

CHILDREN'S MEDICAL RESEARCH INSTITUTE
(ABN 47 002 684 737)
A not-for-profit organisation responsible for operation of
CellBank Australia
("CellBank")

Whose principal place of business is 214 Hawkesbury Rd, Westmead 2145, NSW Australia

DETAILS PAGE:
AGREEMENT FOR DEPOSIT OF MATERIAL

Depositor (Organisation).....

ABN.....

Address.....

.....

Contact Name.....Tel.....

Email.....Fax.....

CellBank is a repository specialising in the growth, quality control, and storage of Cell Lines. It accepts deposits of Cell Lines, aiming to freeze and store a quality-controlled "bank" of cells for subsequent distribution to the research community. CellBank operates as a not-for-profit facility and aims to recover costs from sales of products and services.

The Depositor agrees to deposit Material with CellBank for the purpose of CellBank distributing the Material to Recipients, subject to the terms and conditions of the Agreement.

	Signed for and on behalf of Depositor	Signed for and on behalf of CellBank
Signature of authorised representatives		
Name		
Position		
Date		

CHILDREN'S MEDICAL RESEARCH INSTITUTE
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A not-for-profit organisation responsible for operation of
CellBank Australia
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STANDARD TERMS AND CONDITIONS:
AGREEMENT FOR DEPOSIT OF MATERIAL

1. DEFINITIONS AND INTERPRETATION

1.1 In these Standard Terms and Conditions, unless the context otherwise requires:

"Accession" means to include a Cell Line within a collection of Cell Lines, by:

- (a) allocating it a unique identifier (known as an accession number or catalogue number);
- (b) collecting information regarding that Cell Line's provenance and behaviour;
- (c) making the information referred to in paragraph (b) available to Recipients; and
- (d) performing cell culture and quality control processes required to produce sufficient vials or flasks for distribution of that Cell Line.

"Accession Form" means each Accession Form completed by the Depositor with each deposit of Material under the Agreement, in such form as is acceptable to CellBank.

"Agreement" means the agreement between CellBank and the Depositor for the deposit of Material comprising, in decreasing order of priority to the extent of any inconsistency:

- (a) any Special Terms;
- (b) the Details Page;
- (c) these Standard Terms and Conditions; and
- (d) each Accession Form and Deposit Query Form in relation to each deposit.

"Applicable Law" means any valid law, act, statute, treaty, rule, regulation, statutory instrument, ordinance, order, code (having the force of law), guideline (having the force of law), judgment, decree, injunction, permit or decision of any national, federal, state or local government, authority, agency, court or other body, whether in Australia or any other jurisdiction, having jurisdiction over the matter in question, as in effect from time to time.

"Business Day" means a day which is not a Saturday, Sunday, a bank holiday or a public holiday in Sydney, NSW, Australia.

"Cell Line" means a defined population of cells, derived from a single source, which has been maintained in culture for an extended period of time.

“Contaminant” means, in relation to a Cell Line, an additional cell population present within the Cell Line that makes the Cell Line impure. A Contaminant may arise from micro-organisms present within the culture, or may arise from the introduction of cells from another Cell Line.

“Deposit Query Form” means each Deposit Query Form completed by the Depositor and delivered to CellBank with each deposit of Material under the Agreement, in such form as is acceptable to CellBank.

“Depositor” means the party whose details are set out in the Details Page.

“Derivatives” means, in relation to a Cell Line, cells arising from the continued growth of that Cell Line, and which have been modified in any way.

“Details Page” means the Details Page completed and signed by the Depositor and attached to these Standard Terms and Conditions.

“Indemnified Parties” means CellBank, and the officers, employees and agents of CellBank.

“Information” means all information that the Depositor has about the Cell Lines that form part of any deposit of Material under the Agreement, including information about possible Contaminants and risk of use, as specified by the Depositor in the relevant Accession Form, Deposit Query Form or as otherwise advised by the Depositor to CellBank in writing.

“Intellectual Property Rights” means any rights in respect of trade marks (whether registered or not), get up or trade dress, brands, logos, service marks and trade names, all rights in or to any patent, copyright, database rights, design (whether registered or not) or other design right, utility model, moral right, eligible layout right, chip topography right and any other rights of a proprietary nature in or to the results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether registrable or not and wherever existing in the world, including all renewals, extensions and revivals of, and all rights to apply for, any of the foregoing rights.

