

Material transfer agreement schedule

Commencement Date _____ 20____*

*If no date is specified, the Commencement Date is the date the last of the parties signs this agreement.

Recipient _____ Company Number: _____
(Insert full name of legal entity) (Insert ACN/ABN/ARBN or other)

Street Address: _____

Suburb: _____ Postcode: _____ Country: _____

Delivery Address Street Address: _____

Suburb: _____ Postcode: _____ Country: _____

Material _____
(Insert a description of all material to be provided including the volume and all relevant characteristics)

Approved Purpose The purposes* of:

*If no purpose is specified, the Approved Purpose is the Recipient using the material for internal, non-commercial research and teaching purposes.

The parties acknowledge and agree that if any Material is provided by UQ to the Recipient on or after the Commencement Date then that Material is provided on the basis of the Material transfer agreement terms and conditions annexed to this Schedule (or if no terms are annexed, the Material transfer agreement terms and conditions made available by UQ from time to time).

Execution

Signed as an agreement.

SIGNED for and on behalf of

The University of Queensland

by its duly authorised officer: _____ in the presence of: _____

Executive Dean / Director _____ Witness (Print Name) _____

Print name _____ Date: _____

Print title _____

SIGNED for and on behalf of

the Recipient

by its duly authorised officer: _____ in the presence of: _____

Authorised officer _____ Witness (Print Name) _____

Print Name _____ Date: _____

Print title _____

Material transfer agreement terms and conditions

Background

- A The Material and any Confidential Information has a unique value to UQ and may be the basis of applications for registration of Intellectual Property Rights.
- B UQ may suffer significant loss or damage as a result of any unauthorised use or disclosure of the Material or any Confidential Information and may be precluded from being granted registration of Intellectual Property Rights as a result of any unauthorised use or disclosure of the Material or any Confidential Information.
- C The Recipient agrees to receive the Material on the basis of these terms and conditions.

rights in relation to inventions, trade names, business names, company names, indications of origin, designs, plant varieties, semiconductors, circuit layouts, confidential information and knowhow;

- (b) any right of registration of, provisional applications for, claim of priority from, continuation of or division of such rights; and
- (c) all other Intellectual Property Rights as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.

Operative terms

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Agreement	means this agreement as amended or replaced by agreement of the parties in writing from time to time.
Approved Purpose	means the approved purpose specified in the Schedule.
Commencement Date	means the date specified in the Schedule.
Confidential Information	means the terms of this Agreement, New IPR and any information disclosed by UQ to the Recipient in relation to the Material, except for information: <ul style="list-style-type: none"> (a) that the Recipient can show was already known to, in the rightful possession of or independently developed by the Recipient in good faith and free of any obligation of confidence; or (b) that the Recipient can show is in the public domain otherwise than by a breach of this Agreement or other obligation of confidence.
Delivery Address	means the delivery address specified in the Schedule.
Derivatives	means any material that is propagated from, derived from or based upon the Material, whether or not progeny, and whether modified or unmodified.
Material	means the material specified in the Schedule and includes any Derivatives.
New IPR	means any Intellectual Property Rights, results and data that arises from the Recipient's use or possession of the Material or Confidential Information.
Intellectual Property Rights	means all industrial and Intellectual Property Rights anywhere in the world, whether registered or unregistered, including: <ul style="list-style-type: none"> (a) patent rights, trade mark rights, copyright, plant breeders' rights and

Recipient

means the recipient specified in the Schedule.

UQ

means The University of Queensland ABN 63 942 912 684 a body corporate constituted under the *University of Queensland Act 1998* (Qld) of Brisbane in the State of Queensland 4072.

1.2 Interpretation

In this Agreement:

- (a) no rule of construction applies to the disadvantage of the party that drafts this Agreement on the basis that the party suggested the relevant drafting;
- (b) references to a party mean UQ or the Recipient and references to the parties mean both of UQ and the Recipient; and
- (c) words such as "includes" and "including" do not impose any limitation on the construction of general language that is followed by specific examples.

2 Supply

2.1 Supply

- (a) UQ may make the Material available to the Recipient at the Delivery Address.
- (b) The costs of delivering the Material must be paid by the Recipient in advance (if any).

2.2 Recipient requirements

The Recipient must:

- (a) only use the Material for the Approved Purpose;
- (b) only use the Material for the purpose of non-commercial research;
- (c) not provide the Material to any third party;
- (d) not use the Material in humans;
- (e) not seek any form of registration of Intellectual Property Rights or other statutory protection of the Material;
- (f) not seek to reverse engineer the Material or otherwise determine the origin of the Material;
- (g) comply with all laws and applicable codes of conduct in relation to use of the Material;
- (h) obtain all ethical clearances that are necessary or desirable to use the Material for the Approved

Purpose; and

- (i) cooperate with UQ and act reasonably in connection with this Agreement and receipt of the Material.

2.3 Physical ownership

The Recipient acknowledges and agrees that, as between the parties, UQ retains title to the Material provided to the Recipient under this Agreement.

