

**Material Transfer Agreement**

**St John of God Health Care Inc.**

**[Insert Recipient Name]**



This **Material Transfer Agreement** is made on 2014 between the following parties:

**1 St John of God Health Care Inc**ARBN 051 960 911
an incorporated association with limited liability, incorporated in Western Australia under the Associations Incorporation Act 1987 (WA) of Level 2, 12 Kings Park Road, West Perth WA 6005

(**SJGHC**)

**2 [Insert Recipient Name]** ([Insert ABN]) of [Insert Recipient Address]

(**Recipient**)

**Recitals**

1. SJGHC has agreed to supply the Material, and any Data, to the Recipient for the Research Purpose in accordance with this Agreement.
2. The Recipient agrees to use the Material, and any Data, supplied by SJGHC only for the Research Purpose and in accordance with the terms of this Agreement.

**The Parties agree** in consideration of among other things, the mutual promises contained in this Agreement:

# Definitions and interpretation

## Definitions

In this Agreement:

### **Agreement** means this agreement including its Schedules and Annexures (if any);

### **Business Day** means any week day from Monday to Friday (inclusive) other than a public holiday in the Relevant State;

### **Confidential Information** means any and all information disclosed by a Party (“**Disclosing Party**”) to the other party (“**Receiving Party**”) which is not in the public domain and which is reasonably regarded by the Disclosing Party as confidential including, without limitation:

* Material and Data;
* all other information relating to the Material provided by the Disclosing Party to the Receiving Party including clinical data such as patient details and patient Personal Information;
* any documents describing New IP Rights and IP Rights,

with the exception of information, which:

* is in or becomes part of the public domain other than through a breach of this Agreement; or
* the Receiving Party can prove, by contemporaneous written documentation, the Confidential Information was already known to it at the time of disclosure of the Confidential Information by the Disclosing Party; or

This document has been prepared using similar agreements by other Institutions, including an agreement produced by the University of Sydney.

* the Receiving Party obtains from a third party that is lawfully entitled to disclose it.

### **Data** means:

* any annotated clinical or non-clinical information requested by the Recipient and approved for release by SJGHC; and
* all information or reports,

provided by SJGHC to the Recipient in respect of research outcomes or research proposals, which may relate to the use of the Material, or other projects relevant to the Research Proposal and the transfer of Material to the Recipient, but excludes information that would not be considered Confidential Information;

### **Effective Date** means the date specified in Item 1 of Schedule 1;

### **Ethics Approval** means the relevant ethics approvals required for the Research Purpose, as specified in Item 3 of Schedule 1;

### **Expiry Date** means the date specified in Item 2 of Schedule 1

### **GST** means any goods and services tax, value added tax, retail turnover tax, consumption tax, or any similar tax, impost or duty introduced or charged by the Commonwealth of Australia or any state or territory of Australia whether before, on or after the Commencement Date, which is or may be levied or becomes payable in connection with the supply of the Services or any goods, services or other things provided by a Party under this Agreement;

### **IP Rights** means all intellectual property rights throughout the world including copyright, rights in circuit layouts, appearance designs (whether or not registerable), rights in respect of inventions (whether or not patentable), trade-marks (whether or not registerable) and Confidential Information, together with the right to apply for and be granted registration if registration is required or available to effect those rights;

### **Location** means the location at which the Recipient will use the Material and/or Data, as specified in Item 4 of Schedule 1;

### **Material** means all materials as listed in Schedule 2 and any Progeny and any Unmodified Derivatives as applicable, but does not include Modifications;

### **Modifications** means any substances created by the Recipient through use of the Material, which contain or incorporate the Material;

### **New IP Rights** means all IP Rights arising from the Recipient’s use of or access to the Material and/or Data, including any IP Rights in any inventions created by the Recipient, including Modifications;

### **Parties** means the SJGHC and the Recipient and Party means either one of them;

### **Personal Information** has the meaning ascribed to it in the *Privacy Act* 1988 (Cth), being information or an opinion about an identified individual, or an individual who is reasonably identifiable:

