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**Master Non-disclosure Agreement (Mutual)**

|  |  |
| --- | --- |
| **Date:** | [insert date the last party signs this agreement] |
| **Parties** | [insert name ] ABN / ACN [ insert ABN or ACN ] of [ insert address ]  **and**  [insert name ] ABN / ACN [ insert ABN or ACN ] of [ insert address ]  (together, the **parties**) |
| **Agreement** | 1. The parties to this Master NDA wish to share information, including Confidential Information, for the Purpose. 2. This Master NDA is limited to proposed clinical trial studies between the parties. 3. The parties agree to share the information on the terms set out in this Master NDA. |

**Executed as an Agreement**

[Company execution block]

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by **[insert company name]** in accordance with section 127 of the *Corporations Act 2001* (Cth) in the presence of |  |  |  |
|  | ← |  | ← |
| Signature of director |  | Signature of director/company secretary/sole director and sole company secretary  (Please delete as applicable) |  |
| Name of director (print) |  | Name of director/company secretary/sole director and sole company secretary (print) |  |

[Alternative execution block]

|  |  |  |  |
| --- | --- | --- | --- |
| **Signed** for **[insert contracting party name]** by an authorised officerin the presence of |  |  |  |
|  | ← |  | ← |
| Signature of witness |  | Signature of officer |  |
|  |  |  |  |
| Name of witness (print) |  | Name of officer (print) |  |
|  |  |  |  |
|  |  | Office held |  |

**General Terms**

# Interpretation

* 1. Definitions

The following definitions apply in this Master NDA (and relevant Study Proposal).

**Commencement Date** means the date on which a Study Proposal commences, as specified in the Study Proposal.

**Confidential Information** means information in any form or medium that is not Excluded Information and that:

1. relates to the past, present or future operations or affairs of the Disclosing Party or its controlled entities and:
2. the Disclosing Party makes the Receiving Party aware is considered by the Disclosing Party to be confidential;
3. is by its nature confidential or the Receiving Party knows or ought to know is confidential; or
4. is personal information for the purposes of the *Privacy Act* 1988 (Cth) or the *Privacy and Personal Information Protection Act* 1998 (NSW) or is health information for the purposes of the *Health Records and Information Privacy Act* (NSW) 2002.
5. relates to any person and has been provided to or is held by the Disclosing Party on a confidential basis.

**Disclosing Party** means the party who is disclosing information, including Confidential Information.

**Excluded Information** means information that the Receiving Party can establish is in the public domain other than through a breach of this Master NDA.

**Master NDA** means this Master Non-Disclosure Agreement.

**Period of Disclosure** means the period that the parties may disclose the Confidential Information for a Study, as specified in a Study Proposal.

**Purpose** means disclosing and discussing the Confidential Information to enable the University to assess its interest in conducting the Study.

**Receiving Party** means the party who is receiving information, including Confidential Information.

**Study** means the proposed clinical trial specified in a Study Proposal.

**Study Proposal** means a document substantially in the form of Annexure 1 to this Master NDA.

* 1. Rules for interpreting this agreement

Headings are for convenience only and do not affect interpretation. The following rules also apply in interpreting this Master NDA and relevant Study Proposal:

1. A reference to:
   * + 1. a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re‑enacted or replaced;
       2. a document or agreement (including this Master NDA), or a provision of a document or agreement (including this Master NDA), is to that document, agreement or provision as amended, supplemented or replaced;
       3. a party to this Master NDA or to any other agreement or document (including the Study Proposal) includes a successor in title, permitted substitute or a permitted assign of that party;
       4. a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
       5. anything (including a right, obligation or concept) includes each part of it.
2. A singular word includes the plural, and vice versa.
3. A word which suggests one gender includes the other genders.
4. If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

# Study Proposal

1. Where the parties wish to exchange Confidential Information for the Purpose in respect of a Study, the parties will complete the Study Proposal.
2. A signed Study Proposal will be incorporated into this Master NDA (that is, the terms of this Master NDA will apply to each Study Proposal).
3. To the extent of any inconsistency between the Master NDA and a Study Proposal, the terms of the Master NDA will prevail.

# Disclosure of Confidential Information

1. The Disclosing Party agrees to disclose to the Receiving Party during the Period of Disclosure certain Confidential Information solely for the Purpose and subject to the terms of this Master NDA (and relevant Study Proposal).
2. Neither party is obliged to disclose any particular information to the other party.
3. The Receiving Party acknowledges that neither the Disclosing Party nor its representative makes any representation or warranty (express or implied) as to the accuracy, content, legality or completeness of the Confidential Information or is under any obligation to notify the Receiving Party if it becomes aware of any inaccuracy, incompleteness or change in the Confidential Information.

# Confidential Information

* 1. Obligations of confidentiality

In consideration of the disclosure referred to in clause 3 the Receiving Party agrees, except as permitted by clause 4.3, to:

* + 1. keep all Confidential Information confidential;
    2. not disclose Confidential Information directly or indirectly in any form to anyone else;
    3. not use or make a copy of any Confidential Information other than for the Purpose; and
    4. not manufacture any product or use any process based on the Confidential Information or otherwise commercialise anything based on the Confidential Information.
  1. Ownership of Confidential Information

The Receiving Party acknowledges that all Confidential Information which has or may come into the possession of the Receiving Party and all rights relating to that Confidential Information remain the property of the Disclosing Party.

