

Material Transfer Agreement (UNSW Provider)

AGREEMENT DETAILS

Agreement Date	The date that this Agreement is executed by the last party to it.		
UNSW (or Provider)	Name	The University of New South Wales, a body corporate established pursuant to the University of New South Wales Act 1989 (NSW) (UNSW)	
	Address	UNSW Sydney NSW 2052, Australia	
	ABN	57 195 873 179	
	Notices	Attention - RGC	Director, Research Grants and Contracts Research Grants and Contracts
		Address	Level 3, Rupert Myers Building South Wing, UNSW NSW 2052, Australia
		Email	MyResearch.rgc@unsw.edu.au
		Phone	+61 2 9065 8491
	Invoices	Attention	Associate Director, Research Revenue and Accounting
		Address	Research Revenue and Accounting UNSW Sydney NSW 2052
		Email	researchfinance@unsw.edu.au
Phone		+61 2 9065 8577	
Investigator	Name	[insert]	
	Email	[insert]	
	Phone	[insert]	
Key Personnel	[Insert name, email and phone]		
[Insert shortform name] (or Recipient)	Name	[LEGAL NAME] [You need to complete the details for the other party in this section, being the legal name, ABN (or other registration detail) and an address below. You should make sure that the correct legal name is used (and it is not a trading name or an unincorporated affiliation).]	

Address	[REGISTERED ADDRESS OR STREET ADDRESS AND COUNTRY IF A FOREIGN PARTY]	
ABN or ACN or other registration number:	[INSERT NUMBER] [You can do a basic ABN search for Australian entities at ABN lookup to make sure the details are correct]	
Notices & Invoices	Attention	[INSERT NAME OF LEGAL CONTACT] [This person should be the organisation contact not the researcher, project manager or agreement contact]
	Address	[insert]
	Email	[insert]
Investigator	Name	[insert]
	Email	[insert]
	Phone	[insert]
Key Personnel	[Insert name, email and phone]	
Commencement Date	[Date of last signature of this Agreement OR DATE]	
Materials	[DETAILS OF THE MATERIAL REQUESTED, INCLUDE SPECIFIC INFORMATION]	
Purpose	[DESCRIBE WHAT THE MATERIAL WILL BE USED FOR. THIS MTA TEMPLATE AS DRAFTED IS FOR NON-CLINICAL, NON-COMMERCIAL RESEARCH PURPOSES.]	
Term	[If you want the Recipient to only be able to use the Materials for a defined period – specify that period here.]	
Quantity	[TYPE AND QUANTITY]	
Packaging	[DETAILS OR NA]	
Collection Location	[DETAILS OR NA]	
Collection Date	[EXPECTED DATE OR TIME PERIOD]	
Fees (recoverable costs)	[\$[NUMBER OR NA] (exclusive of GST) [The Recipient should pay for costs associated with storage, packaging and transport or delivery of the material]	
Project	[NAME OR TITLE OF THE RESEARCH PROJECT, STUDY OR PROTOCOL THE MATERIAL WILL BE USED IN]	
Project Location	[PREMISES WHERE THE MATERIAL WILL BE USED]	
Insurance	[SPECIFY TYPES OF INSURANCE AND \$ LIMITS IF REQUIRED OR NA]	
Special Conditions	[SPECIFY ANY SPECIAL CONDITIONS RELATED TO MATTERS SUCH AS SUPPLY OF THE MATERIALS, INTELLECTUAL PROPERTY, USE OF THE RESULTS BY UNSW, PUBLICATION, ATTRIBUTION, OR OTHERWISE THAT ARE NON-STANDARD TO THE GENERAL TERMS]	

[Please seek assistance from the UNSW Legal Office where the Special Conditions required to be inserted are not consistent with the General Terms of this Agreement. This is because the Special Conditions override the General Terms]

SAMPLE

EXECUTION

Executed as an Agreement

Signed for and on behalf of UNSW by its authorised representative:

Signature

Date

Name of authorised representative

Position

Signed for and on behalf of [insert Recipient name] by its authorised representative:

Signature

Date

Name of authorised representative

Position

GENERAL TERMS

1 Definitions and interpretation

1.1 Definitions

In this Agreement, the following capitalised words have the following meaning.