“Loss” means:

- (a) any claim, demand, remedy, requisition, objection, suit, injury, damage, loss, liability, action, proceeding, right of action or claim for compensation;
- (b) a valid request, direction, notice, demand, requirement, condition (including condition of an approval) or order from an authority that requires anything to be done or not to be done; or
- (c) any reasonable cost (including legal costs on a solicitor and client basis), charge, expense, outgoing, payment or other expenditure of any nature.

“Material” means each sample of Cell Lines deposited by the Depositor with CellBank for the purpose of CellBank distributing the Cell Lines to Recipients, its Replicates and further Derivatives and any Products derived from those Cell Lines. For the avoidance of doubt, Material may comprise one or more deposits by one or more individuals employed by or representing the Depositor.

“Panels” means any cell grouping into which Material can be incorporated, including cell panels and DNA panels, for subsequent distribution as part of a larger collection.

“Product” means a substance derived from a Cell Line that can be purified or handled separately, including DNA, RNA and antibodies.

“Recipients” means research laboratories and any other parties that require Cell Lines for Research Purposes.

“Replicates” means, in relation to a Cell Line, cells arising from the continued growth of that Cell Line, which display behaviour consistent with the original material from which they were derived.

“Repository” means a facility specialising in the collection and appropriate maintenance of cells in various formats, including as Cell Lines, for subsequent distribution to third parties.

“Research Purposes” means activities undertaken for the advancement of knowledge. It specifically excludes use of Material, their Replicates, Products and Derivatives for any activity undertaken for commercial gain and any activity involving direct or indirect application in humans, including diagnostic testing and production of substances for end-use in human subjects.

“Site” means CellBank’s principal place of business at 214 Hawkesbury Rd, Westmead 2145, NSW Australia or any other site that may become CellBank’s principal place of business or any other site that may be an auxiliary place of business for CellBank.

“Special Terms” means any other terms and conditions which are in addition to or which amend these Standard Terms and Conditions and which are set out in Schedule 1.

“Standard Terms and Conditions” means these standard terms and conditions.

“Third Party Distributor” means a Repository or other third party who purchases Material directly from CellBank for the purpose of distribution directly to Recipients for Research Purposes.

“Viable” means, in relation to a Cell Line, that the Cell Line shows evidence of growth and passes those quality control tests normally performed by CellBank to assess viability.

1.2 In the Agreement, unless the context otherwise requires:

- (a) words importing:
 - (i) the singular include the plural and vice versa;
 - (ii) any gender includes the other genders;
- (b) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) a party is to a party to the Agreement, and a reference to a party to a document (including the Agreement) includes the party’s executors, administrators, successors and permitted assigns and substitutes;
 - (iv) a recital, clause, paragraph, Schedule, annexure or attachment is to a recital, clause or paragraph of or schedule, annexure or attachment to these Standard Terms and Conditions, and a reference to the Agreement includes any such recitals, Schedules, annexures and attachments;
 - (v) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (vi) a right includes a benefit, remedy, discretion, authority or power;

- (vii) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (viii) provisions or terms of the Agreement or another document, agreement understanding or arrangement include a reference to both express and implied provisions and terms;
 - (ix) time is to local time in Sydney, NSW, Australia;
 - (x) “\$” or “dollars” is a reference to the lawful currency of Australia;
 - (xi) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties; and
 - (xii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission;
- (d) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
 - (e) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of the Agreement or any part of it;
 - (f) headings do not affect the interpretation of the Agreement; and
 - (g) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or before the immediately following Business Day.

2. GRANT OF RIGHTS

2.1 In consideration of the mutual promises in the Agreement, the Depositor grants CellBank an irrevocable, perpetual, non-exclusive, royalty free, transferrable, worldwide licence to:

- (a) hold on deposit and store the Material;
- (b) analyse, test and replicate any or all of the Material;
- (c) incorporate any or all of the Material into additional Panels for research use, including but not limited to, Cell Line panels and DNA panels; and
- (d) Accession, market and distribute any or all of the Material and Information to Recipients, on their own or incorporated into other Panels, in all cases for Research Purposes (unless otherwise authorised by the Depositor pursuant to clause 7.4),

in each case in accordance with the Agreement.

