**Material Transfer Agreement**

This Material Transfer Agreement is by and between:

**Parties**

**BARWON HEALTH** ABN 45 877 249 165 a body corporate established under the *Health Services Act* 1988 (Vic), of Bellerine Street, Geelong VIC 3220 (‘**Barwon Health**’)

**and -**

**[Insert full business name,** ABN and address of Recipient Institution] (‘**Recipient**’) on behalf of [XXXXXXXXXXXXXXXXXXXXXXX] (“**Recipient Investigator”).**

**Barwon Health and Recipient, collectively the ‘Parties’**

**Recitals**

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| --- | --- |
| A  | Barwon Health through the Barwon Health Investigator has collected and/or produced the Material. |
| B | Recipient wishes to acquire the Material for the Purpose.  |
| C  | Barwon Health is willing to provide a sample of the Material to the Recipient for the Term subject to the terms of this Agreement |

**Definitions**

1. In this Agreement, unless expressed or implied to the contrary, the following definitions apply:

***Barwon Health Researcher*** means the researcher identified in the Schedule.

***Commercial Purposes*** means any commercial or profit generating purpose including the sale, lease of, other transfer of the Material and includes uses of the Material by any organisation, including Recipient, to perform contract research, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the Material.

***Confidential Information*** means information disclosed by Barwon Health to the Recipient in relation to the Material, Purpose or otherwise (whether in written, oral or other form) including but not limited to know how, techniques, practices, processes, inventions and ideas but does not include information which: a) was lawfully in the Recipient’s 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 Recipient’s part or on the part of any of the Recipient’s employees; c) is given to the Recipient from sources independent of Barwon Health; d) was independently developed by the Recipient without the knowledge of the Confidential Information provided by Barwon Health as evidenced by contemporaneous written records; e) must be disclosed for minimum lawful compliance with court orders, regulations or statutes.

***Human bio-specimens*** means as defined in the National Statement on Ethical Conduct in Human Research 2007 (updated 2018): ‘any biological material obtained from a person including tissue, blood, urine, sputum and any derivative from these including cell lines. It does not include non-human biological material such as micro-organisms that live on or in a person’. ’Bio-specimens’ includes tumour biopsies (fresh or paraffin-embedded blocks), samples of normal tissues, blood and serum samples, urine and other body fluids, and tissue derivatives including DNA, RNA, and proteins obtained from human beings.

***Material*** means ‘human bio-specimens’ belonging to or under the control of Barwon Health which the Recipient wishes to acquire in the amounts described in the Schedule.

***Purpose*** means the purpose described in the Schedule.

***Term*** means the term described in the Schedule.

**Provision of Material**

1. Barwon Health will provide the Material to the Recipient.

**Use of Material**

1. Barwon Health grants Recipient a non-exclusive licence to use the Material solely for the Purpose. The Recipient and Recipient Investigator agree that the Material:
2. will not be used directly or indirectly for any Commercial Purpose or commercially-sponsored research;
3. will not be used in humans or for diagnostic purposes without the prior written consent of Barwon Health;
4. will be kept secure, only be used at the Recipient organisation and only in the Recipient Investigator’s laboratory under the direct supervision of the Recipient Investigator or others working under his/her direction;
5. will not be sequenced, modified or otherwise altered without the prior written consent of Barwon Health.
6. will not be used in connection with human subjects or in clinical trials involving human subjects, without the written consent of Barwon Health.

**Safety**

1. The Material delivered pursuant to this agreement may be experimental in nature and have hazardous properties. The Recipient is responsible for the safe handling and storage of the Material and agrees to comply with any safety precautions accompanying the Material.

**Comply with laws**

1. In carrying out the Purpose and in the storage and use of the Material, the Recipient will exercise all reasonable care, employ good laboratory practice and will comply with any applicable laws and regulations governing the transportation, keeping, use or disposal of the Material.

**Transfer of Material**

1. The Recipient must not supply the Material to any third party and the Recipient, and the Recipient Investigator will refer to Barwon Health any request for the Material, from anyone other than those persons working under the Recipient Investigator's direct supervision.

**Ownership of Materials**

1. Barwon Health retains ownership of the Material. Barwon Health has the right to use or permit others to use the Material at any time for any purpose. Recipient obtains no ownership rights in the Material by virtue of the transfer by Barwon Health under this Agreement. Except as provided in this Agreement, no express or implied licences or other rights to any part of the Material are provided to the Recipient.

**Confidential Information**

1. The Recipient must hold and procure the holding of any Confidential Information in strict confidence. The Recipient must not disclose the Confidential Information to any person except to such of its directors, officers and employees who need to know for the Purpose. The obligations under this clause 9 will expire five (5) years from expiration or termination of this Agreement.