Affiliate of a party means an entity who, directly or indirectly, Controls or is Controlled by or is under common Control with a party.

Agreement means this agreement between UNSW and the Recipient once executed.

Background IP means all Intellectual Property Rights in the Materials owned or controlled by UNSW at the Commencement Date, which UNSW has the right to license to third parties and that are necessary for the Recipient's use of the Materials for the Purpose under this Agreement.

Business Day means any day that is not a Saturday, Sunday or public holiday in the jurisdiction where a party is located.

Confidential Information means all information related to:

- (a) the Materials;
- (b) the Purpose; and
- (c) all other information disclosed by a party (**Discloser**) to the other party (**Receiving Party**) or which the Receiving Party otherwise becomes aware of during the Term or before the Commencement Date, that is:
 - (i) imparted in circumstances of confidence; or
 - (ii) by its nature reasonably to be considered the confidential information of the Discloser or of a person to whom the Discloser owes a duty of confidence; and
- (d) all Records; and

in each case, irrespective of the medium or means of disclosure or whether the disclosure is made directly or indirectly either by or to the Receiving Party or by the Discloser's Personnel, Affiliates or Related Bodies Corporate but does not include any Excluded Information.

Control has the meaning given to that term in section 50AA of the Corporations Act.

Corporations Act means the Corporations Act 2001 (Cth).

Derivatives means any improvements or modifications of the Materials made directly or indirectly by the Recipient, or anything derived by the Recipient from or using the Materials. Some examples include:

- (a) structural or functional analogues and homologues and purified or fractionated subsets of the Materials;
- (b) expression products, replicates and progeny of any of the above; and
- (c) polynucleotides coding for any of the above.

Excluded Information means information that:

- (a) is wholly in the public domain other than due to a breach of this Agreement or any other obligation of confidentiality;
- (b) was known by a Receiving Party at the time of disclosure by the Discloser or is subsequently disclosed to the Receiving Party by someone other than the Discloser and the information was not acquired directly or indirectly through a breach of this Agreement or any other obligation of confidentiality; or
- (c) is independently developed by the Receiving Party without any reference to or reliance on the Confidential Information.

Excluded Loss means any special, indirect or consequential Loss arising under or in connection with this Agreement, including any loss of profits, loss of anticipated savings or loss of reputation.

Government Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

GST means the tax imposed by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means, with respect to a party:

- (a) a liquidator is appointed to the party;
- (b) the party applies to be voluntarily deregistered;
- (c) the party resolves to wind itself up; or
- (d) the party receives a notice from the Australian Securities and Investments Commission that it is to be deregistered, unless the deregistration process is stopped within one month after that notice.

Intellectual Property Rights means any inventions, patents, trade marks, service marks, design rights, database rights (whether registered or otherwise) and any applications, renewals and extensions for these, copyright, know-how, trade or business names and all other intellectual or industrial property rights anywhere in the world, whether or not registered or capable of registration and any associated goodwill and the right to have confidential information kept confidential.

Law means any applicable statute, regulation, by-law, ordinance, rule, proclamation, subordinate

legislation, order in council, any other instrument of a legislative character, and court rules, that are in force from time to time in Australia (whether made by a State, Territory, the Commonwealth, or a local government) or elsewhere, and includes the common law and rules of equity as applicable from time to time.

Loss means liabilities, expenses, charges, claims, losses, damages and costs (including legal cost on a full indemnity basis) whether incurred by or awarded against a party.

Materials means the material (whether of biological, chemical, mechanical or other nature) specified in the Agreement Details and related information and data provided by UNSW and includes Unmodified Derivatives.

