol (Appendix A), which shall be an integral part of this Agreement, upon the terms and conditions hereinafter appearing:

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, all words beginning with capital letters and defined herein below shall have the following meaning:

Research Plan/Protocol : means detailed plan of study and / or specific assays to be undertaken as described in Appendix A.

Material/s : means clinical specimens, progeny, and modified derivatives of the biological specimens and / or data as described in Appendix B, which shall be an integral part of this Agreement.

Modifications : Substances created by the Recipient which contain and/or incorporate and/or originated from the Materials and / or the use of the Materials.

2. OWNERSHIP OF MATERIALS

- a. The Second Party acknowledges that rights, title and interests of the Materials are the property of the First Party and the First Party shall retain ownership of the Materials.
- b. The ownership of the Materials will be further negotiated by both Parties according to the prevailing laws and regulations.

3. USE OF MATERIALS

3.1 The Second Party has agreed to use the Materials and Modifications:

3.1.1 solely for the purposes as formulated in the Research Plan/Protocol as further described in the Appendix A;

3.1.2 in accordance with the terms of this Agreement and all applicable laws, statutes and regulations.

3.2 The Second Party has agreed not to:

3.2.1 transfer, distribute, release, or disclose by any means, either intentional or accidental, the Materials or Modifications to, or the use thereof, to any other party, except as expressly stated in Appendix A, for the sole purpose of the Research Plan/Protocol under the supervision of the Scientists;

3.2.2 use the Materials or Modifications for any purpose other than as expressly stated in Appendix A.

3.3 The Second Party has agreed that all persons listed in the Research Plan/Protocol are under the direct responsibility of the Second Party, and the actions of such persons, and consequences thereof, with respect to the Materials and Research Plan/Protocol are thereby considered the full responsibility of the Second Party.

4. THE RESEARCH PLAN/ PROTOCOL

4.1 The Research Plan/Protocol shall be developed together by the Parties. In the Research Plan/Protocol, the Parties will be represented by the Scientists. The role and responsibilities of the Scientists shall be further described in the Research Plan/Protocol.

4.2 The Parties agree to provide best effort to conduct the research, the tests, and the experiments related to the Research Plan/Protocol within the jurisdiction of the Republic of Indonesia, using available national capabilities and resources.

4.3 The Second party shall transfer, in confidence, to the First Party any and all data, records, and results derived from the Materials and Research Plan, including detailed records of direct use of the Materials. The schedule and form for this transfer will be as detailed in the Research Plan/Protocol.

5. INTELLECTUAL PROPERTY RIGHTS

The Second Party acknowledges that the Materials or Modifications are or maybe the subject of patent application. Nothing in this Agreement grants any implied or expressed license or right under any patents or any know-how or trade secrets or other proprietary rights to use the Materials or Modifications or any product or process related thereto for profit-making or commercial purposes, including but not limited to, production, sale, screening or drug design.

6. RETURN OF MATERIALS AND MODIFICATIONS

- a. The Second Party has agreed to return any and all unused Materials, Modifications and all of the data, records, and results derived from the Materials and Research Plan/Protocol to the first Party within two (2) weeks after the study is completed.
- b. At any time and its sole discretion, the First Party may request in writing to the Second Party to return any and all unused Materials, Modifications and all of the data, records, and results derived from the Materials and Research Plan/Protocol, and the Second Party has agreed to fulfill the request within one (1) week of the written request.

7. PUBLICATION

The use of any data, results, or concepts (hereinafter referred to as "Outputs"), derived from use of the Materials in presentations, abstracts, publications (both peer-reviewed and not peer-reviewed), grants, or other means of disseminations by the Second Party shall require expressed written consent from the First Party.

In the event that the Second Party wishes to use Outputs for dissemination of any kind as described above, the Second Party shall provide a written request along with a copy of the presentation, abstract, manuscript, grant or

other medium to the First Party in no less than fourteen (14) days prior to any requested date of dissemination. The inclusion of the First Party in the Outputs, as author or co-author, shall be described in details in the Research Plan/Protocol.

In the event that any subsequent dissemination occurs that is authorized by the First Party, the Second Party has agreed to acknowledge the First Party and its scientists, as academically and scientifically appropriate, based on international guidelines related to provision of the Materials or other direct contribution to the research. The First Party agrees that it will acknowledge the Second Party's publications, as academically and scientifically appropriate, in its publications, which may refer to the results of the Research Plan/Protocol.

8. CONFIDENTIALITY

The Second Party shall treat in confidence any information relating to the Materials and/or Modifications save for information that is in the public domain through no fault of their obligation herein. Such information shall include, without limitation, any specific, technical, trade or business information of the First Party.

9. DISCLAIMER OF WARRANTY

9.1 The First Party makes no representations, conditions or warranties, either expressed or implied, with respect to any use of the Materials or Modifications. Without limiting the generality of the foregoing, the First Party disclaims any implied warranty, conditions or representations that the Materials or Modifications correspond with a particular description, is of merchantable quality or fit for a particular purpose.

9.2 The First Party shall not be liable for loss whether direct, consequential, incidental or special (and whether arising out of contract or tort) which the Second Party or any third party may suffer arising from the use, handling, storage, defect, error, fault or failure to perform with respect to the Materials or Modifications.

