



UNSW Biospecimen Services Material and Data Transfer Agreement

PARTIES	
UNSW	The University of New South Wales ABN 57 195 873 179 a body corporate established pursuant to the University of New South Wales Act 1989 (NSW) of UNSW Sydney NSW 2052 Australia
Recipient	[insert name] ABN [insert] of [address]
BACKGROUND	
- UNSW acting through UNSW Biospecimen Services agrees to provide Material and Data to the Recipient for use only in the Research Project. - In consideration of UNSW providing the Material and Data, the Recipient agrees to pay the Fees (if any) and comply with the terms of this Agreement.	
DETAILS	
KEY DATES	
Commencement date (clause 10.1)	[insert] The date this Agreement is signed by the last of the parties to sign it
Collection date (clause 2.3)	[insert]
CONTACT DETAILS	
Address for notices (clause 13)	For UNSW: Manager, UNSW Biospecimen Services Dr Anusha Hettiaratchi LG15 Lowy Cancer Research Centre The University of New South Wales UNSW Sydney NSW 2052 Email: BiospecimenServices@unsw.edu.au Phone: +61 2 9065 5665 Copy to: Attention: Director, Grants Management Office Address: Level 3 South Wing Rupert Myers Building The University of New South Wales UNSW SYDNEY NSW 2052 Fax: (02) 9385 7238
	Recipient Address: Attention: [insert] Address: [insert] Fax: [insert]

INSURANCE	
Insurance required (clause 10.6)	(a) workers compensation insurance in accordance with applicable law and awards; (b) public liability insurance for an amount not less than \$10m; and (c) professional indemnity insurance for an amount not less than \$5m.
RESEARCH PROJECT	
Research Project (clause 3)	Non-commercial research purposes, as described in Schedule 1
Name of Recipient Scientist	[insert]
Project Location	[insert]
MATERIALS AND DATA	
Description of Materials	[insert]
Quantity of Materials	[insert]
Packaging for Materials	[insert]
Materials Collection location (clause 2)	[insert]
Data Description	[insert details – insert nil if no data to be supplied]
PAYMENT	
Fees (clause 2.2)	[insert amount]

UNSW Biospecimen Services Material Transfer Agreement

1 Interpretation

1.1 In this Agreement:

Commencement Date means the date this Agreement is signed by the last of the parties to sign it;

Completion Date means:

- (a) the date upon which the Recipient submits the final report to the reviewing Human Research Ethics Committee, or
- (b) the date the Research Project is discontinued; or
- (c) the date this Agreement is terminated in accordance with clause 9.

Data means the Data (if any) specified in the Details;

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

Intellectual Property means statutory and other proprietary rights in respect of copyright and neighbouring rights, all rights in relation to inventions, patents, plant varieties, registered and unregistered trademarks, registered and unregistered designs, circuit layouts and rights to require information to be kept confidential, and all other rights as defined by Article 2 of the Convention establishing the World Intellectual Property Organization of July 1967, and all rights to apply for any of the above, but does not include moral rights that are not transferable;

Materials means the Materials specified in the Details;

Paper means any proposed manuscript, abstract, paper, journal article, student thesis, or content of any oral, poster or other presentation;

Materials and Data means the Materials and Data (if any) specified in the Details;

Results means all outcomes of Recipient's use of the Materials and Data, including all information, data, Derivatives and tangible objects arising from Recipient's use of the Research Materials and Data; and

Term means the period of time starting on the date this Agreement is executed by the last of the parties to execute it and ending on the Completion Date.

1.2 Unless the context otherwise requires:

- (a) a term defined in the Details has a corresponding meaning in this Agreement;
- (b) a word which denotes the singular denotes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (d) a reference to any legislation includes that legislation as amended, re-enacted consolidated or substituted; and
- (e) a reference to a person includes a partnership and a body whether corporate or otherwise.