2.2 The licence granted by the Depositor under clause 2.1 includes:

- (a) the right for CellBank to grant sub-licences of any of the rights referred to in clauses 2.1(a) to 2.1(c) (inclusive) to any Recipient that is distributed any Material in accordance with the Agreement; and
- (b) the right for CellBank to grant sub-licences of any of the rights referred to in clauses 2.1(a) to 2.1(d) (inclusive) to any Third Party Distributor that is distributed any Material in accordance with the Agreement (other than the right to replicate the Material), and that Third Party Distributor may in turn grant sub-licences of any of the rights referred to in

clauses 2.1(a) to 2.1(c) (inclusive) to any Recipient to which that Third Party Distributor distributes any Material (including the right to replicate the Material).

3. THE DEPOSITOR'S WARRANTIES

3.1 The Depositor warrants to CellBank that, to the best of its knowledge:

- (a) it has the necessary rights in and title to the Material to deposit the Material with CellBank, to enter into the Agreement and to authorise use and distribution of the Material by CellBank as provided for in the Agreement;
- (b) it has supplied the Material and Information to CellBank in a manner that complies with all Applicable Law;
- (c) all Information provided to CellBank is true, correct and complete and allows a reasonable assessment of the Material's nature and associated risks and omits nothing of a material nature;
- (d) it has obtained in writing all requisite consents from the donor of the Material for the use of the Material for Research Purposes;
- (e) the Material has been legally and ethically obtained;
- (f) use of the Material and Information by CellBank, as proposed by the Agreement, will not infringe the Intellectual Property Rights or any other rights of any third party; and
- (g) the Material is pure at the time of deposit.

4. DELIVERY OF MATERIAL

- 4.1 In order to make any deposit of Material with CellBank in accordance with the Agreement, the Depositor must deliver two frozen vials of Material (or such other amount as the parties may agree), from the same date and passage, to the Site, along with the Information required by the Accession Form, the Deposit Query Form and such other requirements as may be notified by CellBank to the Depositor from time to time.
- 4.2 In relation to any deposit of Material under this Agreement, the Depositor must notify CellBank that it wishes to make the deposit by contacting CellBank at least one (1) week prior to the proposed delivery date and agreeing with CellBank on a date for delivery, before dispatching the Material and Information.
- 4.3 The Depositor must ensure that Material to be deposited is properly and securely packed and transported to the Site in accordance with any Applicable Law.
- 4.4 The Depositor will be responsible for customs clearance, import or customs duty and any insurance of Material to cover loss or damage to Material occurring prior to the time at which Material is received at the Site. CellBank does not accept any risk or responsibility for Material prior to its receipt by an employee of CellBank at the Site.

5. ACCEPTANCE OF MATERIAL

- 5.1 Following receipt of Material, CellBank will initially store the Material.
- 5.2 When CellBank has confirmed to its satisfaction that the Material meets its criteria, CellBank will add the Material to the list of Cell Lines that can be acquired from CellBank and will advertise its

accessibility accordingly. CellBank will distribute quantities of the Material in response to requests from Recipients for its use for Research Purposes only (unless otherwise authorised by the Depositor pursuant to clause 7.4).

5.3 The Depositor acknowledges that CellBank will seek to distribute the Material for a fee. The Depositor agrees that it will have no entitlement to receive any part of any fee that CellBank may charge.

5.4 CellBank's acceptance of Material is in no way an acknowledgement that CellBank accepts the Material as being Viable.

6. REJECTION OF MATERIAL

6.1 If at any time during the term of the Agreement a sample of the Material provided to CellBank by the Depositor is determined by CellBank, in its absolute discretion, to be impure, not Viable or otherwise not of a satisfactory standard for a deposit of Cell Line material, CellBank may decline to Accession the Material, may decline to distribute the Material and may provide seven (7) days written notice to the Depositor of its intention to destroy the Material. However, if the Depositor then provides written notice to CellBank that it wishes to retain the Material and that notice is provided to CellBank within seven (7) days of the date of CellBank's notice, the Depositor may arrange to pick up the Material within a further fourteen (14) days but at the Depositor's cost. If the Depositor does not provide notice to CellBank in accordance with this provision that it wishes to retain the Material or does provide that notice but does not pick up the Material within the time required by this provision, CellBank has the right to destroy the Material twenty-one (21) days after the date of CellBank's notice of intention to destroy the Material.

