**DATA TRANSFER AGREEMENT**

**(“Agreement”)**

**Schedule**

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| **PROVIDER INSTITUTION** | Alfred Health  ABN 27 318 956 319  55 Commercial Road  Melbourne VIC 3004 |
| **PROVIDER RESEARCHER**  Researcher responsible for providing the Data to Recipient |  |
| **RECIPIENT**  Name and full address of Recipient |  |
| **RECIPIENT RESEARCHER**  Researcher responsible for use of Data within Recipient Institution |  |
| **DATA**  Brief description of data to be provided | **Details of Data**  Please include a description/list of the data being provided  Without limiting the above, for the purposes of this Agreement, “Data” also includes any copies or replicates of any Data supplied.  **Type of Data:** (please select one)  *Identifiable*  (E.g. the data contains patient names, date of birth, contact information etc.)  *Re-identifiable*  (I.e. the institution receiving the data will be able to re-identify the data using information they already have)  *Pseudo-anonymised*  (e.g. the data contains study subject IDs, randomized patient ID numbers etc.)  **Does the Data contain any UK or EU/EEA data?** (please select one)  *Yes*  *No* |
| **DATA RETENTION PERIOD** | Please indicate how long the Data will be retained |
| **PERMITTED PURPOSE**  Brief description of research to be undertaken with the Data | Please describe the purpose for which the Data can be used |
| **PAYMENT**  Include payment details, including invoicing information | Please list any payments to be made, where they are to be made to, when, and how to invoice |

**Background**

Recipient is conducting a research project as described in the Permitted Purpose. As part of this project Provider Institution has agreed to provide Recipient with the Data on the terms and conditions contained in this Agreement. In consideration for Provider Institution agreeing to supply the Data, Recipient agrees to be bound by such terms and conditions.

**Terms and Conditions**

1. **Defined terms**

***Applicable Privacy Legislation*** means any applicable laws, rules or regulations which deals with, or is applicable to, the processing or protection of personal information, sensitive information or health information, including without limitation (as applicable) the *Privacy Act 1988* (Cth) and the Australian Privacy Principles made under that Act, section 141 of the *Health Services Act 1988* (Vic), the *Health Records Act 2001* (Vic), the *Privacy and Data Protection Act 2014* (Vic).

***Commencement Date*** means the date of last signature below.

***Confidential Information*** in relation to a party includes the following, in whatever form (written, oral, electronic, visible, hidden or other):

1. all information that is confidential to the Disclosing Party and that is disclosed (whether before or after Commencement Date) by the Disclosing Party to the Receiving Party including, but not limited to, all information relating to the Data and any confidential know-how, data, results, models, protocols, samples, intellectual property, technology, trade secrets, drawings, processes, formulae, product development plans;
2. but excludes information that Receiving Party can establish by competent evidence: (i) is public knowledge or is lawfully known to, or in the possession or control of, the Receiving Party, other than as a result of a breach of confidentiality or this Agreement; or (ii) is independently developed by the Receiving Party without the use of the Disclosing Party Confidential Information and/or the Data.

***Data*** means the data described in the Schedule which the Provider Institution agrees to transfer to the Recipient.

***Data Retention Period*** means the period of time the Recipient may retain the Data as described in the Schedule.

***Disclosing Party*** means the party to this Agreement who is providing Confidential Information to the Receiving Party.

***HREC*** means the Human Research Ethics Committee that is responsible for reviewing medical research and clinical trial protocols for the Recipient or Provider Institution.

***Good Industry Practice*** means the practices, procedures, methods, standards, skill and care which would reasonably be expected to be used by prudent, diligent and competent professional supplier with skill and experience in, and the expertise and resources necessary to complete, the Purpose or activities which are the same or similar to the Purpose.

***Intellectual Property Rights*** means all present and future patents, trademarks, copyrights, trade secrets, know how, rights to extract information from a database, design rights, rights to keep know how confidential and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of them which may subsist anywhere in the world, whether or not any of them are registered and including applications for registration of any of them.

***Permitted Purpose*** means the permitted use of the Data by the Recipient as set out in the Schedule or as approved in writing by Provider Institution in writing from time to time.

***Provider Institution***means the Provider Institution named in the Schedule.

***Provider Researcher*** means the Provider Researcher named in the Schedule.

***Publish***means to publish by way of a paper, article, manuscript, report, poster, internet posting, presentation slides, abstract, outline, video, instruction material or other disclosure arising from use of the Data, in printed, electronic, oral or other form. ***Publication*** has a corresponding meaning.

***Receiving Party*** means the party to this Agreement who receives Confidential Information, either directly or indirectly, from the Disclosing Party.

***Recipient*** means the Recipient named in the Schedule.

***Recipient Researcher*** means the Recipient Researcher (being an employee of the Recipient Institution) named in the Schedule.