Personal Information means personal information as defined in the *Privacy Act 1988* (Cth).

Personnel means any employee, officer, principal, agent, advisor, contractor, student or volunteer of a party.

Privacy Laws means the *Privacy and Personal Information Protection Act 1998* (NSW) and the *Privacy Act 1988* (Cth) and similar applicable laws in the jurisdiction where a party is located.

Publication means any manuscript, abstract, article, thesis, paper or other work intended for publication; any visual or oral presentation; or any poster, electronic or web presentation.

Purpose means the Purpose described in the Agreement Details, but does not include any clinical or commercial use.

Records means all notes, memoranda, copies and records (in whatever form) made by a party containing, referring to or based on the Confidential Information.

Related Body Corporate has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

Results means all outcomes generated by the Recipient's use of the Materials and includes Intellectual Property Rights vesting in such results and data as well as non-patentable results, discoveries and data arising from the Recipient's use of the Materials.

Unmodified Derivatives means substances created by the Recipient which constitute an unmodified functional subunit or product expressed by the Materials. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the Materials, proteins expressed by DNA/RNA supplied by UNSW, or monoclonal antibodies secreted by a hybridoma cell line.

1.2 Interpretation

Unless the context requires otherwise:

- (a) Reference to:
 - (i) one gender includes the others;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns;
 - (v) a thing includes the whole and each part of it separately;
 - (vi) a statute, regulation, code or other Law or a provision of any of them includes:
 - (A) any amendment or replacement of it; and
 - (B) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (vii) dollars mean Australian dollars unless otherwise stated.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings and any table of contents or index are for convenience only and do not form part of this Agreement or affect its interpretation.
- (e) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
- (f) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (g) A reference to a term in the Agreement Details which is not separately defined has the meaning specified in the Agreement Details.

1.3 Order of precedence

This Agreement comprises the:

- (a) Agreement Details; and
- (b) General Terms,

if the Agreement Details include any Special Conditions, the Special Conditions will have precedence over the General Terms to the extent of any ambiguity or inconsistency.

2 Supply of Materials

- 2.1 Subject to clause 2.2, UNSW agrees to make the Materials available to the Recipient on the terms and conditions of this Agreement:
- (a) on the Collection Date;
 - (b) at the Collection Location;
 - (c) in the Quantity and Packaging specified in the Agreement Details; and
 - (d) in compliance with any Special Conditions (if any).
- 2.2 The Recipient must pay to UNSW the Fees (if any) within thirty (30) days of receipt of a tax invoice from UNSW.
- 2.3 If the Materials are not collected by or on behalf of the Recipient by the Collection Date or within sixty (60) days of the date of this Agreement, this Agreement will automatically terminate.
- 2.4 All risk in the Materials transfers to the Recipient on collection of the Materials. The Recipient is liable for risks in relation to the transport, storage, handling and use of the Materials.
- 2.5 The Recipient acknowledges and agrees that its right to use the Materials under this Agreement is non-exclusive and that nothing in this Agreement prevents UNSW from exploiting the Materials or supplying them to any third party.

3 Use of Materials

- 3.1 The Recipient may only use the Materials:
- (a) for the Purpose;
 - (b) at the Project Location;
 - (c) during the Term; and
 - (d) on the terms and conditions of this Agreement.
- 3.2 The Recipient must:
- (a) ensure the Materials are kept secure, confidential and under the active supervision of the Recipient Investigator;
 - (b) ensure the Materials are stored, transported and used in compliance with all applicable:
 - (i) Laws;
 - (ii) codes and guidelines;
 - (iii) ethical approvals; and
 - (iv) all reasonable directions made by UNSW;
 - (c) not use the Materials or Derivatives in any research or trials involving human subjects, human body fluids, extracts of human tissue in

