

TEMPLATE DATA USE AGREEMENT

THIS AGREEMENT is executed on the _____ day of _____ 20_____

BETWEEN

THE UNIVERSITY OF MELBOURNE (ABN 84 002 705 224) of Parkville, Victoria 3010, Australia, a body politic and corporate established in 1853 and constituted under the *University of Melbourne Act 2009* (Vic)

(UoM)

AND

THE RECIPIENT SPECIFIED IN ITEM 1 OF THE SCHEDULE

(the Recipient)

RECITALS

- A. UoM has a research interest and experience in the field of colorectal cancer.
- B. UoM also holds data on behalf of a number of research institutions who participate in the Colon Cancer Family Registry and have a research interest and expertise in the field of colorectal cancer.
- C. The Recipient has requested certain Data from UoM for the purposes of the Recipient's Research.
- D. UoM has agreed to make the Data available on the terms and conditions set out in this Agreement. The Recipient's use of the Data is subject to the rights and interests of UoM and the participants in the Colon Cancer Family Registry as set out in this Agreement.

IT IS AGREED AS FOLLOWS

1. DEFINITIONS

- 1.1 In this Agreement, unless the context otherwise requires:
 - 1.1.1 **Agreement** means this agreement together with any schedules or annexures and any amendments made in accordance with this agreement.
 - 1.1.2 **Business Day** means a day that is not a Saturday, Sunday or a UoM holiday as indicated on UoM calendar (as amended from time to time).
 - 1.1.3 **CCFR Publications Policy** means the publications policy that applies to CCFR activities from time to time.
 - 1.1.4 **Colon Cancer Family Registry** or **CCFR** means the international consortium of research institutions (including UoM) established under funding from the United State's National Institutes of Health formed as a resource to support studies on the etiology, prevention, and clinical management of colorectal cancer.
 - 1.1.5 **Completion Date** means the date specified in item 3 of the Schedule.
 - 1.1.6 **Data** means the data and related information supplied by UoM as detailed in item 4 of the Schedule.
 - 1.1.7 **Intellectual Property** means all industrial and intellectual property rights whether capable of protection by statute, common law or in equity and including copyright, discoveries, inventions, patent rights, registered and unregistered trade marks, and all rights and interests of a like nature including but not limited to methods and techniques, together with any documentation relating to such rights and interests.
 - 1.1.8 **Notice** means any notice, demand, consent or other communication whatsoever given or made under this Agreement and must be in writing.

- 1.1.9 **Other CCFR Sites** means The Mayo Clinic, The Mayo Clinic Arizona, the University of Hawaii, Sinai Health System, the Fred Hutchinson Cancer Research Center, Cedars-Sinai Medical Center, Cleveland Clinic Foundation, Dartmouth College, and the University of Minnesota. **Other CCFR Site** means any one of them.
- 1.1.10 **Parties** means the parties to this Agreement and their respective successors and permitted assigns, and 'Party' means any one of them.
- 1.1.11 **Research** means the research as described in items 5 and 6 of the Schedule as approved by UoM and any other Other CCFR Site that originally provided UoM with the Data or part thereof and, where ethics or institutional review board approval is required to conduct the Research, by the relevant ethics or institutional review board.
- 1.1.12 **Results** means results and data generated by the Recipient using the Data. Results includes, without limitation, Intellectual Property vesting in such results and data, as well as non-patentable results, discoveries and data.
- 1.1.13 **Start Date** means the date specified in item 2 of the Schedule.
- 1.1.14 **Term** means the period from the Start Date to the Completion Date.

2. SUPPLY OF DATA

- 2.1 UoM has agreed to make the Data available to the Recipient for the purposes of the Recipient's Research on the terms and conditions set out in this Agreement.
- 2.2 The supply of Data is subject to any special conditions set out in Item 7 of the Schedule.

3. RIGHTS OF UOM

Nothing in this Agreement prevents UoM or the concerned Other CCFR Sites from exploiting the Data or distributing the Data to any third party, including both profit and non-profit organisations.