***Results*** means the results generated by the Recipient’s use, analysis and interpretation of the Data in accordance with the Purpose but does not include the Data.

1. **Term**

This Agreement will be effective as of the Commencement Date and shall continue until the completion of the Permitted Purpose (“**Term”**) unless otherwise extended by the parties’ in accordance with clause 13(b).

1. **Conditions for provision of Data**
   1. **Licence to Recipient**
      1. Provider Institution grants to the Recipient a limited, non-exclusive, licence to use the Data for the sole purpose of undertaking the research described in the Permitted Purpose, subject to the terms and conditions of this Agreement.
      2. The right and licence to use the Data is not transferable or sub-licensable unless such transfer is approved by Provider Institution and provided that:
         1. the Data is only transferred to persons or institutions approved by Provider Institution in advance in writing, such approval not to be unreasonably withheld;
         2. the Recipient remains liable to comply with this Agreement in relation to the Data and remains liable for the acts and omissions of any third party transferee or sub-licensee;
         3. the Recipient must enter into an appropriate written agreement with any transferee or sub-licensee of the Data on terms and conditions no less restrictive to those in Agreement and for a period no longer than the Term. At Provider Institution’s request, the Recipient shall provide Provider Institution with a copy of any such agreement(s); and
         4. the Data is not further transferred by any transferee or sub-licensee.
      3. Prior to the initiation of the research described in the Permitted Purpose, the Recipient must obtain all necessary approvals from the HREC and/ or Recipient’s governance or advisory committee.
   2. **Permitted use and restrictions**

The Recipient must not, without the express prior written consent of Provider Institution:

* + 1. use the Data for any purpose other than the Permitted Purpose;
    2. use the Data directly or indirectly for any commercial purpose;
    3. use the Data for diagnostic purposes;
    4. release the Data or allow it to be used by any Recipient employee not engaged in conducting the research described in the Permitted Purpose, or to any third party person or institution;
    5. store, transfer or use the Data outside Australia; and
    6. notwithstanding anything in this Agreement to the contrary, the Recipient may allow or permit its authorised representatives or legal advisers to have access to or inspect the Data where such access is necessary for the Permitted Purpose and provided that each representative or legal adviser to whom the Data is provided is aware of, and abides by, the terms and conditions of this Agreement.
  1. **Provider Institution Obligations**

Prior to Provider Institution providing the Data to the Recipient, the Provider Institution must obtain all necessary approvals from the Provider Institution’s HREC and/ or governance or advisory committee.

1. **Privacy and security**

The Recipient:

1. must comply with all applicable laws, rules and regulations, including Applicable Privacy Legislation, in relation to its handling and use of the Data and Confidential Information;
2. must at all times preserve the confidentiality of the Data and Confidential Information. In particular, it undertakes not to use, or attempt to use, the Data to compromise or otherwise infringe the confidentiality and privacy of any individual whose data forms part of the Data or Confidential Information;
3. must maintain and enforce appropriate administrative, technical, and physical safeguards and safety and security procedures, in accordance with Good Industry Practice to protect the Data from any unauthorised access, modification, misuse, damage, disclosure, loss or interference (**Data Breach**).
4. must maintain appropriate mechanisms in accordance with Good Industry Practice, for detecting the occurrence of actual and potential Data Breaches.
5. after becoming aware of any actual or potential Data Breach, must:
   1. immediately notify the Provider Institution;
   2. provide information to the Provider Institution about the incident, the cause of the incident and if any, the steps that Recipient intends to take to remedy the Data Breach;
   3. cooperate with the Provider Institution and provide all reasonable assistance which the Provider Institution may request in order to remedy and otherwise manage any Data Breach, whether or not caused by or contributed to by Recipient; and
   4. take all necessary action to prevent any recurrence of such Data Breach or potential Data Breach;
6. acknowledges that the Provider Institution may provide information about any actual or potential Data Breach to third parties including relevant governmental authorities and affected individuals, including the identity of the Recipient or other details as considered reasonably necessary by the Provider Institution or as may be required under applicable law or by relevant authorities;
7. acknowledges that the Data or Confidential Information may contain 'personal or health information' and agrees that any such personal or health information in the Data will be used and disclosed only in accordance with the Applicable Privacy Legislation; and
8. must not, without the prior consent of Provider Institution, disclose the Data or Confidential Information to any third party in any form in (or from) which an individual’s identity is apparent or could reasonably be ascertained.

The expression 'personal or health information' in this clause 4 means (i) ‘personal information’ as defined in the *Privacy and Data Protection Act 2014* (Vic) or (ii) 'health information' as defined in the *Health Records Act 2001* (Vic).