#### whether the information or opinion is true or not; and

#### whether the information or opinion is recorded in a material form or not; and

### **Progeny** means an unmodified descendant from the Material, such as virus from virus, cell from cell, organism from organism;

### **Project Officer** means the project officer for SJGHC and the project officer for the Recipient, as set out in Item 7 of Schedule 1;

### **Recipient Personnel** means the personnel of the Recipient who will be responsible for the use of the Material and/or Data, as specified in Item 6 of Schedule 1;

### **Relevant State** means the State listed in our address for service of notices;

### **Research Purpose** means the research purpose specified in Schedule 3;

### **Unmodified Derivatives** means substances created by the Recipient, which constitute an unmodified functional sub-unit or an expression product of the Material.

## Interpretation

In this Agreement, unless the context requires otherwise:

### words importing the singular include the plural and vice versa, words of one gender include any gender, and words importing persons include corporations and any other entity recognised by law;

### a reference to this Agreement includes the Schedules to this Agreement;

### a reference to a clause, part or Schedule is a reference to a clause in or a part or schedule to this Agreement;

### a covenant, agreement representation or warranty on the part of 2 or more persons binds them jointly and severally;

### a reference to a statute or ordinance includes all regulations, by-laws, requisitions or orders under and amendments to that statute or ordinance, whether by subsequent statute or otherwise, and a statute or ordinance passed in substitution for the statute or ordinance referred to or incorporating any of its provisions;

### the words “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation and, when introducing an example, do not limit the meaning of the words to which the example relates; and

### Australian dollars, dollars, $, A$ or AUD is a reference to the lawful currency of Australia.

# Supply

## Use of Material and Data

### SJGHC agrees to supply the Material and Data to the Recipient for the Research Purpose on the following terms and conditions:

### SJGHC will deliver or assist in arranging for delivery of the Material and/or Data to the Recipient at the time and in the manner described in Item 5 of Schedule 1.

### The Recipient agrees to limit the use of the Material and Data so that it is used:

#### only at the Location;

#### only for the Research Purpose;

#### only under the direction of the Recipient Personnel; and

#### not for any commercial or profit-making business.

### The Recipient will:

#### safeguard the Material and Data against disclosure to other parties;

#### act in accordance with any directions from SJGHC as to the safeguarding of Material or Data; and

#### ensure that the Material and Data remain clearly identifiable as being the property of SJGHC.

## Prohibited Use

The Recipient agrees to not use the Material in human subjects or in clinical trials involving human subjects without the written permission of SJGHC, such permission to be withheld at SJGHC’s absolute discretion.

## Limited transfer

### The Recipient must not, unless it obtains the prior written consent of SJGHC, transfer the Material or Data to any party other than a party working under the direct supervision of the Recipient Personnel at the Location.

### The Recipient will promptly submit, to SJGHC for approval, any requests to transfer the Materials or Data. SJGHC may withhold approval in its absolute discretion.

### Notwithstanding clause 2.3(a), the Recipient shall have the right, without restriction, to distribute substances created by the Recipient through the use of the Material, only if those substances are not Progeny, Unmodified Derivatives, or Modifications.

# Term

### This Agreement commences on the Effective Date and continues until the Expiry Date (“**Term**”) unless extended or terminated earlier in accordance with this Agreement.

### The Term may be extended by the written mutual consent of the parties for such periods and on such terms as are mutually acceptable.

# Fees

## Delivery fees

### All costs relating to the delivery of the Material and Data to the Recipient under this Agreement will be borne by the Recipient, unless otherwise agreed with SJGHC.

## GST

### Unless otherwise expressly stated, all amounts, prices, values or other sums payable or to be provided under this Agreement are exclusive of GST.