9.3 Nothing in this Agreement shall be construed as a warranty or representation by the First Party that the Materials, Modifications or Inventions is or will be free from infringement of patent, copyrights, trademarks, industrial design or other intellectual property rights of any third party.

9.4 The Second Party acknowledges that the Materials are experimental in nature and it is provided without warranty of fitness for the purposes described in the Research Plan.

10. INDEMNITY

10.1 The Second Party hereby jointly and severally agrees and undertakes to indemnify, hold harmless and defend the First Party against any and all claims, actions, damages, liabilities, loss whatsoever (including all legal costs and expenses on a full indemnity basis) arising out of or resulting from directly, the possession, use and/or storage of any of the Materials and Modifications or by reason of any breach of the terms herein by the Second Party including, without limiting, the generality of

the foregoing, any consequential losses suffered by the First Party by reason of the foregoing howsoever the same may arise.

10.2 In no event shall the First Party be liable for consequential or incidental damages arising from breach or breaches of this Agreement.

10.3 No action, whether in contract or tort (including negligence) or otherwise arising out of or in connection with this Agreement may be brought by the Second Party more than 6 (six) months after the cause of action has occurred.

11. TERMINATION

11.1 This Agreement will terminate on the earliest of the following date: (a) on the completion of the implementation activities set forth in the Research Plan/Protocol as described in the Appendix A, or (b) in 30 (thirty) days' written notice by either party to another.

11.2 In addition, the First Party may terminate this agreement if it is of the view that the Second Party is in breach of any of the terms hereof and such breach, if capable of being remedied, is not remedied by the Second Party after 30 (thirty) days' Notice by the First Party.

11.3 Upon termination of this Agreement as provided above, the Second Party shall discontinue its use of the Materials and Modifications and will, upon direction from the First Party, return and /or destroy any remaining Materials and Modifications, including but not limited to, all of the data, records, and results derived from the Materials and Research Plan/Protocol.

11.4 Clauses 5, 6, 7, 8, 9, and 10 of this Agreement shall survive the termination of this Agreement howsoever caused.

12. ARBITRATION

12.1 Any and all disputes in connection with this Agreement shall, so far as is possible, be settled amicably between the Parties hereto.

12.2 Failing such an amicable settlement, any and all disputes, controversies, and conflicts arising out of, or in connection with this Agreement, or its performance, shall be finally settled by arbitration in accordance with the Arbitration Rule of the International Chamber of Commerce ("ICC"), which rules are deemed to be incorporated by reference into this clause. The Arbitration proceedings shall take place in Jakarta and shall be conducted in English.

12.3 The Parties agree that the Panel of Arbitrators shall consist of 3 (three) arbitrators. The First Party and the Second Party shall respectively have the right to appoint one (1) arbitrator and should one party fail to appoint its arbitrator in fourteen (14) days from the appointment of the first arbitrator, then such arbitrator shall be appointed by the ICC. The two (2) arbitrators so appointed shall jointly appoint the third arbitrator who will act as the Chairman of the Panel of Arbitrators. Should the two (2) arbitrators fail to appoint the third arbitrator in fourteen (14) days from the appointment of the second arbitrator, then such third arbitrator shall be appointed by the ICC.

12.4 The decision of the Panel of Arbitrators shall be final, binding and incontestable and may be used as a basis for judgment thereon in Indonesia or elsewhere. It shall include a determination as to which of the Parties shall pay the costs of the arbitration.

12.5 Neither Party shall be entitled to commence or maintain any action in a court of law upon any matter in dispute until such matter shall have been submitted and determined as herein before provided, except for the enforcement of such arbitration.

12.6 Pending the submission to arbitration and thereafter until the Panel of Arbitrator publishes its award, except for the Termination set forth in Article 11 of this Agreement, the Parties shall continue to perform all their obligations under this Agreement without prejudice to a final adjustment in accordance with the said award.

13. NOTICE

13.1 Address

Any Notice required or permitted to be given hereunder shall be in writing and may be given by personal delivery, registered mail, telex if confirmed on the same day in writing by registered mail, with postage fully prepaid or facsimile to the following address :

First Party :

Institution:

[address]

Fax:

Email:

Attn:

Scientist :

[address]

Fax:

Email:

Attn:

Second Party :

Institution:

[address]

Fax:

Email:

Attn:

Scientist :

[address]

Fax:

Email:

Attn:

13.2 Receipt

Any notice so given shall be deemed to be received in case of telex or facsimile, forty-eight (48) hours after dispatch, or in case of a letter upon receipt, or fourteen (14) days after posting, whichever is sooner, for mail sent between any countries, upon receipt or seven (7) days after posting, whichever is sooner.

13.3 Service

To prove service of notice, it shall be sufficient to prove that a letter, telex, or facsimile containing the notice was properly addressed and properly dispatched or posted.

13. GOVERNING LAWS

This Agreement shall be construed, governed, interpreted and applied in accordance with the laws of the Republic of Indonesia.

First Party,

Second Party,

[signature]

[signature]

[name]

[name]

[title]

[title]

Date: _____

Date: _____

[signature]

[signature]

—

Scientist:

Scientist:

[title]

[title]

Date: _____

Date: _____

—

Approved by,

[signature]

[name]

Director General,

National Institute of Health Research and Development

Date: _____