6.2 Where a Material is rejected under clause 6.1, CellBank may request that the Depositor provide a further sample of the Material, however there is no obligation for CellBank to do so.

7. CELLBANK'S OBLIGATIONS

7.1 CellBank will use its reasonable endeavours to handle the Material with due skill and care and in accordance with Applicable Law, taking into account the hazardous characteristics of the Material.

7.2 CellBank will use its reasonable endeavours to maintain and use the Material with appropriate precautions to minimise any risk of harm to persons and property, taking into account the hazardous characteristics of the Material and to safeguard the Material from theft and misuse.

7.3 CellBank acknowledges that the Material is not intended for use in humans and it will not knowingly provide the Material to any Recipient for use in, or with, human subjects without the prior written consent of the Depositor and, where applicable, from any applicable professional ethics or regulatory authority. This applies to both direct and indirect applications and includes diagnostic testing and production of substances for end-use in human subjects. CellBank undertakes to contractually require all Recipients of the Material to undertake to CellBank that they will not use the Material in humans.

7.4 Unless first authorised by the Depositor in writing, CellBank will not knowingly provide the Material to any Recipient for commercial use, or for any use involved in the preparation for sale of any biological materials. Any applications made to CellBank by the Recipient for commercial use will be referred directly to the Depositor.

7.5 CellBank will make no attempt, and is under no obligation, to identify the donor of the Material apart from any scientific methods employed to authenticate the Cell Line during its quality control.

8. DISTRIBUTION OF MATERIAL

8.1 Notwithstanding any other clause in the Agreement, CellBank may distribute any of the Material to a

Third Party Distributor for subsequent distribution to Recipients, provided that the Third Party Distributor contractually agrees with CellBank to:

- (a) comply with CellBank's obligations as listed in clauses 7.1 to 7.4 inclusive and 10.1 of this Agreement; and
- (b) not replicate the Material.

8.2 The Depositor acknowledges that any Third Party Distributor to whom any of the Material is distributed by CellBank pursuant to clause 8.1 may seek to distribute the Material for a fee and that fee may involve a commercial gain for the Third Party Distributor. The Depositor agrees that it will have no entitlement to receive any part of any fee that the Third Party Distributor may charge.

9. **LIABILITY AND INDEMNITIES**

9.1 To the maximum extent permitted by law and notwithstanding any other provision of the Agreement, the Indemnified Parties are not liable in respect of any indirect, consequential or special loss, loss of revenue or loss of profit howsoever arising whether under contract, in tort, in equity, under statute or otherwise.

9.2 The Depositor agrees that the Indemnified Parties have not made any representations as to any matter, fact or thing that is not expressly provided for in the Agreement and CellBank does not give any warranty or guarantee in relation to its obligations under the Agreement except to the extent required by law.

9.3 The Depositor indemnifies the Indemnified Parties against any contingent or actual Loss incurred by any of the Indemnified Parties arising from or in connection with any breach of the Agreement by, or the negligence of, the Depositor.

10. **OWNERSHIP OF INTELLECTUAL PROPERTY**

10.1 Unless otherwise agreed in writing between the parties, CellBank acknowledges that any Intellectual Property Rights created, made, discovered or reduced to practice by the Depositor (whether solely or jointly with others) in connection with the Material are the property of the Depositor.

10.2 The Agreement does not grant CellBank any other licence or right to use Material for any purpose other than those set out in the Agreement.

11. **SAFETY HAZARDS**

11.1 The Depositor acknowledges that the Material contains an inherent pathogenic risk as biological material and that it is impossible to fully quantify or eliminate such risk. Appropriate handling measures will be determined by CellBank according to the usual hazards associated with cell culture and specifically in reliance on the Information conveyed by the Depositor to CellBank. Any specific hazards associated with the Material which CellBank is aware of will be made known by CellBank to any Recipients to whom the Material is distributed and these Recipients will be required to agree with CellBank to adopt measures for the appropriate handling and storage of the Material.