### If GST is payable on any supply made under this Agreement:

#### the Recipient must pay to SJGHC an amount equal to the GST payable on the taxable supply in addition to and at the same time as payment for the taxable supply is required to be made under this Agreement;

#### SJGHC must give the Recipient a tax invoice for the taxable supply; and

#### where the Recipient is required under this Agreement to pay for or reimburse an expense or outgoing of SJGHC, or is required to make a payment under an indemnity in respect of an expense or outgoing of SJGHC, the amount the Recipient has to pay is the sum of:

##### the amount of the expense or outgoing less any input tax credit in respect of that expense or outgoing to which SJGHC is entitled, and

##### if SJGHC’s recovery from the Recipient is in respect of a taxable supply, an amount equal to the GST payable by SJGHC in respect of that recovery.

# Intellectual Property

## Ownership

### The Recipient acknowledges that:

#### SJGHC will continue to own the IP Rights in the Material and Data, and any Progeny or Unmodified Derivatives; and

#### no licence, to the Recipient, of the IP Rights in the Material or Data is implied by the Recipient’s use of the Material or Data.

### Subject to clause 5.1(a), all New IP Rights will be owned by the Party who created or made an inventive contribution to the New IP Rights, and each Party will grant the other Party a non-exclusive, perpetual, royalty-free licence to use the New IP Rights for its own non-commercial research purposes.

### The Recipient will provide details of any New IP Rights to SJGHC within a reasonable time period from the date of creation of the New IP Rights, and comply with any reasonable reporting requirements in relation to the New IP Rights as specified by SJGHC.

### The Parties will not sell, deal or exploit the Material or Data for profit or for commercial gain (financial or otherwise) or allow any third party to do the same.

## Third party rights

### The provision of the Material and Data to the Recipient will not alter or detract from any third party rights in the Material and Data.

# Warranties and Liability

## No warranties

### The Recipient acknowledges that the Material is experimental in nature and may have hazardous properties. To the extent permitted by law and subject to clause 6.2, SJGHC makes no warranty or representation that the Material or Data is fit for the particular purpose for which it is required by the Recipient. SJGHC expressly excludes and disclaims any warranty that the Recipient is able to perform the Research Purpose or to use or commercialise the research results.

### To the extent permitted by law, and subject to clause 6.2, SJGHC excludes all implied terms, representations and warranties whether statutory or otherwise, relating to the subject matter of this Agreement.

## Consumer law

### SJGHC acknowledges that if under applicable State, Territory or Commonwealth law, the Recipient is a “consumer”:

### certain warranties or conditions may be implied in this Agreement; or

### certain guarantees and rights may be conferred on the Recipient,

which cannot be excluded, restricted or modified. If so, and if that law applies to SJGHC, then to the maximum extent permitted by law, SJGHC’s liability is limited (at SJGHC’s option) to re-supply of the relevant goods or the payment of the cost of re-supplying the relevant goods.

## Limit on liability

### Subject to clause 6.2, SJGHC’s total liability to the Recipient for loss or damage of any kind, however caused, due to breach of contract, SJGHC’s negligence, breach of any law or equity arising from or in any way related to this Agreement, the Material or the Data, is as specified in Item 10 of Schedule 1.

### The Recipient assumes all liability for damage or loss, which may arise from the Recipient’s use, storage or disposal of the Material and/or Data. The Recipient indemnifies SJGHC for any liability, loss, costs, damages and expenses (including legal costs and expenses) incurred or suffered by SJGHC from any claim or demand by any other person due to, or arising from, the use, storage or disposal of the Material and/or Data, except to the extent caused by the gross negligence or misconduct of SJGHC.

# Compliance

The Recipient agrees to use, and ensure the use of, the Material and Data, in accordance with all applicable statutes, regulations, codes of conduct, including those relating to research involving humans, animals or DNA and only after first obtaining necessary approvals from its relevant ethics committee(s).

# Publication

### Subject to clause 8(b), this Agreement will not be interpreted as preventing or delaying publication of research findings resulting from use of the Material, Data, Modifications, Progeny or Unmodified Derivatives by the Recipient.

