

Material Transfer Agreement

Standard Terms and Conditions

Background

- A Barwon Health owns the Material.
- B Barwon Health has agreed to provide the Material to the Recipient in accordance with the terms and conditions of this Agreement.

1 Application

- 1.1 These terms and conditions are to be read with the attached Agreement Details.
- 1.2 Together, the Agreement Details and these terms and conditions are called 'this Agreement'.

2 Term

- 2.1 This Agreement begins on the date specified in the Agreement Details (**Start Date**), and ends on the date specified in the Agreement Details (**End Date**), unless this Agreement is otherwise terminated in accordance with **clause 13**.

3 Material

- 3.1 Barwon Health will provide the Recipient with the Material specified in the Agreement Details (**Material**).

4 Provision and Use of Material

- 4.1 The Recipient must use the Material only for the purpose specified in the Agreement Details (**Purpose**).
- 4.2 Unless expressly permitted in the Agreement Details, the Recipient must not:
 - 4.2.1 use the Material in connection with human subjects without the written consent of Barwon Health; or
 - 4.2.2 supply, transfer, trade, sell, or otherwise commercially deal with the Material.
- 4.3 New Intellectual Property must be dealt with in accordance with Agreement Details.
- 4.4 The Recipient must use the Material in accordance with all applicable laws, regulations, guidelines and codes.
- 4.5 Prior to the End Date, the Recipient at its own cost, and at the option of Barwon Health, must destroy or return all unused Material to Barwon Health.

5 Safety

- 5.1 The Recipient acknowledges that the Material may be toxic, may contain infectious agents or other substances that are hazardous or dangerous, or harmful to persons or property.

5.2 The Recipient acknowledges that the Recipient uses the Material at the Recipient's own risk, and that Barwon Health is, in no way, liable or responsible for any consequence flowing from the handling, storage, and/or use of the Material.

5.3 The Recipient is solely responsible for the safe handling, storage and use of the Material, and must ensure that the Material will not cause any harm to any person, or to property.

6 Warranties

6.1 Barwon Health provides the Material to the Recipient without any representation, warranty for suitability, efficacy for any application, merchantability, fitness for a particular purpose or any other warranty, express or implied.

6.2 Barwon Health makes no representation that the use of the Material will not infringe any patent, copyright, trademark, or any other proprietary right.

7 Payment

7.1 Terms used in this **clause 7** have the same meaning as those terms in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

7.2 The Recipient must pay Barwon Health on the basis of the price specified in the Agreement Details (**Price**). The Price does not include GST.

7.3 At the time of payment, the Recipient must pay to Barwon Health any applicable GST in addition to the Price.

7.4 The Recipient is only required to pay Barwon Health after Barwon Health has provided a tax invoice in the format required by law.

7.5 The Recipient must pay Barwon Health for the amount invoiced within 30 days after the invoice is received.

7.6 The Parties acknowledge that the Price represents an amount for Barwon Health to recover the reasonable expenses relating to any collection, storage or transport of the Material to the Recipient.

8 Confidentiality and privacy

8.1 The Recipient must not disclose the Confidential Information, except if:

8.1.1 the disclosure is required by law; or

8.1.2 the disclosure is reasonably made to a professional adviser, provided that the adviser is subject to a duty of confidentiality similar to the obligation imposed by this Agreement.

8.2 The Recipient must comply with:

8.2.1 all Commonwealth and State privacy, health records or similar legislation and regulations which Barwon Health is required to comply with, including, the *Information Privacy Act 2000* (Vic), section 141 of the *Health Services Act 1988* (Vic), and the *Health Records Act 2001* (Vic); and

- 8.2.2 any request which Barwon Health may make in writing to the Recipient, which may be reasonably required to ensure that Barwon Health complies with its obligations arising under any Commonwealth, State, Territory privacy, health records or similar legislation or regulations.
- 8.3 The Recipient must use the Confidential Information only for the Purpose, and must not use the Confidential Information for any other purpose.
- 8.4 The Recipient must keep the Confidential Information in a safe place to ensure that unauthorised persons do not have access to the Confidential Information.
- 8.5 If the Recipient becomes aware of any steps taken, being taken, or considered, to compel the Recipient or any of its agents or employees to disclose Confidential Information, the Recipient must:
 - 8.5.1 to the extent permitted by law, defer and limit the disclosure with a view to preserving the confidentiality of the Confidential Information as much as possible;
 - 8.5.2 promptly notify Barwon Health; and
 - 8.5.3 do anything reasonably required by Barwon Health including the institution and conduct of legal proceedings at Barwon Health's direction and expense to oppose or restrict that disclosure.

9 Ownership and Rights

- 9.1 This Recipient acknowledges that this Agreement is not a contract for sale of goods.
- 9.2 The Recipient acknowledges that the Material, and all Confidential Information, including any copyright that subsists in any part of the Confidential Information, shall at all times remain the absolute property of Barwon Health.
- 9.3 Nothing in this Agreement confers upon the Recipient any right to the Material or Confidential Information.

