



James Cook University

[name of Recipient]

Material Transfer Agreement

Non-Biological Material

[Note to user: This template is for the transfer of non-biological material and is not to be used for the transfer of any biological or living material. If any of the Material comprises biological or living material, please use the template Material Transfer Agreement for biological material.]



Reference Schedule

Item	Description	Detail	
1.	Notice details for Recipient (clause 14)	Postal address:	
		Representative:	
		Representative's position:	
		Email:	
2.	Notice details for JCU (clause 14)	Postal address:	1 James Cook Drive, Douglas, Queensland 4811
		Representative:	
		Representative's position:	Director, JCU Connect
		Email:	directorjcuconnect@jcu.edu.au
3.	Commencement Date (clause 13.1)	[insert date] or [The date that this Agreement has been executed by both parties, as determined by the dates applied to the execution clauses.]	
4.	Expiry Date (clause 13.1)	[insert date that Permitted Use is to end]	
5.	Material (clause 5)	Type	[insert name of type of non-biological material e.g.: formulations, non-living]



Parties

James Cook University ABN 46 253 211 955, a body corporate established pursuant to the *James Cook University Act 1997* (Qld) of 1 James Cook Drive, Townsville in the State of Queensland, Australia (**JCU**)

[Insert name of recipient of Material] ACN [insert] of [address] (**Recipient**)

Background

- A JCU possesses the Material.
 - B The Recipient wishes to use the Material for the Permitted Use.
 - C JCU agrees to supply the Material to the Recipient and the Recipient agrees to receive and use the Material on the terms and conditions of this Agreement.
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Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this document, these terms have the following meanings:

Agreement	this agreement, including the Reference Schedule.
Business Day	a day that is not a Saturday, Sunday or a public holiday in Townsville, Queensland.
Commencement Date	the date specified in item 3 of the Reference Schedule.
Confidential Information	



- (e) is or becomes public knowledge, other than by breach of this Agreement or by any other unlawful means;
- (f) is in the possession of a party without restriction in relation to disclosure before the



Thesis the postgraduate research paper, dissertation and/or thesis submitted by a Student in connection with the Student's higher research degree at the Recipient.

2 Interpretation and priority

2.1 Construction

Unless expressed to the contrary, in this Agreement:

- (a) headings are for convenience only and do not affect the interpretation of the Agreement;
- (b) words in the singular include the plural and vice versa;
- (c) any gender includes the other genders;
- (d) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (e) 'includes' means includes without limitation;
- (f) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (g) a reference to:
 - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
 - (iv) a right includes a benefit, remedy, discretion or power;



- (i) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

2.2 Priority

Where any inconsistency exists between:

- (a) the Special Conditions;
- (b) the agreed terms of the Agreement (including the Reference Schedule);
or
- (c) any other schedules or annexures of this Agreement,

the provisions will take precedence in that order to the extent necessary to resolve the inconsistency.

3 Term

This Agreement commences on the Commencement Date and ends on the Expiry Date, unless terminated earlier in accordance with **clause 13**.

4 Special Conditions

The parties agree to be bound by any Special Conditions.

5 Material

5.1 Permission to use the Material

JCU grants the Recipient a non-exclusive, non-transferable right to use the Material for the Permitted Use during the Term. This right does not include any right for the Recipient to supply the Material to any third party other than with the prior written consent of JCU.

5.2 Delivery of the Material

- (a) Unless otherwise agreed in writing between the parties, JCU will deliver the Material to the Premises.
- (b) The party specified in **item 7** of the Reference Schedule will pay the cost of delivering the Material to the Premises.

6 Recipient's obligations

6.1 Payment of Fee



6.2 Use of the Material

[Drafting note: Please review the list of requirements and obligations below to determine if each of them is applicable to the Permitted Use. Delete any that are not applicable to the Permitted Use.]

The Recipient must:

- (a) use the Material only for the Permitted Use and not for any other purpose or use;



6.3 Nagoya Protocol

JCU does not represent or warrant that:

- (a) the Material has been collected, produced, obtained or maintained in accordance with; or
- (b) that the Recipient's access to, receipt or use of the Material under this Agreement is or will be compliant with,

any domestic or international laws regulating the access to, collection of, supply of, storage or utilisation of genetic resources, including any under the 1993 Convention on Biological Diversity or the Nagoya Protocol made under that convention. It is the responsibility of the Recipient to ensure its compliance with any such laws, at the Recipient's cost.