### The Recipient agrees to appropriately acknowledge SJGHC as the provider of the Material or Data in all publications, which contain refer to or use the Material or Data in accordance with any conditions imposed by SJGHC from time to time. The Recipient agrees to send SJGHC a copy of any such publication at the time of submission or publication.

# Confidentiality and privacy

## Confidentiality

### The Recipient shall keep and use all of the Confidential Information in confidence and shall not, without SJGHC’s prior written consent, disclose any part of the Confidential Information or provide any part of the Confidential Information to any person, firm, corporation, or other entity.

### Notwithstanding any termination or expiration of this Agreement, the obligations of confidentiality created in this clause 9.1 shall continue to be binding upon the Recipient, its successors, and assigns for five (5) years after the earlier of the expiration or termination of this Agreement.

## Privacy obligations

The Recipient acknowledges that it may be given access to Personal Information in relation to patients. The Recipient must at all times:

### comply with all privacy laws by which it is bound;

### keep all Personal Information confidential and use the Personal Information only for the purpose of fulfilling its obligations under this Agreement;

### ensure that it does not disclose any Personal Information to a third party without the prior written consent of SJGHC, unless the third party is the individual to whom the Personal Information relates;

### take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, or unauthorised access, modification or disclosure, including undertaking any staff training as may be required; and

###  not do anything with the Personal Information that will cause SJGHC to breach its obligations under privacy law;

### provide all reasonable assistance immediately required to assist SJGHC in complying with its obligations under any privacy law; and

### notify SJGHC immediately if it becomes aware that a disclosure of Personal Information:

#### has been made in breach of this Agreement or any legislation, principle, industry code or policy by which either Party is bound relating to the collection, use, disclosure, storage or granting of access rights to the Personal Information; or

#### is or may be required by law.

# Relationship

### The Parties hereby declare that:

### it is not their intention to hereby create a partnership or the relationship of partners between them, and nothing in this Agreement should be construed to that effect; and

### except as otherwise expressly provided in this Agreement, one Party shall not be the agent or representative of the other Party and shall not have any authority to act or assume any responsibility or obligation on behalf of that other Party.

# Termination

## Termination events

This Agreement will terminate on the earliest of:

### completion of the research associated with the Research Purpose; or

### written notice by SJGHC following a breach by the Recipient of the terms of this Agreement, which the Recipient has failed to remedy within 14 days after receiving notice requiring them to do so; or

### 30 days’ written notice by either Party without reason (subject to clause 11.3 below); or

### expiration or non-renewal of ethics approval for the Research Purpose; or

### the Expiry Date.

## Consequences

On termination of this Agreement under clause 11.1, the Recipient agrees to:

### undertake an audit of the remaining Material and within 60 days provide SJGHC with a complete list of all Material which remains in existence at the date of termination (“**Extant Material**”); and

### discontinue its use of the Extant Material and Data and either return to SJGHC or, at the option of SJGHC, destroy the Data and any Extant Material and certify that destruction to SJGHC; and

### either destroy any Modifications or remain bound by the terms of clause 5, as they apply to Modifications.

## Requests in relation to termination

### In the event of termination under clause 11.1(c) , the Recipient may request the effective date of termination be deferred for a period of up to one (1) year to permit completion of research in progress. SJGHC may only withhold approval to defer termination on reasonable grounds, including imminent health risk, obligations to third parties or IP Rights infringement.

### On termination of this Agreement under clause 11.1 the Recipient may only undertake further research with the Extant Material and the Data with the written permission of SJGHC, such permission will be determined by SJGHC in its absolute discretion.

## Survival and rights after termination

### Termination of this Agreement is without prejudice to the rights of the terminating party to obtain damages for any breach of this Agreement.

### Clauses 2, 5, 6, 9, 11.1, 11.2, 12 and any special terms survive the termination of this Agreement for any reason.

# Disputes

### In the event of any dispute between the Parties under this Agreement, the Parties agree to first enter into good faith discussions and negotiations in an endeavour to reach an agreement on the dispute. If the Parties are unable to reach an agreement within ten Business Days following the commencement of such good faith discussions, either Party may, by written notice to the other Party, refer the matter to non-binding mediation (the terms of which will be agreed by the Parties at that time).