2 Supply of Materials and Data

- 2.1 All costs relating to the delivery and cost recovery of the Materials and Data to the Recipient under this Agreement will be borne by the Recipient, unless otherwise agreed to by UNSW Biospecimen Services.
- 2.2 Recipient must pay to UNSW Biospecimen Services the Fees (if any) prior to the collection of the Materials.
- 2.3 Subject to receipt of the Fees (if any), UNSW through UNSW Biospecimen Services agrees to make the Materials and Data available to the Recipient at the Collection Location in the quantity and packaging specified in the Details.
- 2.4 Recipient must arrange for collection of the Materials and Data from the Collection Location at its own cost within 60 days of the Commencement Date or as otherwise agreed between the parties.
- 2.5 If the Materials and Data are not collected by or on behalf of Recipient at Collection Date or as otherwise agreed between the parties, this Agreement will automatically terminate with immediate effect.
- 2.6 All risk in and responsibility ("custodianship") for the Materials and Data transfers to Recipient upon collection.

3 Use of Materials and Data

- 3.1 The Recipient may use the Materials and Data:
 - (a) only if use of the Materials and Data for the Research Project has received approval of a Human Research Ethics Committee and, if applicable, the Recipient has complied with all conditions applicable to such approval;
 - (b) during the Term of this Agreement;

- (c) solely at the Project Location;
 - (d) solely for the Research Project;
 - (e) under the supervision of the Recipient Scientist; and
 - (f) only for non-commercial research purposes.
- 3.2 The Recipient must at all times keep the Materials secure, confidential and under the personal care and control of the Recipient Scientist.
- 3.3 UNSW Biospecimen Services will always supply Material and Data in a de-identified manner, that is, with removal of personal information relating to donors from whom the Material and Data has been derived. The Recipient agrees that it will not make any attempt to re-identify the de-identified Material and Data supplied by UNSW Biospecimen Services.
- 3.4 The Recipient must not, without the prior written consent UNSW Biospecimen Services:
- (a) sell, loan, or otherwise provide the Materials or Data, or any part thereof, to any third party; or
 - (b) use the Materials and Data for any purpose other than for the Research Project or at any location other than at the Location, unless such other use of the Materials and Data has received approval of a Human Research Ethics Committee and unless the Recipient obtains prior written consent from UNSW Biospecimen Services; UNSW Biospecimen Services can in its absolute discretion withhold consent and is not bound to advise the Recipient of its reasons for withholding consent.
- 3.5 On assuming custodianship of the Material and Data the Recipient will then be responsible for the appropriate storage and use of the Materials and Data in accordance with all applicable laws, regulations, codes of practice and ethical principles, including those relating to humans, animals and DNA, and all reasonable directions provided by UNSW Biospecimen Services.
- 3.6 The Recipient will establish and implement appropriate policies and procedures to:
- (a) safeguard the Material and the Data against disclosure to other parties;
 - (b) keep the Material and Data in such a way that it is clearly identifiable as the property of UNSW Biospecimen Services.
- 3.7 The Recipient must not use the Materials for patient treatment, or for clinical or diagnostic purposes.
- 3.8 The Recipient acknowledges that its right to use the Materials and Data under this Agreement is non-exclusive and that nothing in this Agreement prevents UNSW Biospecimen Services from exploiting the Materials or any improvements or modifications to the Materials, or from supplying the Materials or Data to any third party.

4 Reporting

The Recipient will provide UNSW Biospecimen Services with a final report on the Research Project on the date upon which the Recipient submits a final report to the reviewing Human Research Ethics Committee.

5 Access

On reasonable notice, the Recipient must grant access to the Project Location to UNSW for the purpose of ascertaining whether the Recipient is complying with this Agreement.

6 Intellectual Property

The Recipient shall own the Results of the Research Project and Intellectual Property arising from the Recipient's use of the Material and Data.

7 Confidentiality

7.1 Subject to clause 7.2 the Parties shall keep confidential all details of this Agreement and information relating to this Agreement unless prior written agreement is obtained in advance of any disclosure. This obligation of confidentiality shall survive termination of this Agreement indefinitely. The obligations of confidentiality shall not apply to any information:

- (a) that the receiving party can show was known to the receiving party in advance of receipt from the disclosing party;
- (b) is in the public domain or subsequently becomes publicly known through no fault, act or omission of the receiving party;
- (c) is received by the receiving party without restriction from a third party lawfully entitled to make the disclosure to the receiving party without any such restriction;
- (d) is developed by the receiving party independently and without the aid or benefit of the information obtained from the disclosing party;
- (e) the receiving party is required to disclose by law, government regulation or court order provided the receiving party notifies the disclosing party of such requirement in advance of disclosure.