- plant culture or human cells in cell culture without UNSW's express prior written consent;
- (d) immediately report to UNSW any use or disclosure of the Materials other than as permitted under this Agreement, take reasonable steps to mitigate the effects of such unauthorised use or disclosure and cooperate with all reasonable requirements of UNSW to that end;
- (e) notify UNSW promptly of all Results and provide UNSW with regular reports on the progress of the Project;
- (f) if requested, provide a report in a form acceptable to UNSW on the conclusion of the Project, including details of all Results, Derivatives and any related new Intellectual Property Rights;
- (g) not sell, loan, or otherwise provide any Materials or Unmodified Derivatives to any third party, without UNSW's express prior written consent; and
- (h) not use UNSW's name or logo without the prior written consent of UNSW.

4 Intellectual Property

- 4.1 The Materials and any Intellectual Property Rights subsisting in or in relation to them remain the property of UNSW.
- 4.2 Nothing in this Agreement or the use of the Materials by the Recipient grants to the Recipient a licence or other interest in any Intellectual Property Rights of UNSW other than as expressly set out in this Agreement.
- 4.3 UNSW grants to the Recipient during the Term a non-exclusive, fully paid up, non-transferable licence to use the Background IP for the Purpose on the terms of this Agreement.
- 4.4 Subject to any Special Conditions and clause 4.1, the Recipient will own all rights in any Derivatives. For the avoidance of doubt UNSW will own all rights, including Intellectual Property rights in:
- (a) any Materials incorporated in the Derivatives;
 - (b) Unmodified Derivatives; and
 - (c) UNSW's Background IP.
- 4.5 On request, a party must sign all documents and do all things (including requiring its Personnel to sign documents) as necessary or desirable to vest, confirm, perfect and record the ownership rights of a party under this Agreement.

5 Confidentiality

5.1 Confidentiality obligations

The Receiving Party must:

- (a) use the Confidential Information solely for the Purpose;
- (b) not disclose or permit the disclosure or use of the Confidential Information, except as provided in this Agreement;
- (c) not use, and ensure that its Personnel do not use, any Confidential Information for any purpose other than the Purpose in compliance with its obligations under this Agreement;
- (d) take all action necessary to maintain the confidential nature of the Confidential Information, including:
 - (i) take reasonable steps to keep the Confidential Information:
 - (A) within its possession and control, and
 - (B) secure to protect it from unauthorised access, disclosure or use, or loss, damage or destruction; and
 - (ii) notify the Discloser as soon as the Receiving Party becomes aware of a breach of this Agreement or any actual, suspected or likely unauthorised access to, or use or disclosure of the Confidential Information.

5.2 Permitted disclosures

- (a) During the Agreement Term, the Receiving Party may disclose the Confidential Information to its Personnel, Affiliates and Related Bodies Corporate, who have a specific need to access the Confidential Information for the Purpose, provided they are made aware of the confidential nature of the Confidential Information, the terms of this Agreement and are bound by an obligation of confidentiality, before they are provided with or given access to Confidential Information.
- (b) The Receiving Party may disclose Confidential Information if required by any Law or order of any Government Agency provided that it:
 - (i) only discloses the minimum amount of information necessary to comply with the requirement;
 - (ii) takes all reasonably available legal measures to avoid such disclosure;
 - (iii) notifies the Discloser as soon as practicable after the order of such disclosure so that the Discloser may seek an appropriate protective order or other remedy; and
 - (iv) consults with the Discloser as to the form of disclosure to be made and takes account of any reasonable comments of the Discloser.

6 Privacy

6.1 Each party agrees to:

- (a) comply with the relevant Privacy Laws;
- (b) not do anything with any Personal Information they receive or hold that will cause the other party to be in breach of any Privacy Laws; and
- (c) assist and co-operate with the other party in resolving any complaints made under any Privacy Laws.