* 1. Exceptions to obligations of confidentiality

The obligations in clause 4.1 do not apply to the Receiving Party if:

1. the Disclosing Party has first agreed in writing to the particular disclosure, use, or copying;
2. the information is disclosed to an officer or employee of the Receiving Party who needs to know the information concerned to perform its duties in relation to the Purpose; or
3. disclosure of any Confidential Information is required to comply with any applicable law or requirement of any government agency or regulatory body and the Receiving Party first informs the Disclosing Party of the intended disclosure and cooperates with the Disclosing Party to limit that disclosure as reasonably requested.
   1. Security of Confidential Information

The Receiving Party must:

* + 1. keep effective control of Confidential Information;
    2. ensure that Confidential Information is secure from theft, loss, damage or unauthorised access or alteration;
    3. ensure that its officers or employees do not disclose, use or copy Confidential Information except as permitted by this clause 3;
    4. if required by the Disclosing Party obtain from each of its officers and employees to whom Confidential Information is disclosed, a written undertaking to comply with the obligations of the Receiving Party under this clause 3 in a form approved by the Disclosing Party;
    5. notify the Disclosing Party of any suspected or actual unauthorised use, copying or disclosure of Confidential Information; and
    6. provide assistance reasonably requested by the Disclosing Party in relation to proceedings the Disclosing Party takes, or threatens to take, against any person for unauthorised use, copying or disclosure of Confidential Information.
  1. Return of Confidential Information

#### Subject to clause 4.6, at the conclusion of the Purpose or at the written request of the Disclosing Party, the Receiving Party must (at its expense) promptly:

##### deliver to the Disclosing Party (or if in electronic form, erase or destroy and deliver evidence of erasure or destruction) all documents and other materials containing, recording or referring to Confidential Information which are in its possession, power or control; and

##### ensure that any person who receives the Confidential Information by the Receiving Party’s authority returns the Confidential Information to the Disclosing Party in any form in which it is held (or if it is in electronic form, erases or destroys it and gives evidence of its erasure or destruction to the Disclosing Party).

#### The return or destruction of documents or materials does not release the Recipient from its obligations under this Master NDA.

* 1. Exceptions to return and destruction

#### The Receiving Party is not required to delete or destroy any electronic back-up media that have been created solely by their automatic or routine archiving or back-up procedures to the extent that the media are not easily segregated, are maintained in confidence and are not accessible to users of the electronic system.

#### The Receiving Party may retain a copy of a document or material containing Confidential Information:

#### if the Receiving Party is required to retain the document or material by law or for the internal auditing or reporting obligations of the Receiving Party; or

#### if the document or material forms part of any advice, opinion or due diligence report prepared by advisers of the Receiving Party in relation to the Purpose.

* 1. Privacy

The parties and their employees and agents must comply with both parties’ obligations under the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act* (NSW) and the *Health Records and Information Privacy Act* (NSW) 2002 in relation to Confidential Information.

* 1. Survival of obligations

The obligations in this clause 4 concerning Confidential Information survive the expiry or termination of this Master NDA.

# Term of the Master NDA

#### This Master NDA will continue for a period of 5 years from the date of the Master NDA.

#### A party may terminate this Master NDA on 30 days written notice. The parties may not enter into further Study Proposals from the date of the notice of termination.

#### If a Study Proposal is in effect on the termination of this Master NDA, the parties agree that the terms of this Master NDA will continue to apply to the extent required to give effect to the Study Proposal.

# General

1. 1. Governing law

This Master NDA is governed by the laws of New South Wales and any dispute relating to it must only be referred to the courts of New South Wales and the federal courts of Australia.

* 1. Assignment

Neither party may assign its rights or obligations under this Master NDA without the prior written consent of the other party.

* 1. Giving effect to this agreement

Each party must do anything (including execute any document) and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Master NDA.

* 1. Exercise of rights

The exercise of a right does not prevent any further exercise of that right or the exercise of any other right. Neither the exercise of a right nor a delay in the exercise of a right operates as an election or a variation of the terms of this Master NDA.

* 1. Operation of this agreement

1. This Master NDA, including any Annexure(s), contains the entire agreement between the parties about its subject matter.
2. Any right that a person may have under this Master NDA is in addition to, and does not replace or limit, any other right that the person may have.
3. Any provision of this Master NDA which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Master NDA enforceable.
   1. Amendment

This Master NDA and any Study Proposal can only be amended by written agreement of the parties.

* 1. Counterparts

This Master NDA and any Study Proposal may be signed in counterparts and when taken together constitute the one document. The counter-parts may be exchanged electronically.

**ANNEXURE 1 – STUDY PROPOSAL**

|  |  |
| --- | --- |
| **Background** | This Study Proposal is made pursuant and subject to the Master Non-Disclosure Agreement between [insert name ] ABN / ACN [ insert ABN or ACN ] of [ insert address ]and[insert name ] ABN / ACN [ insert ABN or ACN ] of [ insert address ] of [insert date] **(Master NDA**)  On execution, this Study Proposal is incorporated into the Master NDA as provided in Clause 2 of the Master NDA.  Capitalised terms have the same meaning given to those terms in the Master NDA. |
| **Commencement Date** | [insert date, or the date the last party signs this Study Proposal] |
| **Period of Disclosure** | [insert the period that the parties disclose information– eg 12 months from the Commencement Date] |
| **Study** | [insert title and description of the clinical trial that is the purpose of exchange of confidential information] |
| **Address for Notices** | **[party 1]**  Attention: [Insert name]  Address: [insert address]  Email: [Insert email]  **[party 2]**  Attention: [Insert name]  Address: [insert address]  Email: [Insert email] |

**Executed as an Agreement**

Signed for and on behalf **[party 1]** by its authorised representative:

Signature

Name (print)

Position (print)

Date

Signed for and behalf of **[party 2]** by its authorised representative:

Signature

Name (print)

Position (print)

Date

**Read and acknowledged** by the Principle Investigator, [insert site of Principle Investigator]

Signature

Name (print)

Date