

Mutual Confidentiality Agreement

This Agreement is made on _____ (Insert date)

Parties

1. **The Walter & Eliza Hall Institute of Medical Research** ACN 004 251 423 of 1G Royal Parade, Parkville, Victoria, 3052, Australia (**WEHI**)
2. The party specified in item 1 of the Agreement Details (**Applicant**)

Background

- A. WEHI has established and is responsible for administering the National Drug Discovery Centre.
- B. WEHI will make the National Drug Discovery Centre available to Australian medical research organisations and small-to-medium enterprises.
- C. Access will be determined by on a project-by-project basis by reference to applications which will be submitted by those seeking to use the National Drug Discovery Centre, which applications will be assessed by a committee comprised of both WEHI and external experts.
- D. The Applicant wishes to access the National Drug Discovery Centre.
- E. Each party has agreed to disclose Confidential Information to the other party for the Approved Purpose on the terms of this Agreement.

Agreement Details

1. Applicant	(Name and ACN/ABN of institute/SME) of (Institute/SME address)	
2. Approved Purpose	The review and assessment by the parties of the Applicant's application to the National Drug Discovery Centre for WEHI to carry out certain scientific research in relation to the Applicant's project.	
3. WEHI's Confidential Information	All Information relating to: a. WEHI's technologies intellectual property and know-how (including but not limited to assays and know-how in respect of assay development) disclosed in the course of negotiations, discussions and meetings between the parties relating to the Applicant's use or potential use of the National Drug Discovery Centre; and b. WEHI's process to review, assess, prioritise and approve/reject any Application.	
4. Applicant's Confidential Information	a. The Application including its subject matter and related information; and b. any other details of the Applicant's scientific research that are disclosed as a result of the Applicant submitting an Application.	
5. Term	10 years after the date the Applicant submits the Application to WEHI.	
6. Notice Details	If to WEHI Address: 1G Royal Parade, Parkville, Victoria, 3052, Australia Fax: n/a Email: nddc@wehi.edu.au	If to Applicant Address: Fax: Email:

Executed as an agreement

Signed for and on behalf of **The Walter & Eliza Hall Institute of Medical Research ACN 004 251 423** by its duly authorised representative:

.....
Signature of authorised representative

.....
Name & title of authorised representative

Signed for and on behalf of _____ (Name and ACN/ABN of institute/SME)

by its duly authorised representative:

.....
Signature of authorised representative

.....
Name & title of authorised representative

1. Disclosure of Confidential Information

1.1 Each party agrees that any disclosure of the Confidential Information to the other party in relation to the Applicant's application to utilise the National Drug Discovery Centre is in accordance with and governed by this Agreement.

1.2 The Receiving Party:

- (a) acknowledges that the Confidential Information is valuable to the Disclosing Party;
- (b) acknowledges that it will be given access to Confidential Information solely for the Approved Purpose; and
- (c) undertakes to deal with the Confidential Information in accordance with the terms of this Agreement.

2. Obligations of confidentiality

2.1 Subject to clauses 2.2 and 3.1, the Receiving Party must:

- (a) only use the Confidential Information for the Approved Purpose;
- (b) keep the Confidential Information secret and confidential and not directly or indirectly disclose, divulge or communicate any of the Confidential Information to any other person without the prior written approval of the Disclosing Party;
- (c) take all reasonable steps to protect Confidential Information from unauthorised disclosure, access, copying or use;
- (d) co-operate with the Disclosing Party in any action the Disclosing Party may take to protect the confidentiality of the Confidential Information;
- (e) not deliberately memorise, use, modify, reverse engineer or make copies, notes or records of the Confidential Information for any purpose other than in connection with the performance by the Receiving Party of its obligations under this Agreement; and
- (f) not apply for, register or attempt to register, or authorise or assist any third party to apply for or register, under any statute or otherwise in any country, a patent or other form of intellectual property relating to or incorporating any Confidential Information.

2.2 The obligations of confidentiality under clause 2.1 do not apply to:

- (a) any Confidential Information that:
 - (i) is disclosed to the Receiving Party by a third party entitled to do so, whether before or after the date of this Agreement;
 - (ii) was already lawfully in the Receiving Party's possession when it was given to the Receiving Party and was not

otherwise acquired from the Disclosing Party directly or indirectly; or

- (iii) is generally available to the public at the date of this Agreement or subsequently becomes so available other than by reason of a breach of this Agreement;

- (b) any disclosure of Confidential Information by the Receiving Party that is necessary to comply with any court order, law, or the applicable rules of any financial market if, to the extent practicable and as soon as reasonably possible, the Receiving Party:

- (i) notifies the Disclosing Party of the proposed disclosure;
- (ii) consults with the Disclosing Party as to its content; and
- (iii) uses reasonable endeavours to comply with any reasonable request by the Disclosing Party concerning the proposed disclosure; or

- (c) any disclosure of the Applicant's Confidential Information by WEHI to a Commonwealth entity, department or authority which is required to be made by WEHI pursuant to any contractual or other funding arrangement entered into by WEHI with that Commonwealth entity, department or authority.

2.3 The Receiving Party must promptly notify the Disclosing Party if the Receiving Party becomes aware of any potential, suspected or actual breach of this Agreement insofar as it relates to Disclosing Party's Confidential Information.