6.4 Responsibility for Personnel

The Recipient will ensure that its Personnel and other persons under its control or supervision who have any access to the Material:

- (a) comply with the obligations imposed by this Agreement as if they were personally bound by such obligations;
- (b) assign any Intellectual Property in Permitted Use Results and New Material (other than copyright in a Student's Thesis) which they generate in accordance with this Agreement;
- (c) grant a Moral Rights Consent with respect to any publication of Permitted Use Results (provided that the parties acknowledge authorship of a Student's Thesis); and
- (d) if the Representative or person is a Student, that they grant to JCU a royalty free and irrevocable licence to use the Student's Thesis for non-commercial JCU purposes, where requested by JCU.

6.5 Evidence of compliance

Upon reasonable request of JCU during the Term, the Recipient must provide JCU with evidence, in a form reasonably satisfactory to JCU, of its compliance with **clauses 6.2(a) to 6.2(m), clause 6.3 and 6.4(b) to 6.4(d)**.

6.6 Access and reporting

- (a) The Recipient must, during the Term, provide JCU with access to the Premises, and access to all information and data relating to and including the Material, New Material and the Permitted Use Results.
- (b) The Recipient must deliver to JCU a report on the performance of the Material (including any information or data resulting from use of the Material, including Permitted Use Results) within 30 days after:
 - (i) each anniversary of the Commencement Date during the Term; and
 - (ii) the Expiry Date or date of termination of this Agreement.



- (c) The Recipient acknowledges that JCU may use the results, information and data provided under **clauses 6.6(a)** or **6.6(b)** for its own research purposes.

6.7 Return of the Material

Within 5 Business Days of the earlier of:

- (a) the completion of the Permitted Use;



(a) In consideration for the rights granted to the Recipient under this



to the requirements and restrictions (if any) specified in **item 11** of the Reference Schedule and this **clause 9**.

- (b) If any information is Published in accordance with **clause 9(a)**, the Recipient will acknowledge JCU's supply and ownership of the Material in the manner reasonably required by JCU.

10 Confidential information

10.1 Obligations of confidentiality

Subject to **clause 10.2**, the Recipient must:

- (a) keep confidential and not allow, make or cause any public announcement or other disclosure of any Confidential Information of the Discloser without the prior written consent of the Discloser, which consent may be given or withheld, or given with conditions, in the Discloser's sole discretion;
- (b) use, copy and retain the Confidential Information of the Discloser solely for the purposes of exercising its rights and performing its obligations under this Agreement; and
- (c) on the expiry or termination of this Agreement promptly return to the Discloser or destroy (and certify such destruction) all Confidential Information of the Discloser then in the Recipient's possession or under its control, provided that the Recipient may retain a copy of the Confidential Information of the Discloser:
 - (i) for the Recipient's internal record-keeping purposes;
 - (ii) where the copy of the Confidential Information of the Discloser is contained in the Recipient's computer system back-ups, which are not generally available to employees of the Recipient and which cannot readily be deleted; or
 - (iii) if the Recipient is required to do so by:
 - (A) law or Legislative Requirements;
 - (B) its insurance policies; or
 - (C) any applicable professional standard or government policy.

10.2 Exceptions

The obligations of each party (as a Recipient) under **clause 10.1** do not apply to a disclosure or announcement by the Recipient to the extent that the disclosure or announcement is:

- (a) to a related body corporate of the Recipient, including that related body corporate's officer, employees and/or agents on a need to know basis and only if the disclosure is made on a confidential basis;



- (b) to any bona fide proposed assignee of all or part of the rights and obligations of the Recipient under this Agreement subject to the proposed assignee undertaking to treat the information as confidential;
- (c) required by the listing rules of Australian Stock Exchange Limited or any relevant overseas stock exchange;
- (d) reasonably necessary to comply with any request, instruction, direction of any Minister of the Commonwealth or of the Queensland Government;
- (e) required by law, provided that the Recipient notifies the Discloser prior to the disclosure required to enable the Discloser to seek a protective order or other appropriate remedy in respect of the Confidential Information;



11.2 Release

To the extent permitted by law and subject to **clause 11.5**, the Recipient releases JCU and its Personnel from all actions, claims, proceedings or demands and in respect of any loss, death, injury, illness or damage (whether personal or property, and whether special, direct, indirect or consequential, including consequential financial loss) that the Recipient has, or may have in the future, against JCU or its Personnel in respect of or in any way arising out of the use of the Material, the Permitted Use Results (including the New Material) or any products derived from the Material, except to the extent that the loss, injury or damage was caused by the negligence of JCU or its Personnel.