4. USE OF THE DATA AND OBLIGATIONS OF THE RECIPIENT

- 4.1 The Recipient:
- 4.1.1 must only use the Data for the purposes of the Research;
 - 4.1.2 must not use the Data for purposes other than the Research;
 - 4.1.3 must comply with all applicable Federal, State and local laws and appropriate standards in relation to the use of the Data including, but not limited to, privacy and confidentiality laws;
 - 4.1.4 must treat the Data as confidential information and restrict access to the Data to those of its employee researchers who are directly involved in the Research and who are placed under an obligation to observe the terms of this Agreement;
 - 4.1.5 must take such reasonable steps to provide for the safe custody of any and all Data in its possession and to prevent unauthorised access thereto or use thereof
 - 4.1.6 must not transfer, sell, disseminate, disclose or otherwise distribute the Data to any third party without UoM's prior written consent and without conforming to established CCFR protocols in advance, including those regarding access to CCFR data and requirement that such third parties enter into a Data Use Agreement with the same restrictions, terms and conditions as apply pursuant to this Agreement;
 - 4.1.7 must not use the Data for any profit-making or commercial purposes;
 - 4.1.8 must at the termination of this Agreement, delete all copies of the Data except for one copy to be kept securely solely for record-keeping purposes;
 - 4.1.9 must not use UoM's or any Other CCFR Site's name or logo without the prior written consent of such party;
 - 4.1.10 accepts sole responsibility and liability for the conduct of the Research and will use the Data at its own risk and will obtain and maintain adequate insurance in respect of its use of the Data;

- 4.1.11 indemnifies UoM and its trustees, officers, staff, students, contractors, representatives and agents, and any Other CCFR Site that owns the Data or part thereof (if relevant), against all loss, liability, damage, (whether to persons or property), costs and expenses (including without limitation legal expenses), claims, demands, suits or other actions arising out of the Recipient's use of the Data; and
 - 4.1.12 acknowledges and agrees that to the extent permitted by law, UoM and the Other CCFR Sites exclude all warranties, express or implied, including without limitation warranties of merchantability, fitness for a particular use, safety or quality in relation to the supply of the Data. UoM and the Other CCFR Sites make no representation and provides no warranty that the use of the Data will not infringe any Intellectual Property right of any other person. The Data is provided by UoM under this Agreement on an "as is" basis. The Recipient hereby releases UoM and the Other CCFR Sites from any liability whatsoever in respect of UoM's provision of the Data.
- 4.2 The Recipient must notify UoM promptly of all Results and will provide UoM with regular reports on the progress of the Research. If requested by UoM, the Recipient must also supply UoM with a report and/or outline of any Results, discoveries or comments in relation to the Research at the conclusion of the Research. UoM shall be free to distribute such progress reports and final reports to the Other CCFR Sites.
 - 4.3 The Recipient must report immediately to UoM any use or disclosure of Data other than as permitted in this Agreement and will take all reasonable steps to mitigate the effects of such improper use or disclosure, cooperating with all reasonable requirements of UoM's towards that end.

5. INTELLECTUAL PROPERTY

- 5.1 The Data and any Intellectual Property subsisting therein are the property of UoM and/or Other CCFR Sites, as the case may be. UoM is authorised to enter into this Agreement on behalf of the relevant Other CCFR Sites.
- 5.2 UoM grants the Recipient a non-exclusive, royalty-free licence to use the Data for the purpose of the Research only.

6. PUBLICATION

- 6.1 If the Recipient intends to publish or publicly present material incorporating Results in a way that incorporates the Data or secondary analysis of the Data ("**Publication**"), the Recipient must adhere to the CCFR Publications Policy as amended from time to time, which can be found at (www.coloncfr.org/publications).
- 6.2 The Recipient must:
 - 6.2.1 acknowledge UoM and relevant Other CCFR Sites (as notified by UoM to the Recipient) as the source of the Data in any publications;
 - 6.2.2 if it is appropriate to do so, name UoM and relevant Other CCFR Site researchers as authors in any publications;
 - 6.2.3 not disclose any personal information contained in the Data despite any other provision contained in this Agreement
 - 6.2.4 not release, publish or disclose any findings or information derived from the Data if such findings contain any combination of data elements that might allow for identification or the deduction of a study participant's identity; and
 - 6.2.5 subject any findings or manuscripts arising from its use of the Data for public release (e.g. abstracts, presentations, publications) to a stringent review to ensure that individual study participants cannot be identified.

7. TERM AND TERMINATION

- 7.1 This Agreement commences on the Start Date and, unless extended or terminated earlier in the manner set out in this Agreement, will remain in effect for the Term. This Agreement terminates at the end of the Term.

- 7.2 A Party may terminate this Agreement if the other Party is in default of the terms and conditions of this Agreement and fails to take action to remedy the default within 30 days after written notice from the Party requiring the remedy of the default.
- 7.3 Upon termination or expiration of this Agreement, the Recipient must, at UoM's option, either destroy or return to UoM all Data.