7.2 UNSW Biospecimen Services has reporting obligations to institutions that provide tissue and data to UNSW Biospecimen Services and its affiliates. Those reporting obligations include (a) the number of Materials transferred to third parties undertaking research, and (b) details of those third parties. The Recipient agrees that UNSW Biospecimen Services' compliance with those reporting obligations does not constitute a breach of clause 7.1.

8 Publication

8.1 In relation to proposed publication of any Paper containing or referring to any Data derived from the Australian Department of Human Services, the Recipient must:

- (a) notify UNSW Biospecimen Services of the impending paper at least 14 days before submitting the Paper for publication; and
- (b) acknowledge in the publication the Australian Department of Human Services as the source of that Data.

8.2 The Recipient must acknowledge the role of UNSW Biospecimen Services in any Paper relating to the Research Project containing or referring to the Materials and Data, in accordance with the Form of Acknowledgement shown in Schedule 2 to this Agreement.

8.3 The Recipient will ensure that no Paper contains personal information or identifiers relating to the Material or Data supplied by UNSW Biospecimen Services. All research results using Data must be presented or published in a manner that ensures that no individual can be identified or re-identified.

9 Expiry and Termination

9.1 This Agreement shall commence on the date it is signed by the last of the parties to sign it, and shall continue for the Term.

9.2 A party may terminate this Agreement by the provision of 30 days' notice to the other party.

9.3 A party may terminate this Agreement immediately by notice to the other if that party:

- (a) commits a breach of any term of this Agreement and, if the breach is capable of remedy, fails to remedy the breach within 14 days after being required to do so in writing by the non-breaching party; or
- (b) goes into liquidation, has a receiver or receiver and manager appointed to it or any part of its assets, enters into a scheme of arrangement with creditors or suffers any other form of external administration.

9.4 Upon the earlier of:

- (a) the termination or expiry of this Agreement for any reason; or
- (b) the date the Materials and Data are no longer required for the Research Project,

the Recipient agrees to:

- (c) undertake an audit of the remaining Materials and Data and within 60 days provide UNSW Biospecimen Services with a complete list of all Materials and Data which remain in existence at that date (extant Materials and Data); and
- (b) discontinue its use of the extant Materials and Data and either return to UNSW Biospecimen Services or, at the option of UNSW Biospecimen Services, destroy the extant Material and Data and certify that destruction to UNSW Biospecimen Services.

10 Liability and Indemnity

10.1 UNSW Biospecimen Services does not warrant that:

- (a) the Materials and Data are fit for the Research Project, nor that they have any particular qualities or characteristics;
- (b) the Research Project will lead to any particular result; or
- (c) the use of the Materials and Data will not infringe the rights (including Intellectual Property rights) of any person.

10.2 The Recipient acknowledges that the Materials and Data are experimental in nature, and to the extent permitted by law, UNSW Biospecimen Services 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 Materials and Data.

10.3 UNSW will not be liable to the Recipient for any loss, claim or demand made by the Recipient, or made against the Recipient by any other party, due to or arising from the use of the Materials by the Recipient, except to the extent permitted by law.

10.4 Each Party ("Indemnifier") unconditionally and irrevocably releases and indemnifies each other Party and its officers, employees and agents ("those Indemnified") against any liability, loss, damage, costs and expenses arising from any claim, suit, demand, action or proceeding by any person whether at common law, in equity or pursuant to statute or otherwise ("Loss"), in respect of any loss, death, injury, illness or damage (whether personal or property) that those Indemnified may suffer, incur or sustain arising directly or indirectly:

- (a) where such loss or liability was caused by a willful, unlawful or negligent act or omission of the Indemnifier, its employees, agents or subcontractors in connection with this Agreement; or
- (b) as a result of a breach of this Agreement;

10.5 The Indemnifier's liability to any of those Indemnified under clause 10.4 will be reduced proportionally to the extent that any willful or negligent act or omission by those Indemnified

caused or contributed to the Loss.

- 10.6 The Recipient must during the term of this Agreement at its cost take out and maintain all necessary or prudent insurances in relation to the Research Project, including the insurances specified in the Details (if any).
- 10.7 UNSW may request Recipient to provide written evidence of such insurances at any time (including certificates of currency from the insurer).