- (i) any use of the Material by the Recipient or its Personnel;



- (b) This **clause 12.7** does not limit the application of **clause 12.3**, if appropriate, to the Reimbursable Expense as reduced (see 5(r).1(a)-6.6(s)1c.1(-c



- (i) stop using the Material for any purpose, including the Permitted Use;
- (ii) return or destroy the Material in accordance with its obligations under **clause 6.7**; and
- (iii) take all available steps to:
 - (A) minimise any loss resulting from termination of the Agreement; and
 - (B) protect the Material, Permitted Use Results and Intellectual Property Rights.
- (b) Within 30 days of the Expiry Date or date of termination, the Recipient must provide JCU samples and copies of all New Material and Permitted Use Results developed as at the Expiry Date or date of termination.

14 Notices

14.1 General

Each party must send all notices relating to the Agreement to the other party's nominated representative.

14.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) delivered by hand at the party's current address for notices;
- (b) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (c) sent by email to party's current email address for notices.

14.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices to each party as at the Commencement Date are those set out in **item 1** and **item 2** of the Reference Schedule.
- (b) Each party may change its particulars for delivery of notices by notice to the other party in accordance with this **clause 14**.

14.4 Time of delivery

A notice will be deemed to be given:

- (a) if posted:
 - (i) within Australia to an Australian postal address, five Business Days after posting; or



- (b) if delivered by hand during a Business Day – on the date of delivery;
- (c) if emailed – subject to **clause 14.5**, on the date recorded on the device from which the party sent the email, unless the sending party receives an automated message that the email has not been delivered,

except that a delivery by hand or email received after 5:00 pm (local time of the receiving party) will be deemed to be given on the next Business Day.

14.5 Process service

Any notice under **clause 13** or **15** which is sent via email must also be sent by post, hand delivery or in any other way permitted by law.

15 Dispute Resolution

15.1 Dispute

Subject to **clause 15.5**, the parties agree to follow the procedures in this **clause 15** prior to the commencement of litigation or other external dispute resolution procedure in relation to any dispute between the parties concerning this Agreement.

15.2 Procedure

The parties agree that any dispute concerning this Agreement will be dealt with as follows:

- (a) either party may notify the other in writing of the occurrence of a dispute;
- (b) the parties must meet within five Business Days after receipt of the notice at a mutually convenient time and place, either face to face or by electronic means (**First Meeting**); and
- (c) if the parties fail to hold the First Meeting within the required time, or fail to resolve the dispute as agreed in writing within 14 Business Days after the First Meeting, then the parties must ensure that senior representatives with authority to settle the dispute meet within 14 Business Days at a mutually convenient time and place, either face to face or by electronic means (**Second Meeting**).

15.3 Mediation

- (a) If the dispute is not resolved under **clause 15.2(c)** as agreed in writing within five Business Days after the Second Meeting, then either party may refer the dispute to mediation under **clause 15.3(b)** and the other party must participate in the mediation.
- (b) The mediation will be administered by the Australian Centre for International Commercial Arbitration in Townsville in accordance with the ACICA Mediation Rules operating at the time the dispute is referred to mediation. The parties:



- (i) will jointly appoint the mediator, or if the parties cannot agree on



16.14 Entire understanding

- (a) This Agreement contains the entire understanding between the parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments concerning the subject matter of this Agreement are merged in and superseded by this Agreement and are of



Execution

Executed as an agreement.

[OPTION ONE: If Recipient wishes to execute via an authorised officer.]

Executed for and on behalf of **[insert name of Recipient]** by its duly appointed officer in the presence of:

.....
Witness

.....
Officer

.....
Name of Witness (print)

By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of **[name of Recipient]**.

.....
Name of Officer (print)

.....
Date

.....
Position of Officer (print)

[OPTION TWO: If Recipient is a company]

Executed by **[name of Recipient]** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

.....
Company Secretary/Director

.....
Director

.....
Name of Company Secretary/Director (print)

.....
Name of Director (print)

.....
Date

.....
Date



Executed for and on behalf of **James Cook University** by its duly appointed officer in the presence of:)
)
)

.....
Witness

.....
Officer

.....
Name of Witness (print)

By executing this Agreement the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of James Cook University.

.....
Name of Officer (print)

.....
Date

.....
Position of Officer (print)