3 Exclusion of warranties

3.1 No warranties with respect to Material

The Recipient acknowledges and agrees that:

- (a) UQ does not make any representation or give any warranty that the Material is fit for any particular purpose;
- (b) UQ does not make any representation or give any warranty that the use of the Material by the Recipient or transfer of the Material to the Recipient will not infringe the Intellectual Property Rights or other rights of any third party;
- (c) the Material is provided on an "as is" basis; and
- (d) nothing in this Agreement grants the Recipient a licence or assigns to the Recipient any Intellectual Property Rights of UQ.

3.2 Reliance warranty

The Recipient represents and warrants, and it is a condition of this Agreement, that the Recipient did not rely on any representation made to the Recipient by UQ prior to entry into this Agreement.

4 Intellectual Property Rights

- (a) The Recipient must notify UQ of any New IPR upon its creation.
- (b) The parties agree that the New IPR will be owned by the parties in equal shares as tenants in common.
- (c) Each party assigns all right, title and interest in the New IPR to the other party to the extent required to give effect to clause 4(b).
- (d) Without limiting clause 9.1, the parties must do all things that are reasonably necessary to give effect to and record the assignment contemplated by clause 4(c).
- (e) Each party grants the other party a non-exclusive, non-transferable, royalty free, perpetual licence to exercise any Intellectual Property Rights contemplated by clause 4(c) for internal research and teaching purposes.
- (f) Each party must not use the New IPR for commercial purposes without the prior written consent of the other party.

5 Confidentiality

5.1 Obligation of confidence

The Recipient must:

- (a) keep the Confidential Information confidential;
- (b) not use the Confidential Information for any purpose other than the Approved Purpose;
- (c) not copy the Confidential Information for any purpose;
- (d) not disclose the Confidential Information to any third party; and
- (e) not use the Confidential Information of the other party to the disadvantage of the other party.

5.2 Exceptions

The obligations of confidence contemplated by clause 5.1 do not apply to Confidential Information to the extent that the information is required to be disclosed under applicable law, but only if the Recipient has given UQ all available notice to enable UQ to attempt to remove that requirement and only discloses the minimum information required.

6 Term and termination

- (a) This Agreement commences on the date of entry into this Agreement and continues until terminated by UQ.
- (b) If the Recipient breaches this Agreement UQ may terminate this Agreement by notice in writing to the Recipient.
- (c) The Recipient expressly waives any rights it may have to terminate this Agreement.
- (d) On termination of this Agreement:
 - (i) accrued rights or remedies of a party are not affected; and
 - (ii) at UQ's discretion, the Recipient must destroy or deliver to UQ any Material and Confidential Information that was made available to the Recipient, copies of that Confidential Information and Derivatives.
- (e) Termination of this Agreement will not affect any provision of this Agreement that is intended to come into force or continue after the termination including clauses 2, 5, 7 and 8.

7 Trade marks, acknowledgement and publications

7.1 No use of trade marks

The Recipient must not, and must ensure that its officers, employees, agents and subcontractors do not, use the trade marks, logos or other indicators of origin of UQ without the prior written consent of UQ.

7.2 Acknowledgement

The Recipient must acknowledge UQ's provision of the Material and any staff notified by UQ as being involved in the development of the Material in any publications relating to the Material.

7.3 Publication

- (a) Subject to clause 7.3(b), the Recipient may publish any results relating to the Material.
- (b) Prior to publishing any results relating to the Material, the Recipient must:
 - (i) provide a copy of the proposed publication to UQ at least 30 days prior to the intended publication; and
 - (ii) amend the proposed publication or delay publication if UQ notifies the Recipient in writing that a potential patent application may be prejudiced or Confidential Information would be disclosed by that publication.
- (c) The parties agree to negotiate in good faith the extent of any amendment or period of delay or, failing agreement, agree that the extent or period may be determined by UQ.

8 Disclaimer and Indemnity

- (a) The Recipient acknowledges that UQ disclaims all liability in relation to the Recipient's use and possession of the Material.
- (b) The Recipient is liable for, and indemnifies UQ from and against, all loss or damage suffered or incurred by UQ however caused in connection with:
 - (i) any breach of this Agreement by the Recipient;

- (ii) any negligent act or omission of the Recipient;
 - (iii) use or possession of the Material by the Recipient; or
 - (iv) any claim or allegation that the Recipient's use of the Material infringes the Intellectual Property Rights or other rights of any third party.
- (c) Notwithstanding any other provision of this agreement, if any applicable legislation prohibits the exclusion of liability by a party in the manner contemplated by this clause 8 with respect to particular loss or damage, then:
- (i) the exclusion does not apply to that loss or damage; and
 - (ii) that party's liability is only limited or excluded with respect to that loss or damage in the manner permitted under that legislation (if any).

copy of this Agreement by facsimile or email to the other party.

9 General

9.1 Further assurances

Each party must do all things necessary or desirable to give effect to the provisions of this deed including by signing all documents and performing all acts.