# General

## Notices

Any notice, demand or request by the Recipient to SJGHC or by SJGHC to the Recipient to be made or given pursuant to this Agreement shall be in writing signed by the Party giving the notice or its agent and may be served personally, by facsimile, by being delivered or by being sent by prepaid security post,

### in the case of SJGHC, to the address specified herein for SJGHC, unless SJGHC has given written notice of a substituted address for service of notices and then at that substituted address; or

### in the case of the Recipient, to the address specified herein for the Recipient,

###  and shall be deemed to have been served:

### if delivered personally or by delivery, on the day of delivery if delivered before 5.00pm on a business day, and otherwise on the next following business day;

### if sent by facsimile transmission, on the day of transmission if delivered before 5.00pm on a business day, otherwise on the next following business day (in the case of it being transmitted by facsimile to the facsimile receiver number of the Recipient and a correct and complete transmission report for that transmission being received by the sender); or

### if sent by post, on the business day next following the day of posting.

## Severance

### If any provision of this Agreement is void, unenforceable or illegal in a jurisdiction, it is severed from the remainder for the purposes of enforcement in that jurisdiction.

### The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

## Governing law and jurisdiction

This agreement is governed by the laws of the Relevant State and the parties accept the jurisdiction of its courts.

## Variation and waiver

### Any variation to any term or provision to this Agreement or a right created under it must be in writing and signed by both Parties. A waiver of any breach of this Agreement or of any right arising out of this Agreement must be in writing and signed by the Party granting the waiver.

## Rights cumulative

Except as expressly provided to the contrary in this Agreement, the rights, powers, discretions, authorities and remedies provided in this Agreement are cumulative with, and do not exclude, the rights, powers, discretions, authorities or remedies of a party provided by law independently of this Agreement.

## Assignment

A Party will not assign its rights under this Agreement without the prior written consent of the other Party.

## No exclusivity

The Recipient is not acquiring the Material or the Data on an exclusive basis and this Agreement will not preclude SJGHC from providing the Material or the Data to another party.

## Counterparts

This agreement may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument. An executed facsimile or electronic scanned copy of this Agreement shall have the same force and effect as an original.

## Entire agreement

This Agreement supersedes all previous agreements in respect of its subject matter and contains the entire agreement between the Parties.

Schedule 1 – Items

|  |  |
| --- | --- |
| **Item** |  |
| 1. **Effective Date**
 | [Please insert] |
| 1. **Expiry Date**
 | [Please insert] |
| 1. **Ethics Approval(s)**
 | [Please insert] |
| 1. **Location**
 | [Please insert] |
| 1. **Delivery details**
 | [Please insert] |
| 1. **Recipient Personnel**
 | [Please insert] |
| 1. **Project Officer**
 | **SJGHC:**Name:Telephone:Email:  |
|  | **Recipient:**[Please insert] |
| 1. **Notices**
 | **SJGHC:**St John of God Health Carec/- St John of God [Please insert] HospitalTel:Fax: Attn:  |
|  | **Recipient:**[Please insert] |
| 1. **Fees**
 | [Please insert] |
| 1. **Limit on liability**
 | $[insert dollar amount] |
| 1. **Relevant State**
 | Western Australia/Victoria/New South Wales [delete as appropriate] |

Schedule 2 – Material(s)

1. **Material(s)**

[Please insert all Material and make note if the Material includes biological materials]

Schedule 3 – Research Purpose

[Please insert description of the Research Purpose]

**Executed as an agreement**

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** for and on behalf of **St John of God Health Care Inc** by its authorised officer in the presence of: |  |  |  |
| Signature of authorised officer |
| Signature of witness |  |  |  |
| Name of witness | Name of authorised officer |
| Address of witness |  |  | Role of authorised officer |

**[Insert appropriate execution clause for Recipient (Check this with Group Legal)]**