MATERIAL TRANSFER AGREEMENT

**Details of the parties**

|  |  |
| --- | --- |
| **INSTITUTION** | **(name of Health Service Provider), a body corporate established under section 32 of the Health Services Act 2016** |
| Address: |  |
|  |
| ABN: |  |
| Contact for Notices: |  |
| Fax for Notices: |  |
| Phone Number: |  |
| Internal Reference:  |  |

|  |  |
| --- | --- |
| **RECIPIENT ORGANISATION** |  |
| Address: |  |
|  |
| ABN: |  |
| Contact for Notices: |  |
| Fax for Notices: |  |
| Phone Number: |  |
| **Recipient Scientists** |  |
| Project for which the Materials are supplied | (Refer to Schedule 1) |
| Materials to be supplied | (Refer to Schedule 1) |
| Transmittal Fee | $ |

|  |  |
| --- | --- |
| **Date of Execution:** |  |

*Acknowledgement: The Harry Perkins Institute for Medical Research is thanked for granting its permission to substantially adopt the terms of its Material Transfer Agreement.*

# The Recipient Organisation and the Recipient Scientists named above (the “Recipients”) have requested the Institution, as named above, to provide certain materials (the "Materials”) for use in the particular project (the “Project”) described above. The Institution has agreed to supply the Materials on the following terms and conditions:

1. In this Agreement, Materials includes any progeny, modification or improvements to the Materials that the Recipients develop, directly or indirectly while using the Materials supplied by the Institution. As a condition of receiving the Materials, the Recipients must pay the Transmittal Fee specified above in order to reimburse the Institution for its preparation and distribution costs within 30 days of receipt of an invoice from the Institution.
2. The Recipients will use the Materials solely for its internal non-commercial biomedical research purposes in connection with the Project and must not use them for any products or for the generation of other products or processes for profit-making or commercial purposes.
3. The Materials may only be used strictly within the confines of the Research Plan described in Schedule 1.
4. The Recipients acknowledge that the Project specifically excludes without limitation, use of the Material for:

a. any human *in vivo* use whatsoever; or

b. any human *in vitro* diagnostic or therapeutic applications,

and the Recipient must use the Materials with caution and prudence in any experimental work.