9.2 Entire agreement

This Agreement:

- (a) contains the entire agreement of the parties; and
- (b) supersedes all prior representations, conduct and agreements,

with respect to its subject matter, except to the extent that any express warranties have been given by a party as contemplated by section 59 of the *Competition and Consumer Act 2010* (Cth).

9.3 Costs

Each party is responsible for its own costs of entering into and performing this Agreement.

9.4 Jurisdiction

The laws of Queensland, Australia apply to this Agreement and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland, Australia and courts competent to hear appeals from those courts.

9.5 Severability

To the extent that any portion of this Agreement is void or otherwise unenforceable then that portion will be severed and this Agreement will be construed as if the severable portion had never existed.

9.6 No agency

This Agreement does not create a relationship of employment, trust, agency or partnership between the parties.

9.7 Waiver

A right under this Agreement may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.

9.8 Discretion

Unless otherwise expressly contemplated, where a provision of this deed contemplates that a party may exercise its discretion then that party is entitled to exercise that discretion absolutely, with or without conditions and without being required to act reasonably or give reasons.

9.9 Counterparts

- (a) This Agreement will be validly executed if signed in any number of counterparts and the counterparts taken together will constitute one agreement.
- (b) Each party may communicate its execution of this Agreement by successfully transmitting an executed

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Commencement Date _____ 20____ *

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Recipient _____ Company Number: _____
(Insert full name of legal entity) (Insert ACN/ABN/ARBN or other)

Street Address: _____

Suburb: _____ Postcode: _____ Country: _____

Delivery Address Street Address: _____

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(Insert a description of all material to be provided including the volume and all relevant characteristics)

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Execution

Signed as an agreement.

SIGNED for and on behalf of

The University of Queensland

by its duly authorised officer: in the presence of:

.....

Executive Dean / Director Witness (Print Name)

.....

Print name Date:

.....

Print title

SIGNED for and on behalf of

the Recipient

by its duly authorised officer: in the presence of:

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Authorised officer Witness (Print Name)

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Print Name Date:

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- B UQ may suffer significant loss or damage as a result of any unauthorised use or disclosure of the Material or any Confidential Information and may be precluded from being granted registration of Intellectual Property Rights as a result of any unauthorised use or disclosure of the Material or any Confidential Information.
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rights in relation to inventions, trade names, business names, company names, indications of origin, designs, plant varieties, semiconductors, circuit layouts, confidential information and knowhow;

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- (d) Without limiting clause 9.1, the parties must do all things that are reasonably necessary to give effect to and record the assignment contemplated by clause 4(c).
- (e) Each party grants the other party a non-exclusive, non-transferable, royalty free, perpetual licence to exercise any Intellectual Property Rights contemplated by clause 4(c) for internal research and teaching purposes.
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5 Confidentiality

5.1 Obligation of confidence

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- (d) not disclose the Confidential Information to any third party; and
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5.2 Exceptions

The obligations of confidence contemplated by clause 5.1 do not apply to Confidential Information to the extent that the information is required to be disclosed under applicable law, but only if the Recipient has given UQ all available notice to enable UQ to attempt to remove that requirement and only discloses the minimum information required.

6 Term and termination

- (a) This Agreement commences on the date of entry into this Agreement and continues until terminated by UQ.
- (b) If the Recipient breaches this Agreement UQ may terminate this Agreement by notice in writing to the Recipient.
- (c) The Recipient expressly waives any rights it may have to terminate this Agreement.
- (d) On termination of this Agreement:
 - (i) accrued rights or remedies of a party are not affected; and
 - (ii) at UQ's discretion, the Recipient must destroy or deliver to UQ any Material and Confidential Information that was made available to the Recipient, copies of that Confidential Information and Derivatives.
- (e) Termination of this Agreement will not affect any provision of this Agreement that is intended to come into force or continue after the termination including clauses 2, 5, 7 and 8.

7 Trade marks, acknowledgement and publications

7.1 No use of trade marks

The Recipient must not, and must ensure that its officers, employees, agents and subcontractors do not, use the trade marks, logos or other indicators of origin of UQ without the prior written consent of UQ.

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- (a) Subject to clause 7.3(b), the Recipient may publish any results relating to the Material.
- (b) Prior to publishing any results relating to the Material, the Recipient must:
 - (i) provide a copy of the proposed publication to UQ at least 30 days prior to the intended publication; and
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- (b) The Recipient is liable for, and indemnifies UQ from and against, all loss or damage suffered or incurred by UQ however caused in connection with:
 - (i) any breach of this Agreement by the Recipient;

- (ii) any negligent act or omission of the Recipient;
 - (iii) use or possession of the Material by the Recipient; or
 - (iv) any claim or allegation that the Recipient's use of the Material infringes the Intellectual Property Rights or other rights of any third party.
- (c) Notwithstanding any other provision of this agreement, if any applicable legislation prohibits the exclusion of liability by a party in the manner contemplated by this clause 8 with respect to particular loss or damage, then:
- (i) the exclusion does not apply to that loss or damage; and
 - (ii) that party's liability is only limited or excluded with respect to that loss or damage in the manner permitted under that legislation (if any).

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