1. **Confidential Information**
   * 1. The Receiving Party may only use Confidential Information for the Permitted Purpose or to discharge its obligations under this Agreement in accordance with the provisions of this Agreement.
     2. The Receiving Party may only disclose Confidential Information to those of its employees, representatives and officers who have a need to know the Confidential Information and who are bound by obligations of confidentiality and non-use no less restrictive that those in this Agreement.
     3. In the event the Receiving Party is required by a governmental authority or by order of a court of competent jurisdiction to disclose any Confidential Information, the Receiving Party will give prompt prior written notice to the Disclosing Party, if legally permitted, of any such required disclosure and will reasonably cooperate with the Disclosing Party in its efforts to seek an appropriate protective order.
     4. The obligations of confidentiality referred to in this clause 6 shall survive the expiration or termination of this Agreement and continue for a period of ten (10) years from the date of the expiration or termination
2. **Return or destruction of Data and Confidential Information**
   * 1. At the end of the Data Retention Period, or at any time upon the written request of Provider Institution, the Recipient will:
        1. return to the Provider Institution all Data (including Confidential Information) in the Recipient’s possession or control, in a non-proprietary and open access file format (such as .txt, .cvs, .rft, etc) as specified by the Provider Institution; or
        2. permanently delete all the Data (including Confidential Information) held electronically in any medium in the Recipient’s possession or control (such destruction to be certified in writing if requested by the Disclosing Party).
     2. The Recipient may retain a copy of any Data (including Confidential Information) solely and to the limited extent required to perform its obligations under this Agreement or to comply with its record keeping obligations under applicable law.
     3. Any archival copies kept in accordance with clause 7(b) above will continue to be subject to the terms and conditions of this Agreement.
3. **Publication**
   * 1. Any Publication arising from use of the Data shall duly acknowledge the contribution of Provider Institution and the Provider Researcher in a scientifically appropriate manner.
     2. Recipient will provide Provider Institution with a copy of the proposed Publication at least thirty (30) days before submission or disclosure.
     3. Provider Institution shall have the right to review the proposed Publication to identify any Provider Institution Confidential Information or potentially patentable technology. At Provider Institution’s request the Recipient will (i) delay the proposed Publication for up to an additional sixty (60) days from Provider Institution’s receipt of the proposed Publication in order to allow patent applications to be filed remove; and/or (ii) remove any Confidential Information from the Publication as reasonably required to protect the Intellectual Property Rights of Provider Institution.
     4. If the Recipient has not received any comments from the Provider Institution on the proposed publication within twenty (20) days of providing the proposed Publication to Provider Institution the Recipient may make the Publication.
4. **Intellectual property**

**Ownership**

* + 1. All intellectual property created, conceived, owned, controlled, generated or otherwise derived by either party that existed prior to the Commencement Date are and remain their separate property, respectively, and are not affected by this Agreement. Recipient’s receipt of the Data does not imply transfer of any Intellectual Property Rights with respect to the Data other than as provided in this Agreement.
    2. Upon completion of the research conducted for the Permitted Purpose, the Recipient will promptly notify Provider Institution in writing of the results and outcomes of said research, including notification of any inventions, know-how, data or any Intellectual Property Rights created through use of the Data.
    3. If the Recipient, Recipient Researcher or any person acting for or on behalf of the Recipient or the Recipient Researcher makes an invention, discovery or any other Intellectual Property Right that is derived or generated as a result of use of the Data, the Recipient will promptly inform Provider Institution. Ownership shall be determined on the basis of inventorship in accordance with applicable patent law (if patentable), taking into account the respective roles and contributions of the parties to that invention, discovery or Intellectual Property Right. The Parties acknowledge and agree that the research collection of clinical datasets by a Party constitutes a major intellectual contribution to the development or creation of intellectual property
    4. In the case of a joint invention, Provider Institution and the Recipient agree to negotiate in good faith an inter-institutional agreement which governs any intellectual property ownership rights regarding such joint inventions and which may provide, inter alia, for the sharing of income, patent costs and the administration of any patent.
    5. If the Recipient, Recipient Researcher or any person acting for or on behalf of the Recipient or the Recipient Researcher proposes to commercialise any invention, discovery or any other Intellectual Property Right that is derived or generated as a result of use of the Data, the Recipient must notify the Provider in writing and the parties will negotiate in good faith an inter-institutional agreement which governs any intellectual property ownership rights regarding such joint inventions and which may provide, inter alia, for the sharing of income, patent costs and the administration of any patent.

**Licence to Provider Institution**

* + 1. Where the ownership of any invention, results or know-how arising from use of the Data vests in the Recipient, the Recipient hereby grants to Provider Institution a perpetual, irrevocable, non-exclusive, royalty-free licence to use such invention, results or know-how for the sole purposes of Provider Institution’s internal academic research and teaching.