8. GENERAL PROVISIONS

- 8.1 **Relationship of the Parties.** This Agreement does not create a partnership, agency, fiduciary or other relationship, except the relationship of contracting parties. A Party shall not represent that another Party or any of their staff in any way endorse, support or approve of, any products, services, Intellectual Property or business of the representing party unless that other Party has given its express written consent to such representation.
- 8.2 **Relationship of UoM and Other CCFR Sites.** The Recipient agrees that UoM is not acting as an agent of any Other CCFR Site in providing the Recipient with the Data under this Agreement.
- 8.3 **Entire agreement.** This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all prior oral or written representations and agreements.
- 8.4 **Variation.** This Agreement may only be varied in writing signed by the Parties.
- 8.5 **Assignment.** The Recipient must not assign its rights under this Agreement.
- 8.6 **Waiver.** A Party's failure to exercise or delay in exercising a right, power or remedy does not operate as a waiver of that right, power or remedy and does not preclude the future exercise of that right, power or remedy. To be effective, a waiver of a right, power or remedy must be in writing and signed by the Party granting the waiver.
- 8.7 **Severance.** If any provision or part provision of this Agreement is invalid or unenforceable, such provision shall be deemed deleted but only to the extent necessary and the remaining provisions of this Agreement shall remain in full force and effect.
- 8.8 **Notices.** Notices must be in writing and signed by a duly authorised person. Notices to or by a Party delivered in person are deemed to be given by the sender and received by the addressee when delivered to the addressee if by:
- 8.8.1 domestic post, 3 Business Days from and including the date of postage;
 - 8.8.2 international post, 10 Business Days from and including the date of postage; or
 - 8.8.3 facsimile, when transmitted to the addressee provided that if transmission is on a day which is not a Business Day or is after 5.00pm (addressee's time) on the next Business Day.
- 8.9 **Force Majeure.** A Party to this Agreement shall not be responsible or liable for any non-performance or delay in performance of any of its obligations under this Agreement that is caused by an act or event that is beyond the reasonable control of that Party ("**Force Majeure Event**"), provided that it promptly notifies the other parties (with appropriate details); and takes all reasonable steps to work around or reduce the effects of the Force Majeure Event.
- 8.10 **Obligations.** Each Party's obligations and liabilities under this Agreement are several and not joint or joint and several.
- 8.11 **Survival of clauses.** Each Party's obligations under clauses 2.2, 4.1.2, 4.1.3 4.1.4, 4.1.6, 4.1.7, 4.1.8, 4.1.9, 4.1.10, 4.1.11, 4.1.12, 5, 6, 7.3, 8.7 and this clause 8.11 survive termination of this Agreement, along with any other clause which by its nature survives termination.
- 8.12 **Counterparts.** This Agreement may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

EXECUTED AS AN AGREEMENT

SIGNED for and on behalf of **THE UNIVERSITY OF MELBOURNE** in the presence of:)
)

.....)
Signature of Witness)

.....)
Name of Witness (block letters))

.....)
Date)

.....
Signature of authorised person

.....
Office held

.....
Name of authorised person (block letters)

SIGNED for and on behalf of **THE RECIPIENT** in the presence of:)
)

.....)
Signature of Witness)

.....)
Name of Witness (block letters))

.....)
Date)

.....
Signature of authorised person

.....
Office held

.....
Name of authorised person (block letters)

Schedule 1. AGREEMENT DETAILS

Item 1 THE PARTIES

UoM	Legal Name	The University of Melbourne [ABN 84 002 705 224]
	Address	Attention: Deputy Vice-Chancellor (Research) The University of Melbourne VIC 3010 Australia

THE RECIPIENT	Legal Name	INSERT
	Address	INSERT

Item 2 START DATE The earlier of [insert] or the date upon which UoM first supplies the Data to the Recipient.

Item 3 COMPLETION DATE INSERT

Item 4 DATA INSERT DESCRIPTION

Item 5 RESEARCH TITLE INSERT PROJECT TITLE

Item 6 RESEARCH SUMMARY INSERT SUMMARY OF RESEARCH PROJECT

Item 7 SPECIAL CONDITIONS INSERT SPECIAL CONDITIONS, eg, USAGE LIMITATIONS OF PARTICULAR CONTRIBUTED DATA

Item 8 CCFR APPLICATION NUMBER INSERT CCFR APPLICATION NUMBER

Item 9 ETHICS OR INSTITUTIONAL REVIEW BOARD APPROVAL NUMBER (IF APPLICABLE) INSERT ETHICS OR INSTITUTIONAL REVIEW BOARD APPROVAL NUMBER (IF APPLICABLE)