11.2 In the event that either CellBank or the Depositor becomes aware of additional information that would affect the assessed risk of use of Material, that party shall notify the other in writing as soon as possible and in any case within twenty-eight (28) days of first becoming aware of such information. This notice will include copies of all information in the possession of the notifying party as to the nature of the risk, as well as how and where the risk came to be known and what, if any, action is recommended to minimise the risk. On receipt of such notice from the notifying party, the parties will, acting in good faith, discuss and agree upon a course of action to minimise the risk notified, including if required, ceasing distribution of the Material.

11.3 Notwithstanding clauses 11.1 and 11.2, where CellBank discovers or is informed of a safety hazard in relation to the Material, then CellBank will immediately cease distribution of the Material.

11.4 If CellBank ceases distribution of Material as permitted by clauses 11.2 or 11.3, CellBank may provide seven (7) days written notice to the Depositor of its intention to destroy the relevant Material. If the Depositor then provides written notice to CellBank that it wishes to retain the Material and that notice is provided to CellBank within seven (7) days of the date of CellBank's notice, the Depositor may arrange to pick up the Material within a further fourteen (14) days but at the Depositor's cost. If the Depositor does not provide notice to CellBank in accordance with this provision that it wishes to retain the Material or does provide that notice but does not pick up the Material within the time required by this provision, CellBank has the right to destroy the Material twenty-one (21) days after the date of CellBank's notice of intention to destroy the Material.

12. **RISK AND TITLE**

Risk in and title to Material will pass to CellBank upon delivery of the Material to the Site and acceptance of the Material by a CellBank employee at the Site.

13. **INSURANCE**

Before the Material is delivered to a CellBank employee at the Site, the Depositor retains responsibility for the Material, including for taking out any insurance equivalent to that, if any, commonly taken out by other similar laboratories that make Cell Line deposits.

14. **TERM AND TERMINATION**

14.1 The Agreement commences when signed and will continue in force for so long as CellBank continues to hold any part of the Material.

15. **MISCELLANEOUS**

15.1 The Agreement will be governed by and construed in accordance with the laws of the State of New South Wales, Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

15.2 The Agreement supersedes all prior agreements, arrangements and undertakings between the parties in connection with its subject matter and constitutes the entire agreement between the parties in connection with its subject matter.

15.3 Should any part of the Agreement be or become invalid, that part will be severed from the Agreement and that invalidity will not affect the validity of the remaining provisions of the Agreement.

15.4 The Agreement may be varied, amended or extended only by the written agreement of the parties.

15.5 No waiver of any breach of the Agreement or of any of the terms will be effective unless the waiver is in writing and signed by the party against whom the waiver is claimed.

15.6 The parties will bear their own legal costs in connection with the Agreement.

15.7 Nothing in the Agreement prevents CellBank from acquiring from another party Cell Lines, Replicates, Derivatives or Products which are similar to the Material.

15.8 Any notice or other communication required to be given under the Agreement will be in writing to the facsimile, email or physical address of the party last notified to the other party and will be deemed to have been given or received:

- (a) on the third day following posting if sent by mail;

- (b) on delivery if delivered by hand, unless that delivery is made on a day which is not a Business Day, or after 5.00pm on a Business Day, in which case that notice or communication is taken to be given or received at 9.00am on the next Business Day; and
 - (c) when sent with confirmed answer back if sent by facsimile or email.
- 15.9 Subject to clause 2, neither party will, without the prior written consent of the other party, transfer or assign any of its rights or obligations under the Agreement.
- 15.10 CellBank holds the benefit of any release, indemnity or any other provision of the Agreement expressed to be for the benefit of any of the Indemnified Parties on trust for those Indemnified Parties.
- 15.11 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by the Agreement.
- 15.12 Any indemnity in the Agreement is independent and survives termination of the Agreement. Any other term which by its nature is intended to survive termination of the Agreement survives termination of the Agreement.
- 15.13 Except where the Agreement expressly states otherwise, the Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- 15.14 The Agreement may be executed in counterparts. All executed counterparts constitute one document. The Agreement may be executed by either of the parties by duly executing a counterpart and forwarding a copy of the signed counterpart to the other party.

SCHEDULE 1
SPECIAL TERMS