7 Publication

- (a) The Recipient is entitled to publish the Results obtained through use of the Materials, provided that no Confidential Information owned by UNSW is disclosed, subject to this clause 7.
- (b) The Recipient must give notice of any proposed Publication in respect of the Project to the other party at least thirty (30) days before the publication date.
- (c) Acting reasonably, UNSW may, within that thirty (30) day period do any one or more of the following:
 - (i) provide comments on the proposed Publication to the Recipient, which that party must consider but is not obliged to follow;
 - (ii) require the Recipient to delay Publication for no more than ninety (90) days to allow UNSW to file patent applications or take other measure to protect its proprietary rights; and/or
 - (iii) require the Recipient to remove specified Confidential Information from the Publication.
- (d) If the Recipient has not received any comments from UNSW on the proposed Publication within thirty (30) days of giving notice under clause (b), the Recipient may make the Publication.
- (e) The parties must ensure that all Publications in respect of the Project appropriately acknowledge the contribution of any other party and their Specified Personnel who have provided significant intellectual or scholarly contributions in connection with a Publication (or any research relating to the Publication) in accordance with usual academic practice.

8 Term and Termination

8.1 Term of Agreement

- (a) Unless it is terminated earlier in accordance with its terms, this Agreement commences on the Commencement Date and will continue until the earlier of:

- (i) the expiry of the Term (if specified in the Agreement Details);
 - (ii) the Material being no longer required for the Project that is undertaken as part of the Purpose; or
 - (iii) expiry or non-renewal of any applicable ethics approval.
- (b) The parties may agree to extend the Term of this Agreement by agreement in writing prior to the end of the then current Term.

8.2 Termination

- (a) Either party may terminate this Agreement for any reason by the provision of thirty (30) days' written notice to the other party.
- (b) UNSW may terminate this Agreement immediately by written notice to the Recipient if it:
- (i) commits a breach of any term of this Agreement and, if the breach is capable of remedy, fails to remedy the breach within ten (10) Business Days after being required to do so in writing by UNSW; or
 - (ii) becomes the subject of any Insolvency Event.

8.3 Consequences of expiry or termination

- (a) The Recipient must cease all use of and return to UNSW, or on UNSW's instruction, destroy all Materials and Confidential Information:
- (i) if the Project discontinues;
 - (ii) there is no further need for the Materials;
 - (iii) return of the Materials is necessary to ensure UNSW complies with any applicable Law; or
 - (iv) on expiration or termination of this Agreement.
- (b) Despite 8.3(a), the Recipient may retain a copy of the Confidential Information (acting reasonably and only for as long as it is reasonably required):
- (i) to fulfil legal, regulatory or reporting obligations;
 - (ii) that is stored electronically due to an existing routine data backup, provided the Confidential Information is deleted from local hard drives and no attempt is made to recover it other than as required by Law; and
 - (iii) provided the Recipient maintains the confidentiality of the Confidential Information in accordance with clause 5.

- (c) On termination or expiry of this Agreement, if requested by UNSW, the Recipient must:
- (i) conduct an audit and provide UNSW with a complete list of all Materials that remain in its control at the date of termination or expiry; and
 - (ii) certify in writing to UNSW that any remaining Materials have been returned or destroyed.

9 Liability and indemnity

- 9.1 The Materials are provided on an "as is" basis meaning that, to the extent permitted by Law, UNSW makes no representations and excludes all warranties, express or implied, including without limitation warranties of merchantability, fitness for a particular use, safety or quality in relation to the supply of the Materials.
- 9.2 To the extent permitted by Law, neither party is liable to the other party under or in connection with this Agreement for any Excluded Loss.
- 9.3 UNSW's liability under this Agreement will be limited to the cost of replacing / resupplying the Materials.
- 9.4 The Recipient releases and indemnifies UNSW and its Personnel (those indemnified) against all Loss incurred by those indemnified, where such Loss arises out of or in connection with the Recipient's collection, transport, use, storage or disposal of the Materials.
- 9.5 The Recipient's liability to indemnify UNSW and its Personnel under this Agreement is reduced proportionally to the extent that any negligent act or omission of UNSW or its Personnel caused or contributed to the Loss.