**Inventions**

1. If in using the Material for the Purpose, the Recipient derives information or knowledge or makes a discovery, improvement or invention (“Invention”) relating to or arising from the use of the Material the Recipient agrees to promptly notify Barwon Health of such an Invention on a confidential basis. If registerable, ownership of and the rights residing in any such Invention will be negotiated in good faith recognising the contribution of the parties in making such Invention and subject to applicable laws and regulations governing inventorship. Should any Inventions be deemed to be owned by the Recipient, the Recipient grants Barwon Health a non-exclusive, perpetual, royalty-free licence to use that Invention for non-commercial internal research. All intellectual property that was created by a party prior to entering into this Agreement or independently from the research being performed as part of this Agreement (***Background IP***) remains the property of the party who created it.

**Results**

1. The Recipient agrees to inform Barwon Health of any results in connection with use of the Material.

**Publication**

1. The Recipient may publish any results derived from its use of the Material, provided:
2. any publications acknowledge the contribution of Barwon Health and the Barwon Health Researcher as being involved in the development or contribution of the Material; and
3. a copy of the proposed publication is provided to Barwon Health forty five (45) days prior to proposed publication, for the purpose of determining whether it contains Confidential Information or intellectual property owned by Barwon Health. Barwon Health may require amendment of the proposed publication or seek a delay in publication if Barwon Health has a patent application which would be prejudiced by publication. The Parties will negotiate in good faith the extent of any amendment or period of delay. In no case should the delay exceed ninety (90) days.

**Term and Termination**

1. Unless otherwise terminated in accordance with this clause 12, this Agreement will expire at the end of the Term unless extended by mutual written agreement of the Parties. A party may terminate this Agreement upon thirty (30) days written notice to the other. Upon expiration of this Agreement or termination by written notice, whichever is earliest, the Recipient will cease using the Material and promptly return to Barwon Health any unused portion of the Material at the Recipient’s cost and expense or destroy the Material at the request of Barwon Health. The rights and obligations of both Parties in clauses 5, 7, 8, 9, 11, 13 and 14 will survive termination of this Agreement for whatever cause.

**No Warranties**

1. Barwon Health:
2. makes no representations and extends no warranties of any kind, either expressed or implied that the use of the Material is fit for any purpose or any particular purpose or will not infringe any patent, copyright, trademark, or other proprietary rights; and
3. excludes all statutory or implied conditions and warranties to the extent permitted by law and where such conditions or warranties cannot legally be excluded, such liability is limited to supplying the Material again or paying the cost of having the Material supplied again (if such is possible).

**Liability**

1. Recipient acknowledges and agrees that, to the extent permitted by law, Barwon Health will not be liable for any loss or damage (whether direct or indirect, special or consequential) arising from the Material or the Recipient’s use, application, storage or disposal or destruction of the Material except to the extent that such damage or loss is a direct result of the negligence or misconduct of Barwon Health.

**Miscellaneous**

1. This Agreement constitutes the entire agreement and understanding of the Parties in relation to the Material. Nothing in this Agreement will be construed so as to oblige either party to enter into any further agreement. The Recipient may not assign this Agreement without the prior written consent of Barwon Health. No modification will be effective unless in writing and signed by the Parties. This Agreement will be validly executed is signed in counterparts, together which will constitute one agreement.

**Governing Law**

1. The laws applicable in the State of Victoria, Australia will apply to this Agreement, and the Victorian courts will have exclusive jurisdiction.

**Executed** as an agreement when it is signed by both Parties.

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| **Signed** for and on behalf of **Barwon Health ABN 96 237 388 063** by its duly authorised representative: |  | **Read** and understood by**BARWON HEALTH INVESTIGATOR** |
| Signed: |  | Signed: |
| Name: |  | Name: |
| Position: |  | Position: |
|  Date: / /  |  | Date: / /  |

|  |  |  |
| --- | --- | --- |
| **SIGNED** for and on behalf of **INSErT RECIPIENT NAME AND ABN** by its duly authorised representative: |  | **Read** and understood by**RECIPIENT INVESTIGATOR**  |
| Signed: |  | Signed: |
| Name: |  | Name: |
| Position: |  | Position: |
|  Date: / /  |  | Date: / /  |

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| **SCHEDULE** |
| Item 1 | Recipient  | **Recipient**:[*name & address*]ABN*: [insert if any]*Telephone: [*insert*]Email: [*insert*] |
| Item 2 | Commencement Date  | The day this Agreement is fully executed  |
| Item 3 | Term | One (1) year from the date of the last signature to this Agreement |
| Item 4 | Material  | **[*insert description of the Material to be provided by Barwon Health to the Recipient or append detailed description if in a separate document*].**  |
| Item 5 | **Purpose**  | [*brief description of the activities to be provided] in relation to [insert purpose description]**eg the non-commercial research into [describe****].*** |
| Item 6 | **Representatives and contact details** | Barwon Health:[*to whom the person reports]* [*name, title, department & address*]Telephone: [*insert*]Email: [*insert*]**Recipient**:*name, title, department & address*]Telephone: [*insert*]Email: [*insert*] |