1. The Recipients will be responsible for complying with all applicable legislation, regulations and relevant standards in relation to the use of the Materials.
2. The Materials and any intellectual property subsisting in or in relation to them are the property of the Institution. The Institution grants to the Recipients a non-exclusive right to use the Materials under the terms and conditions of this Agreement. The Recipients must not sell, loan or otherwise provide the Materials to any other party for any purpose without the prior written consent of the Institution.
3. The Recipients’ right and licence to use the Materials are not transferable. The Recipients agree that the Materials may only be used at the Recipient Organisation and only in the Recipient Scientists’ laboratories under the direct supervision of the Recipient Scientist.
4. The Recipients acknowledge that the Materials are or may be the subject of a patent or patent application. Except as provided in this Agreement, the Recipients agree that they have no express or implied licence or other right to any patents, patent applications, trade secrets or other proprietary rights of the Institution. In particular, no express or implied licence or other right is provided to use the Materials for commercial purposes.
5. If the Recipients desire to use or license the Materials for commercial purposes, the Recipients agree, in advance of such use, to negotiate in good faith with the Institution to establish the terms of a commercial licence agreement. The Recipients acknowledge that the Institution will have no obligation to grant such a licence to the Recipients, and may grant exclusive or non-exclusive commercial licences to others, or sell or assign all or part of the rights in the Materials to any other party.
6. The Recipients must treat as confidential information any Materials or other information provided by the Institution which the Institution regards as being confidential to it, and must take all reasonable and necessary precautions to restrict access to researchers who are directly involved in the Project and who are placed under an obligation to observe the terms of this Agreement. The Recipients’ obligations of confidentiality will survive termination of this Agreement and will continue until the confidential information disclosed by the Institution lawfully becomes part of the public domain. These obligations of confidentiality do not apply to Information which: a) was lawfully in the Recipients’ possession or control prior to the date of disclosure; b) was in the public domain or enters into the public domain through no improper act on the Recipients’ part or on the part of any of the Recipients’ employees; c) is given to the Recipients from sources independent of the Institution; d) was independently developed by the Recipients without the knowledge of the Information provided by the Institution as evidenced by contemporaneous written records; e) must be disclosed for minimum lawful compliance with court orders, regulations or statutes.
7. The Recipients must return to the Institution or, at the Institution’s request, arrange the disposal or destruction of all remaining or unused Materials once (i) this Agreement terminates; (ii) the Project for which the Materials have been supplied discontinues; or (iii) there is no further need for the Materials in connection with the Project. The Recipient will make all reasonable efforts to ensure that such return or destruction of Materials is completed within 30 days of the event that triggers this Clause 11.
8. The Recipients must provide to the Institution copies of any reports and outlines of any discoveries or results in relation to the research and experimentation conducted on the Materials. The Recipient will make all reasonable efforts to ensure that such reports and information are provided to the Institution within 30 days of the conclusion of the project.
9. Nothing in this Agreement prevents the Institutionfrom exploiting, distributing or otherwise making the Materials available to any other parties at any time.
10. The Recipients acknowledge that they will use the Materials at their own risk and agree to accept sole responsibility and liability for the conduct of the Project. To the fullest extent permitted by law, the Institution supplies the Materials without any warranties, express or implied, including without limitation any warranties of merchantability or fitness for a particular purpose.
11. The Recipients agree to indemnify and keep indemnified the Institution and its officers, employees and agents against any and all damages, expenses (including without limitation legal expenses), claims, demands, suits or other liability arising from the Recipients’ use or disposal of the Materials.
12. The Recipients agree to acknowledge the Institution and to appropriately cite by authorship any responsible Institution staff member in any publications or presentations which result from the use of the Materials. During and after the term of this Agreement, the Recipient Scientist must provide the Institution with copies of all manuscripts at least thirty (30) days prior to submission for publication or disclosure. The Recipients must also promptly provide the Institution with copies of all details or results of research derived from the Materials which have been published.
13. The Institution makes no representation and provides no warranty that the use of the Materials will not infringe any other party’s intellectual property or other rights which will interfere with the Recipients’ ability to use the Materials for the purposes contemplated by this Agreement.
14. Unless terminated previously, the term of this Agreement shall be fifteen (15) years from the date of execution of this Agreement.
15. The Institution may terminate this Agreement at any time by giving 30 days’ notice to the Recipient Organisation.
16. The Institution may terminate this Agreement if Recipient is in breach of any of its obligations under this Agreement and, if that breach is capable of remedy, does not rectify that breach within 30 days after receipt of a notice to remedy that breach.
17. A notice, consent, approval or other communication (each a **notice**) under this Agreement must be: delivered to the party’s address; or sent by pre-paid mail to the party’s address; or transmitted by facsimile to the party’s address. A notice given by a party in accordance with this clause is treated as having been given and received: if delivered to a person’s address, on the day of delivery if a business day, otherwise on the next business day; or if sent by pre-paid mail, on the third business day after posting; or if transmitted by facsimile to a person’s address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day. The addresses of the parties for the purposes of giving any notice are set out on the front page of this Agreement.
18. Any failure by a party to compel performance by the other party of any terms and conditions of this Agreement will not constitute a waiver of those terms or conditions or diminish rights arising from their breach.
19. This Agreement may only be amended in writing, signed by the parties. If any provision of this Agreement is invalid or unenforceable, it will be deemed deleted but the remaining provisions of this Agreement will remain in full force and effect.
20. This Agreement contains the entire understanding between the parties concerning its subject matter and supersedes all prior communications between the parties.
21. Each party will execute all documents and perform all acts necessary to give full effect to this Agreement.
22. This Agreement is governed by the laws of Western Australia and the Commonwealth of Australia. Each party submits to the exclusive jurisdiction of courts exercising jurisdiction in Western Australia and the Commonwealth of Australia in connection with all matters concerning this Agreement.

In witness hereof, the parties have caused this Agreement to be executed as of respective dates written below.

Signed on behalf of the **Institution**

by

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….

for and on behalf of (name of Health Service Provider) in accordance with section 41 of the *Health Services Act 2016*

Signed on behalf of the **Recipient Organisation**

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….

Read, understood and acknowledged by the **Recipient Scientist**

Signed: ………………………………….

Name: …………………………………..

Position: …………………………………

Date: ………………………………….

**Schedule 1. Research Plan**