10 Insurance

- 10.1 The Recipient must during the Term take out and maintain adequate insurance in relation to the use of the Materials and the Project, including any insurance specified in the Agreement Details (if any).
- 10.2 UNSW may request the Recipient to provide written evidence of such insurance (including certificates of currency from the insurer).

11 Taxes

- 11.1 If taxes are payable on any supply made under this Agreement (including GST), the Recipient must pay an additional amount equivalent to the taxes.
- 11.2 UNSW will provide a tax invoice to the Recipient for any payments due under this Agreement.

12 Notices

- 12.1 A notice or other communication connected with this Agreement (**Notice**) has no legal effect unless it is in writing.
- 12.2 In addition to any other method of service provided by Law, a Notice may be sent to the Recipient's Contact for Legal Notices at the address or email address set out in the Agreement Details or as subsequently notified, by:
- (a) prepaid priority post;
 - (b) email; or
 - (c) delivery.
- 12.3 If the Notice is sent or delivered in a manner provided by clause 12.2(a), it must be treated as given to and received by the party to which it is addressed:
- (a) if sent by post to an address:
 - (i) in the same country as the place of sending, on the 3rd Business Day; or
 - (ii) in a different country to the place of sending, on the 10th Business Day,(at the address to which it is posted) after posting;
 - (b) if sent by email before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt, or
 - (c) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.

13 Dispute resolution

- 13.1 This clause 13 applies to any dispute which arises between the parties in connection with this Agreement (**Dispute**). Each party must follow the dispute resolution process in this clause before it commences litigation or takes similar action, except to seek an urgent injunction or declaration.
- 13.2 If a party considers that a Dispute has arisen (**Initiating Party**), it must give notice in writing of the Dispute to the other party (**DN Recipient**), setting out reasonable particulars of the matters in dispute (**Dispute Notice**).
- 13.3 Within twenty (20) Business Days of the service of the Dispute Notice by the Initiating Party on the DN Recipient, in the case of UNSW, the relevant Deputy Vice-Chancellor (or equivalent) or their delegate and in the case of the Recipient, its Chief Executive Officer, or their delegates who have appropriate authority to resolve the Dispute (collectively, the **Senior**

Representatives), will meet (in person or by telephone or video conference) and attempt to resolve the Dispute in good faith.

- 13.4 This clause 13 shall survive termination of this Agreement.

14 General

14.1 Assignment

A party must not assign, novate, or otherwise deal with its rights under this Agreement without the prior written consent of the other party.

14.2 Further assurance

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary to give full effect to this Agreement.

14.3 No relationship

Nothing in this Agreement may be construed as creating a relationship of partnership, joint venture, employment, principal and agent or trustee and beneficiary between the parties.

14.4 Entire Agreement

This Agreement:

- (a) is the entire agreement and understanding between the parties on everything connected with the subject matter of this Agreement; and
- (b) supersedes any prior agreement or understanding on anything connected with that subject matter.

14.5 Waiver

The failure by a party to require performance of an obligation under this Agreement by the other party will not operate as a waiver of the obligation and the other party remains liable to perform all its obligations under this Agreement.

14.6 Variation

Any variation to this Agreement is not valid unless it is in writing and signed by each party.

14.7 Severability

Any term of this Agreement which is wholly or partially unenforceable, illegal or void is severed to the extent that it is void or unenforceable, and the rest of this Agreement is not affected and remains in force.

14.8 Survival

Any clause that expressly or by implication continues after termination or expiration of this Agreement, will survive termination or expiry.

14.9 Counterparts

This Agreement may be executed in any number of counterparts each of which may be executed electronically or in handwriting and will be deemed an

original whether kept in electronic or paper form. All counterparts together constitute one agreement.

14.10 Governing law and jurisdiction

The Laws of New South Wales, Australia governs this Agreement and the parties submit to the exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

SAMPLE