10 Publications

- 10.1 The Recipient must not publish any paper, presentation or other publication which in any way refers to the Material or any Confidential Information, without the prior written consent of Barwon Health, which will not be unreasonably withheld.
- 10.2 If Barwon Health does not give its consent as contemplated by **clause 10.1**, the Recipient must abide by any relevant conditions specified by Barwon Health and the publication obligations set out in the Special Conditions (if any).

11 Notices

- 11.1 A Notice to a Party under this Agreement is only given if it is:
 - 11.1.1 delivered or posted to that Party at the address for that Party stated in the Agreement Details; or
 - 11.1.2 faxed to that Party at the fax number for that Party stated in the Agreement Details.

- 11.2 A Party may amend its address or fax number stated the Agreement Details by giving the other Party 7 days written notice of the amendment.

12 Liability and Insurance

- 12.1 The Recipient will be liable and must indemnify Barwon Health, its officers, employees and agents against any liability, loss, damage, or expense (including legal costs on a full indemnity basis) incurred or suffered as a direct or indirect result of any of the following:
- 12.1.1 the transfer, the transport, delivery, use, storage, handling and overall treatment and possession of the Material;
 - 12.1.2 any negligence or other wrongful act or omission of the Recipient or any person for whose acts or omissions the Recipient is liable;
 - 12.1.3 any injury to persons, including injury resulting in death and economic loss; and
 - 12.1.4 any breach of this Agreement by the Recipient.
- 12.2 Without limiting the Recipient's other obligations under this **clause 12**, the Recipient must for the duration of this Agreement and so long as any actual or potential losses or liabilities remain outstanding under or in respect of it maintain whatever insurances are necessary to meet its obligations under this Agreement.

13 Termination

- 13.1 If the Recipient is not meeting any of its obligations under this Agreement, then Barwon Health may:
- 13.1.1 by notice in writing to the Recipient specify which obligations are not being met; and
 - 13.1.2 if after 14 days from the notification has been served, Barwon Health is still of the opinion that these obligations are not being met or will not be met in a reasonable time, Barwon Health may terminate this Agreement by giving notice in writing to the Recipient.
- 13.2 Barwon Health may end this Agreement immediately if any of the following events occur:
- 13.2.1 the Recipient commits a serious breach of this Agreement; and/or
 - 13.2.2 there is a significant risk that the Recipient will be unable to pay its debts as they fall due.
- 13.3 Immediately upon termination of this Agreement, the Recipient must cease using the Material and, at its own cost, and at the option of Barwon Health, destroy or return all unused Material to Barwon Health.
- 13.4 Any termination under this **clause 13** will not give the Recipient a ground for any claim for damages, compensation or costs or expenses of any kind.

14 Miscellaneous

Counterparts

14.1 This Agreement may be executed in any number of counterparts.

Special Conditions

14.2 The Parties agree to abide by the Special Conditions. The Special Conditions override any inconsistent provisions in this Agreement (to the extent of that inconsistency).

Survival

14.3 **Clauses 8, 10 and 12** survive the expiry or termination of this Agreement.

Variation

14.4 This Agreement may only be varied by agreement in writing of both parties or otherwise as expressly provided in this Agreement.

Assignment

14.5 The Agreement may not be assigned by any party, without the consent of the other party.

Waiver

14.6 A waiver by a Party is only effective if it is in writing. A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given.

Severability

14.7 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

14.8 If any clause or part of a clause of this Agreement is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

Entire agreement

14.9 This Agreement contains the entire agreement of the parties in relation to the Material, and supersedes all prior communications, arrangements and agreements, whether written or oral, between the Parties with respect to the subject matter of this Agreement.

Governing law

14.10 This Agreement is governed by the law of Victoria. Each of the Parties submits to the non-exclusive jurisdiction of the courts of Victoria.

15 Definitions and Interpretation

15.1 In this Agreement, the following definitions apply unless they are inconsistent with the context:

Confidential Information means all information disclosed by Barwon Health to the Recipient including inventions, discoveries, facts, data, ideas, manner, method or process of manufacture, method or principle of construction, chemical composition or

formulation, techniques, products, prototypes, process, names, know-how, routines, specifications, drawings (whether in draft or final form), trade secrets, technology methods, computer programs, works in respect to which copyright subsists and any other knowledge, but which is not:

- (a) in the public domain, unless it came into the public domain by a breach of confidentiality;
- (b) already known by the Recipient at the Start Date; or
- (c) obtained lawfully from a third party without any breach of confidentiality.

Material means the material specified in the Agreement Details and includes any material that is derived from or based upon the Material, whether or not progeny, and whether modified or unmodified.

New Intellectual Property means all and any patents, patent applications, trade marks, trade names, trade secrets, registered designs, unregistered design rights, copyrights, know-how, rights in confidential information, and any other intellectual property rights whether registered or unregistered, which arises or is discovered in connection with the Recipient's use of the Material.

Notice includes any document or correspondence required, permitted or referred to in this Agreement.

Special Conditions means the Special Conditions specified in the Agreement Details.

15.2 In this Agreement, unless the context otherwise requires:

- 15.2.1 a reference to a clause or a Schedule is a reference to a clause or Schedule of this Agreement;
- 15.2.2 words denoting the singular include the plural and vice versa;
- 15.2.3 a reference to a Party includes that Party's employees, agents and authorised sub-contractors;
- 15.2.4 a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.