11 Taxes

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

12 Notices

12.1 A party giving notice or notifying under this Agreement must do so in writing:

- (a) directed to the recipient's address specified in the Details as altered by any notice; and
- (b) hand delivered or sent by prepaid post or facsimile to that address.

12.2 A notice given in accordance with this clause is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, seven (7) days after the date of posting; or
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the total number of pages of the notice, unless within 8 business hours after that transmission, the recipient informs the sender that it has not received the entire notice.

13 No waiver

- 13.1 A party's agreement to waive a right or entitlement under this Agreement is only effective if that party gives written notice of that waiver to the party seeking the benefit of the waiver.
- 13.2 Waiver by a party of anything that another party must do under this Agreement is not a waiver of any other right or entitlement under this Agreement.
- 13.3 A failure or delay in exercising a right arising from a breach of this Agreement is not a waiver of that right.

14 Dispute Resolution

- 14.1 No party may start arbitration, tribunal or court proceedings (except proceedings seeking interlocutory relief) in respect of a Dispute unless it has first complied with this clause.
- 14.2 The parties will use their best endeavours to co-operatively resolve a Dispute.
- 14.3 A party to this Agreement claiming that a Dispute has arisen out of or in relation to this Agreement must give written notice (**Notice**) to the other party specifying the nature of the Dispute.
- 14.4 If the parties do not agree within seven days of receipt of the Notice (or such further period as agreed in writing by them) as to:
- (a) the dispute resolution technique (eg expert determination) and procedures to be

adopted;

(b) the timetable for all steps in those procedures; and

(c) the selection and compensation of the independent person required for such technique, the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales, and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

15 General

15.1 This Agreement may only be varied in writing, signed by all the parties.

15.2 A party must not assign its rights or obligations under this Agreement without the prior written consent of the other party.

15.3 This Agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any previous agreement of the parties, or any other communication or representation made, in relation to its subject matter.

15.4 If a provision of this Agreement is invalid, illegal or unenforceable, then to the extent of the invalidity, illegality or unenforceability, that provision must be ignored in the interpretation of this Agreement. All other provisions of this Agreement remain in full force and effect.

15.5 A party may execute this Agreement by signing a counterpart. All counterparts constitute one document, when taken together.

15.6 Each party must:

- (a) do or cause to be done all acts and things necessary or desirable to give effect to; and
- (b) refrain from doing all acts and things that could hinder performance by any party of, this Agreement.

15.7 Each party is to pay its own costs, charges and expenses in entering into this Agreement.

15.8 This Agreement binds and benefits the parties, their respective successors and permitted assigns.

15.9 Unless this Agreement provides otherwise, a party has no right of set-off against a payment due to another party.

15.10 This Agreement is governed by and must be construed in accordance with the laws of New South Wales. Each party:

- (a) irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and all courts that have jurisdiction to hear appeals from them; and
- (b) waives any right to object to proceedings being brought in those courts for any reason.

Executed as an agreement

Signed for and on behalf of the **University of
New South Wales** by an authorised person in the
presence of:)
)
)

.....
Signature

.....
Signature of witness

.....
Director UNSW Grants Management Office
.....

.....
Name of witness (please print)
.....

.....
Date of signing

Signed for and on behalf of [name of Recipient]
by an authorised person in the presence of:)
)
)

.....
Signature

.....
Signature of witness

.....
Name (please print)
.....

.....
Name of witness (please print)
.....

.....
Date of signing

Schedule 1 – Research Project

SAMPLE ONLY

Schedule 2 – Form of Acknowledgement

Form of Acknowledgement – UNSW Biospecimen Services, in accordance with clause 8.2:

By accessing specimens and/or data, you agree to acknowledge the HSA Biobank or Health Precincts Biobank in any publications arising from the use of specimens and data provided by using the following text.

Biospecimens and data used in this research were obtained from the Health Precincts Biobank (formerly named HSA Biobank), UNSW Biospecimen Services, UNSW Sydney, Australia

We also ask for all publications resulting from samples and/or data to be reported to the Health Precincts Biobank. The Health Precincts Biobank Project Manager will contact you periodically to report on research output.

OR

The following acknowledgement statement should be used in the 'Materials/Methods' or 'Acknowledgements' section of your research publication:

“Biospecimens and data used in this research were obtained from UNSW Biospecimen Services, Mark Wainwright Analytical Centre (MWAC), UNSW Sydney, Australia”