3. Authorised disclosure

3.1 A Receiving Party may disclose Confidential Information to a Recipient only if the disclosure is made to the Recipient strictly on a "need to know basis" and, prior to the disclosure:

- (a) the Receiving Party notifies the Recipient of the confidential nature of the Confidential Information to be disclosed; and
- (b) the Recipient agrees to keep the Confidential Information secret and confidential and to only use the Confidential Information for the Approved Purpose.

3.2 Any failure of the Recipient to keep the Confidential Information secret and confidential and to only use the Confidential Information for the Approved Purpose will constitute a breach by the Receiving Party of the terms of this Agreement.

4. Ownership of Confidential Information and intellectual property

The Receiving Party acknowledges that:

- (a) the Confidential Information (and any copies or reproductions of the Confidential Information) is and remains the property of the Disclosing Party; and
- (b) this Agreement does not give the Receiving Party any right or interest, including any intellectual property rights, in the Confidential Information other than the right to use it strictly in accordance with this Agreement.

5. Liability

The Receiving Party acknowledges and agrees that:

- (a) monetary damages may be an insufficient remedy for the Disclosing Party if the Receiving Party breaches this Agreement; and
- (b) in addition to any other remedy which may be available in law or equity, the Disclosing Party may seek injunctive relief to prevent any actual or threatened breach of this Agreement and to compel specific performance of this Agreement.

6. Term

The obligations imposed under this Agreement:

- (a) survive the completion of the Approved Purpose; and
- (b) continue to apply to and must be observed by the parties in perpetuity except to the extent to which clause 2.2 applies.

7. General

7.1 This Agreement can only be amended, supplemented, replaced or novated by another agreement signed by the parties.

7.2 No party may assign its rights under this Agreement without the consent of the other party. The other party shall not unreasonably withhold consent if the party wishes to assign to a related body corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

7.3 This Agreement is governed by the law in force in Victoria and the parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria, and any court that may hear appeals therefrom.

7.4 Each party must pay its own expenses incurred in negotiating and executing this Agreement.

7.5 This Agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

7.6 This Agreement may be executed in counterparts.

7.7 This Agreement, and any provision of this Agreement, is not to be construed to the disadvantage of a party because that party was responsible for their preparation.

- 7.8 Unless this Agreement expressly provides otherwise, nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.
- 7.9 Headings in this Agreement are intended for convenience of reference only. Forms of words will be construed to include singular or plural, and any gender, masculine, feminine, or neuter, as the context requires, and "including" means "including but not limited to".
- 7.10 Any notice or other communication to or by a party under this Agreement must be given to the other party to the address set out in item 6 of the Agreement Details. Notice is deemed to be given by the sender and received by the addressee:
- (a) if delivered in person, when delivered to the addressee;
 - (b) if posted at 4.00pm (addressee's time) on the seventh business day after the date of posting to the addressee, whether delivered or not;
 - (c) if sent by email, four hours after the time the email was sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered; or
 - (d) if sent by facsimile transmission, on the date and time shown on the transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in full,

but if the delivery or receipt is on a day which is not a business day or is after 4.00 pm (addressee's time), it is deemed to have been received at 9.00 am on the next business day. In this clause business day means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place of receipt of the notice or communication.

8. Definitions

In this Agreement, capitalised terms are defined as follows:

Agreement means this agreement.

Agreement Details means the agreement details specified on page 1 of this Agreement.

Approved Purpose means the purpose specified in item 2 of the Agreement Details.

Applicant's Confidential Information means:

- (a) the terms of this Agreement and its subject matter;
- (b) the information specified in item 4 of the Agreement Details (if any);
- (c) information that at the time of disclosure by the Applicant is identified to WEHI as being confidential; and
- (d) all other information belonging or relating to the Applicant that is not generally available to the public at the time of disclosure to the Receiving Party other than by reason of a breach of this Agreement or which WEHI knows, or ought

reasonably to be expected to know, is confidential to the Applicant.

Application means the application submitted by the Applicant to use WEHI's technologies, equipment and/or infrastructure which make up the National Drug Discovery Centre to carry out all or part of the scientific research described in the application

Confidential Information means:

- (a) WEHI's Confidential Information where WEHI is the Disclosing Party; and
- (b) the Applicant's Confidential Information where the Applicant is the Disclosing Party.

Disclosing Party means the party disclosing Confidential Information or the party to which the Confidential Information relates.

Receiving Party means the party receiving or obtaining the Confidential Information of or in relation to the Disclosing Party.

Recipient means any employee, agent, contractor, officer, professional adviser, banker, auditor or other consultant of the Receiving Party including, in the case of WEHI, any members of WEHI's governance or other committees who are not employees of WEHI.

Term means the period specified in item 5 of the Agreement Details.

WEHI's Confidential Information means:

- (a) the terms of this Agreement and its subject matter;
- (b) the information specified in item 3 of the Agreement Details (if any);
- (c) information that at the time of disclosure by WEHI is identified to the Applicant as being confidential; and
- (d) all other information belonging or relating to WEHI that is not generally available to the public at the time of disclosure other than by reason of a breach of this Agreement or which the Applicant knows, or ought reasonably to be expected to know, is confidential to WEHI.