**Data Transfer Agreement**

**Details of the parties**

|  |  |  |  |
| --- | --- | --- | --- |
| **Name of Discloser:** | | | **(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: | | |  |
| Email for Notices: | | |  |
| Phone Number: | | |  |
|  | | |  |
| **Name of Recipient:** |  | | |
| Address: |  | | |
| ABN: |  | | |
| Contact for Notices: |  | | |
| Fax for Notices: |  | | |
| Email for Notices: | | |  |
| Phone Number: |  | | |
|  |  | | |
| Study Name: | |  | |
| Protocol Number: | |  | |
| Date of Agreement: | | *see Schedule 1* | |

This Data Transfer Agreement is made between the Discloser and the Recipient

1. The Recipient has requested that the Discloser provide the Data to the Recipient for the Purpose.
2. The Data includes confidential information.
3. The Discloser has agreed to provide the Data to the Recipient and the Recipient accepts the Data on the terms set out in this Agreement.

**Operative Provisions**

1. **INTERPRETATION**

## In this Agreement:

**Agreement** means this Agreement, including all the Schedules.

**Commencement Date** means the Commencement Date shown in Item 1, Schedule 1.

**Data** means the data of so described in Item 4, Schedule 1.

**Discloser** means the party, so described on the first page of this Agreement, transferring the Data to the Recipient.

**End Date** means the End Date shown in Item 1, Schedule 1.

**Intellectual Property** means all present and future industrial and intellectual property rights, including without limitation:

### inventions, patents, copyright, trade business, company or domain names, rights in relation to circuit layouts, plant breeders rights, registered designs, registered and unregistered trademarks, know how, trade secrets and the right to have confidential information kept confidential, and any and all other rights to intellectual property which may subsist anywhere in the world; and

### any application for or right to apply for registration of any of those rights.

**Location** means the location so described in Item 8, Schedule 1.

**Principal Investigator** means the person so described in Item 6, Schedule 1.

**Purpose** means the purpose so described in Item 3, Schedule 1.

**Recipient** means the party, so described on the first page of this Agreement, receiving the Data from the Discloser.

**Requester** means the person so described in Item 5, Schedule 1.

**Responsible Human Research Ethics Committee (HREC)** means the body so described in Item 14, Schedule 1.

1. **RECIPIENT’S OBLIGATIONS AND RESPONSIBILITIES**
   1. The Recipient agrees that:

## The Recipient will not use the Data other than for the Purpose unless required by law, or the Discloser consents in writing to that use.

## The Recipient will not disclose the Data to any third party unless required by law, or the Discloser consents in writing to that disclosure.

## Subject to clause 2.1.2 above, only the Principal Investigator and those supervised by the Principal Investigator will be granted access to the Data by the Recipient.

## Where the Data includes information that is not personal information, the Recipient must not modify or use it, or link it to other information, in a way that identifies, or might lead to the identification of an individual to whom it relates unless authorised to do so. The Recipient acknowledges that a breach of this clause may constitute an offence under the *Health Services Act 2016*.

## The Data must be retained by the Recipient only in the Location, unless otherwise approved in writing by the Discloser.

* 1. Following receipt of Data by the Recipient, the Recipient must ensure that in storing and using the Data and in carrying out the Purpose, it complies with all applicable laws, regulations, codes, approvals (including ethics approval) and industry standards in respect of the storage and use of the Data.
  2. For the avoidance of doubt, where the Recipient provides Data, or parts thereof, to a third party (Third Party) with the written consent of the Discloser under 2.1.2 of this Agreement, the Recipient remains responsible for all Data provided to that Third Party and for any breach of confidentiality by the Third Party in relation to the Data that may occur.
  3. The Recipient may only provide Data to a Third Party in accordance with clause 2.1.2 of this agreement, provided that the Recipient has ensured that the Third Party has executed a non- disclosure agreement requiring the Third Party to use the Data only in accordance with the terms of this Agreement and in terms otherwise acceptable to the Discloser in its sole discretion. The Recipient must allow the Discloser the reasonable opportunity to review and amend the terms of the non-disclosure agreement prior to providing any Data to the Third Party.

1. **INTELLECTUAL PROPERTY**
   1. The Data is the property of the Discloser. The Discloser grants to the Recipient a non-exclusive right to use the Data under the terms and conditions of this Agreement. The Recipient must not sell, loan or otherwise provide the Data to any other party for any purpose without the prior written consent of the Discloser.
   2. The Recipient’s right and licence to use the Data is not transferable.
   3. The Recipient acknowledges that the Data is or may be the subject of a patent or patent application. Except as provided in this Agreement, the Recipient agrees that they have no express or implied licence or other right to any patents, patent applications, trade secrets or other proprietary rights of the Discloser. In particular, no express or implied licence or other right is provided to use the Data for commercial purposes.
   4. The Recipient must promptly provide to the Discloser copies of any reports and outlines of any discoveries or results in relation to the research and experimentation conducted on the Data. The Recipient will make all reasonable efforts to ensure that such reports and information are provided to the Discloser within 30 days of the conclusion of the Purpose.
   5. No representations or warranties are made or given in relation to the Data by the Discloser.
2. **CONFIDENTIALITY**
   1. The Recipient must treat as confidential information any Data or other information provided by the Discloser, and must in addition to the other obligations under this Agreement, take all reasonable and necessary precautions to restrict access to researchers who are directly involved in the Purpose and who are placed under an obligation to observe the terms of this Agreement.
   2. The Recipient’s obligations of confidentiality will survive termination of this Agreement and will continue until the confidential information disclosed by the Discloser lawfully becomes part of the public domain. These obligations of confidentiality do not apply to information which:

## was lawfully in the Recipient’s possession or control prior to the date of disclosure;

## was in the public domain or enters into the public domain through no improper act on the Recipient’s part or on the part of any of the Recipient’s employees;

## is given to the Recipient from sources independent of the Discloser;

## was independently developed by the Recipient without the knowledge of the information provided by the Discloser as evidenced by contemporaneous written records; or

## must be disclosed for minimum lawful compliance with court orders, regulations or statutes.

* 1. The Recipient will immediately notify the Discloser if it becomes aware that disclosure of any Data is, or may be required by law, and will provide all reasonable assistance and co-operation which the Discloser reasonably considers necessary for the purpose of enabling the Discloser to seek a protective order or other relief from disclosure.
  2. The Recipient must, at the Discloser’s request and discretion, arrange the return or deletion of the Data once:

## this Agreement terminates; or

## the Purpose for which the Data have been supplied discontinues; or

## there is no further need for the Data in connection with the Purpose.

The Recipient will make all reasonable efforts to ensure compliance with the Discloser’s request is completed within 30 days of the event that triggers this clause.

* 1. The Recipient will comply with the Privacy Act 1988 (Cth), the Australian Privacy Principles and any other legislation, codes or guidelines which apply in the jurisdiction in which the Data is to be located and which relates to the use, collection, storage or disclosure of any personal and/or health information.

1. **USE OF DATA**
   1. The Recipient agrees that:

## The Recipient’s use of the Data must be strictly within the confines of the Purpose.

## The Recipient will use the Data exclusively for non-commercial research.

## The Recipient must only use the Data in accordance with the restrictions described in Schedule 1.

## Use of Data will be in compliance with all applicable laws and regulations.

* 1. Nothing in this Agreement prevents the Discloser from exploiting, distributing or otherwise making the Data available to any other parties at any time.

1. **INDEMNITY**
   1. The Recipient acknowledges that it will use the Data at its own risk and agrees to accept sole responsibility and liability for the conduct of the Purpose. To the fullest extent permitted by law, the Discloser supplies the Data without any warranties, express or implied, including without limitation any warranties of merchantability or fitness for a particular purpose.
   2. The Recipient agrees to indemnify and keep indemnified the State of Western Australia, the Minister for Health, the Discloser and its officers, employees, agents and representatives against any and all damages, expenses (including without limitation legal expenses), claims, demands, suits or other liability arising from the Recipient’s use of the Data, except to the extent that such damage or liability is due to the negligence or wilful misconduct of the Discloser.
2. **PUBLICATIONS**
   1. The Recipient will allow the Discloser to review any report or material that result from the Recipient’s use of the Data prior to publication and the Discloser may require any amendments that are reasonably necessary to preserve confidentiality.
   2. The Recipient agrees to acknowledge the source of the Data and to appropriately cite the Discloser and, where required by the Australian Code for the Responsible Conduct of Research (as amended from time to time), staff members of the Discloser in any publications or presentations which result from the use of the Data.
3. **PAYMENTS**
   1. In consideration for provision by the Discloser of the Data, the Recipient will pay to the Discloser as nominated in Schedule 2 in the manner and on the basis of the amounts and at the times set out in Schedule 2. The amounts set out in Schedule 2 do not include GST. At the time of payment, the Recipient must pay to the Discloser any amount of GST that the Discloser is required to pay in addition to the amounts set out in Schedule 2, and in accordance with GST Law.
   2. The Recipient reserves the right to refuse to pay to the Discloser payments specific to Data which do not meet the criteria specified in the Protocol.
   3. Payments will be made by the Recipient upon either receipt of a valid tax invoice or a “Recipient Created Tax Invoice” issued by the Recipient.
   4. The Recipient and the Discloser each warrant that they are registered under GST Law. Tax invoices must identify supplies for which GST is payable.
4. **TERM AND TERMINATION**
   1. In the ordinary course of events, this Agreement terminates on the End Date specified in Schedule 1.
   2. Either party may terminate this Agreement at any time by giving 30 days’ written notice to the other party.
   3. Either party may terminate this Agreement if the other party 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.
   4. The Parties will attempt in good faith to resolve through negotiation any disputes arising out of or relating to this Agreement.
5. **NOTICES**
   1. A notice or other communication under this agreement is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or electronically.
   2. If a notice is sent by mail, it is taken to have been received 3 working days after it is posted. If it is sent by fax, subject to clause 10.3, it is taken to have been received on receipt by the sender of advice from the sending machine that the transmission was sent without error in its entirety to the correct facsimile address of the recipient.
   3. If a notice sent electronically or by fax after 5:00pm or on a day other than a business day, it is taken to have been received on the next business day.
   4. Each party's address for notices is that specified on the first page of this Agreement or (with respect to facsimile numbers and email addresses) specified in Schedule 1 with respect to the Requestor and/ or Principal Investigator, or as otherwise notified in writing.
6. **SURVIVAL**
   1. Without limiting any other term of this Agreement, the following clauses survive termination or expiry: clause 2 *[Recipient’s Obligations and Responsibilities]*; clause 4 *[Confidentiality]*; and clause 6 *[Indemnity].*
7. **OTHER**
   1. 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.
   2. The rights and obligations of the parties under this agreement will not be assignable without the prior written permission of the other party.
   3. Nothing in this agreement will be construed so as to make any party an employee, agent or partner of another, or create any relationship of partnership, agency, or trust whatsoever.
   4. This Agreement may only be amended in writing, signed by the parties.
   5. 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.
   6. This Agreement contains the entire understanding between the parties concerning its subject matter and supersedes all prior communications between the parties.
   7. Each party will execute all documents and perform all acts necessary to give full effect to this Agreement. This agreement may be signed in any number of counterparts.
   8. This agreement shall be construed and governed in accordance with the laws of Western Australia.

The parties have caused this Agreement to be executed as of respective dates written below.

Signed on behalf of the **Discloser**

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**

Signed: ………………………………….

Name: …………………………………...

Position: …………………………………

Date: ………………………………….

Read, understood and acknowledged by the **Principal Investigator / Recipient Scientist**

Signed: ………………………………….

Name: ………………………………….

Position: …………………………………

Date: ………………………………….

**SCHEDULE 1**

**DATA TRANSFER DETAILS**

|  |  |  |
| --- | --- | --- |
| Item 1 | **Term of Agreement**  **Commencement Date:**  **End Date:** |  |
| Item 2 | **Research Project** (title): |  |
| Item 3 | **Recipient’s Purpose for using the Data:** |  |
| Item 4 | **Description of Data being transferred:** |  |
| **Data format**  (circle) | (i) non-identifiable **[Yes]** **[No]**  (ii) re- identifiable **[Yes]** **[No]**  (iii) individually identifiable **[Yes]** **[No]**  *if ‘yes’ to (iii) please provide reason why individual’s identity is required.*  *add attachment if more space required* |
| Item 5 | **Requester’s details** | name:  position:  work location:  contact details: |
| Item 6 | **Principal Investigator’s details** (if not the same as the requester) | name:  position:  work location:  contact details: |
| Item 7 | **Data source/collection**(s) from which the data will be sourced (if known) |  |
| **Is Data Custodian(s) approval required?** (circle) | **[Yes] [No]**  *If yes, Data Custodian(s) to name, sign and date* |
| Item 8 | **Location** where Data to be held by Recipient |  |
| Item 9 | **Data Security** | *Recipient to provide details of how the Data will be stored securely* |
| Item 10 | **Restrictions on use of Data** (circle) | **[Yes] [No]** |
| **If yes, provide details** | *If yes, Discloser to detail (for example: “to be used only for non-clinical research”; ” not to be used in the treatment or diagnosis of humans”)* |
| Item 11 | **Will Data be shared by Recipient with Third Parties?** (circle) | **[Yes] [No]** |
| **If yes, provide details** |  |
| **If yes, has Discloser provided prior written consent for Recipient to share Data?**  (circle) | **[Yes] [No]** |
| Details of how the Data will be disseminated to Third Parties |  |
| Item 12 | **Retention and destruction** | *Detail any relevant retention periods and whether the information should be returned to the Discloser or destroyed.* |
| Item 13 | **List of** **persons having access to the Data** |  |
| Item 14 | **Responsible HREC:** |  |
| Item 15 | **Details of Approved Protocol** | *version approved by HREC* |
| Item 16 | **Special Conditions** | *as specified by Discloser* |

**SCHEDULE 2**

**PAYMENTS**

* 1. Payment Schedule

All payments will be made in Australian Dollars and are exclusive of GST.

Payments will be made to the Payee as per below table:

PAYEE DETAILS

|  |  |
| --- | --- |
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No payments will be made to the Payee until the following are complete: (1) execution of this agreement, (2) submission of all regulatory documents to xxx, and (3) HREC approval