**Material transfer agreement**

**Parties**

The Royal Children’s Hospital (ABN 35 655 720 546) of 50 Flemington Road Parkville Victoria 3052 Australia (**RCH**)

and

[*Insert other party’s details including ABN and address*] (**Supplier**)

**Background**

Supplier proposes to provide, or as at the date of this agreement has provided, RCH with the Materials (as defined below) and any related Confidential Information for the purpose of [*RCH employee to insert accurate description of the purpose for which the material is being provided to RCH – if there is a detailed project, then the project and HREC number should be referenced here*] (**Purpose**).

RCH has agreed to use the Material and to keep confidential all Confidential Information of the Supplier subject to the following terms and conditions of this agreement.

**Description of the Materials**

The Materials being provided to RCH by the Supplier include: [*RCH employee to insert description of the materials being provided by Supplier – If the Material is data, indicate the type (de-identifed, re-identifable, identifiable), description and format being shared*]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Defined terms

In this document:

**Confidential Information** of the Supplier includes the following, whether or not in material form:

1. all information that is confidential to the Supplier and that is disclosed (whether before or after the execution of this agreement) by the Supplier to the RCH including but not limited to all information relating to the Material and any confidential know-how, data, results, models, samples, intellectual property, technology, trade secrets, drawings, processes, formulae, product development plans,

but excludes the following information, being information that:

1. is public knowledge or is lawfully known to or in the possession or control of the RCH, other than as a result of a breach of confidentiality or this agreement;
2. is independently developed by the RCH without the use of the Supplier confidential information and/or Materials; or
3. is required by law to be disclosed.

**Intellectual Property Rights** means all intellectual property rights subsisting anywhere in the world, including the following rights:

1. patents, copyright (including future copyright and software), rights in circuit layouts, designs, trade and service marks (including goodwill in those marks), domain names and trade names, confidential information and any right to have confidential information kept confidential whether or not such rights are registered or capable of being registered; and
2. to the extent available any application or right to apply for registration of any of the rights referred to in paragraph (a).
3. Conditions for provision of Material
	1. **Use generally**

The RCH:

1. may only use the Material for the Purpose;
2. must not use the Material or any products containing any part of the Material or resulting from the use of the Material, for any commercial purpose without the prior written consent of the Supplier;
3. must comply with any applicable laws in relation to the importation, transportation, use, maintenance or disposal of the Material;
4. must not distribute or release the Material (nor any unmodified derivatives or genetically engineered modifications which are based on the Material) to any person other than the employees of the RCH, and must make sure that no one is allowed to take or send the Material to any location other than a location under the control of the RCH without prior written permission from the Supplier.; and
5. *only if the Material is or contains identifiable data*, acknowledges that the Material may contain Personal Information (as defined in the *Privacy Act 1988* (Cth))and agrees that any Personal Information in the Material will be used and disclosed only in accordance with all applicable privacy legislation. The RCH must not disclose the Material to any third party in any form in or from which an individual’s identity is apparent or may reasonably be ascertained without the consent of the Supplier.
	1. **Publication**

The RCH has the right to publish its findings and results from the research with the Material, provided that:

1. the Supplier is given the opportunity to contribute to the publication if deemed appropriate by RCH;and [*RCH employee to consider if appropriate* *– delete if not*]
2. The Supplier is always acknowledged as the source of the Material.
	1. **Intellectual Property Rights in Materials and Results**
3. The Supplier retains all ownership and Intellectual Property Rights in the Material and derivatives of the Material and grants the RCH a non-exclusive, royalty-free licence to use, adapt, reproduce and exploit the Material for the Purpose;
4. In consideration of the Supplier supplying the Materials to the RCH, the RCH will, as soon as practicable, inform the Supplier in writing of any and all findings and research results produced by or on behalf of the RCH related to the use of the Material (**Results**) and of any new Intellectual Property Rights developed from its use of the Materials. The Supplier and RCH will enter into negotiations to discuss their respective ownership rights in relation to any new Intellectual Property Rights in the Results.
	1. **RCH acknowledgements**

The RCH acknowledges and agrees that:

1. the Material is made available for investigational use only;
2. it will not obtain or attempt to obtain any patent protection in relation to:
	1. any part of the Material (or any modification or use of any part of the Material); or
	2. any materials that could not have been made but for having access to the Materials,

without the written consent of the Supplier;

1. this transfer does not constitute a public disclosure;
2. the Material is experimental in nature and may have hazardous properties and is provided to the RCH without any warranty of merchantability or fitness for any particular purpose, or any other warranty, express or implied. To the extent permitted by any applicable laws, the Supplier excludes any and all warranties in relation to the Material; and
3. the Supplier makes no representation or warranty that the Material or the use of any of the Material will not infringe any third party’s Intellectual Property Rights.
4. Use and disclosure of Confidential Information

The RCH agrees to use all Confidential Information solely for the Purpose and to keep it confidential. The RCH may only disclose Confidential Information to those of its employees and officers who have a need to know and are aware that the Confidential Information must be kept confidential.

The RCH must establish and maintain effective security measures to safeguard the Confidential Information from access or use not authorised by this agreement and must keep the Confidential Information under its control.

1. Agreement end and return or destruction of Material and any Confidential Information after agreement ends

Unless otherwise agreed, this agreement ends on the date the associated research project (for which the Materials have been obtained) ends.

Immediately upon the request of the Supplier (including after termination of this agreement in accordance with clause 6) or at agreement end, the RCH must follow the Supplier’s instructions in relation to destroying or returning the Material and/or Confidential Information of the Supplier.

1. Supplier liability

Except to the extent prohibited by law, the RCH assumes all direct liability for damages which may arise from its use, storage or disposal of the Material. Supplier will not be liable to the RCH for any loss, claim or demand made by the RCH, or made against the RCH by any other party, due to or arising from the use of the Material by the RCH, except to the extent permitted by law when caused by the negligence or fault of the Supplier.

1. Termination
2. The Supplier may terminate this agreement at any time with immediate effect by giving written notice to the RCH.
3. Any obligations of confidentiality under this agreement continue to apply to the parties to this agreement after termination.
4. Termination of this agreement does not affect any accrued rights or remedies the Supplier may have.
5. Miscellaneous
6. This agreement may be executed in any number of counterparts. All counterparts will constitute one instrument. The parties agree that facsimile or email signatures will be accepted as originals.
7. A party must not assign or otherwise transfer any or all of its rights arising out of this agreement without the written consent of the other party.
8. This agreement constitutes the entire agreement between the parties with respect to the transfer of Material to the RCH. This agreement may be amended only by written agreement of both parties.

**Executed as an agreement**

|  |  |  |
| --- | --- | --- |
|  |  |  |
| Signed for **The Royal Children’s Hospital**by its authorised representative:  |  | Signed for ***[insert full name of other party]***by its authorised representative: |
|  |  |  |
| Signature |  | Signature |
|  |  |  |
| Print NameDate:                                             |  | Print NameDate:                                             |

**Read, understood and accepted by:**

|  |  |  |
| --- | --- | --- |
|  |  |  |
|  |  |  |
| Signature (RCH Investigator) |  | Signature (Supplier Investigator) |
|  |  |  |
| Print Name |  | Print Name |

|  |  |  |
| --- | --- | --- |
| Date:                                              |  | Date:                                                |