1. **Limitation of Liability**
   * 1. The Recipient acknowledges that the Data is experimental in nature and is provided by Provider Institution without warranty of fitness for any particular purpose or any other warranty, express or implied (except to the extent that such warranties may be implied by law), and without representation that use of the Data will not infringe any patent, copyright, trademark, or any third party Intellectual Property Rights.
     2. To the maximum extent permitted by law, Provider Institution shall have no liability for any use, handling, storage or disposal of the Data by the Recipient, or for any loss, claim, damage or liability of any kind or nature which may arise from or in connection with this Agreement or from the use, handling, storage or disposal of the Data.
2. **Indemnity and Insurance**
   * 1. To the extent permitted by law the Recipient hereby indemnifies and holds harmless the Provider Institution from any liability, damage, loss or expense (including reasonable legal fees and litigation expenses) incurred by or imposed upon Provider Institution in connection with any claims, suits, actions, demands or judgements arising out of the Recipient’s use, handling, storage or disposal of the Data, except to the extent that the liability is due to the gross negligence or wilful misconduct of Provider Institution. Provider Institution will have a duty to mitigate its loss before relying on the indemnity provided by Recipient under this clause 11(a).
     2. Recipient has and will at all times maintain adequate insurance to cover all claims or damages for which it may be liable under this Agreement or as is reasonably required by the Provider Institution from time to time. The Recipient must, upon written request by Provider Institution, provide documentary evidence of such insurance cover (within a reasonable time of a request).
3. **Termination**
   * 1. Provider Institution may terminate this Agreement upon thirty (30) days’ written notice to the Recipient at any time and for any reason or no reason.
     2. If this Agreement is terminated, the Recipient shall return or destroy any Data or Confidential Information in accordance with clause 7. This clause does not prevent the Recipient from retaining a copy of the Data for archival purposes if required by applicable law.
     3. Termination of this Agreement does not affect any accrued rights or remedies Provider Institution may have.
4. **Dispute Resolution**
   * 1. This Agreement (and any dispute, controversy, proceedings or claim of whatever nature arising out of this Agreement) shall be construed, interpreted and governed by the laws of Victoria, Australia, and shall be subject to the exclusive jurisdiction of the Victorian courts (and any courts that may hear appeals from those courts).
     2. Any party seeking to resolve a dispute relating to this Agreement (the “**Dispute**”) must notify the other party in writing and both parties must use reasonable endeavours to resolve the Dispute by negotiation for a period of thirty (30) days from the date of the written notice. If the parties fail to resolve the Dispute in that thirty (30) day period, they must refer the Dispute to mediation in Victoria, with such mediation to be conducted in accordance with the ADR Guidelines provided by the Australian Disputes Centre.
     3. If the Dispute is not resolved within thirty (30) days from the date of referral to the mediator, either party is free to commence court or tribunal proceedings.
     4. Nothing in this clause will prevent a party from seeking interlocutory relief through the courts.
5. **Miscellaneous**
   * 1. This Agreement embodies the entire agreement between the parties with respect to the transfer of Data to the Recipient and exchange of Confidential Information between the parties and supersedes all prior contracts, agreements and understandings relating to the same subject matter between the parties.
     2. This Agreement may be amended only by a written instrument signed by duly authorized representatives of both parties.
     3. All provisions of this Agreement which in accordance with their terms are intended to have effect after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement.
     4. Each party will do anything (including executing any document) and will ensure that its personnel do anything (including executing any document), that the other party may reasonably require to give full effect to this Agreement.
     5. This Agreement does not constitute any party the agent of another, or imply that the parties intend constituting a partnership, joint venture or other form of association in which any party may be liable for the acts or omissions of another.
     6. A party must not assign or otherwise transfer any or all of its rights or obligations arising out of this Agreement without the written consent of the other party, such consent not to be unreasonably withheld.

This Agreement may be executed in separate counterparts, each of which shall be deemed to be an original and all of which together shall constitute a single instrument. The parties agree that digital, facsimile or email signatures will be accepted as originals.

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| **EXECUTED AS AN AGREEMENT** on behalf of **Recipient** by: | **EXECUTED AS AN AGREEMENT** on behalf of the **Provider Institution** by: |
| Signed:  **(WHO WARRANTS THAT THEY ARE DULY AUTHORISED TO EXECUTE THIS AGREEMENT ON BEHALF OF RECIPIENT)**  Name:  Title:  Date: | Signed:  **(WHO WARRANTS THAT THEY ARE DULY AUTHORISED TO EXECUTE THIS AGREEMENT ON BEHALF OF PROVIDER INSTITUTION)**  Name:  Title:  Date: |

Read, understood and accepted by Recipient Researcher:

Signed:

Name: Date: