

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 STORAGE OF MATERIAL

Depositor (Organisation).....

ABN.....

Address.....

.....

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

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

CellBank is a repository offering storage for cell lines and other related material in vapour phase liquid nitrogen or other refrigeration systems. It accepts deposits of frozen cell lines or other material for storage in vapour phase liquid nitrogen or other refrigeration systems and subsequent return at a later date. CellBank operates as a not-for-profit facility and aims to recover costs from sales of products and services.

CellBank agrees to store Material for the Depositor 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
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STANDARD TERMS AND CONDITIONS:
AGREEMENT FOR STORAGE OF MATERIAL

1. DEFINITIONS AND INTERPRETATION

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

"Accepted Purchase Orders" means purchase orders accepted in accordance with clause 3.2.

"Agreement" means the agreement between CellBank and the Depositor for the storage of the 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;
- (d) Quotes;
- (e) Accepted Purchase Orders; and
- (f) Invoices.

"Annual Fee" has the meaning given to that term in clause 3.3(a).

"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.

"Collection" means the Vials deposited by a distinct Depositing Individual, through one or more deposits, with a common Deposit Date.

"Deposit Date" means the date described in clause 4.1 or clause 4.2 (as the case may be).

"Depositing Individual" means an employee or other representative of the Depositor, responsible for an individual Collection of the Depositor.

"Depositor" means the party making the original and any subsequent deposits of Material with CellBank, and whose details are set out in the Details Page. A Depositor may have multiple Depositing Individuals each responsible for a Collection with a distinct Deposit Date, fee calculation, and payment cycle.

“**Derivatives**” means, in relation to a Cell Line, cells or other material 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.

“**Disposal Fee**” has the meaning given to that term in clause 3.3(c).

“**GLP**” means the principles of good laboratory practice set out in the OECD document series titled “*OECD Principles of Good Laboratory Practice and Compliance Monitoring*”.

“**GMP**” means the principles of good manufacturing practice set out in the document titled, “*Good Manufacturing Practice Guide for Active Pharmaceutical Ingredients*”, published by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use.

“**GST**” has the meaning given to that term by the GST Law.

“**GST Law**” has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended) and any regulation made under that Act.

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

“**Invoice**” means an invoice issued by CellBank to the Depositing Individual on behalf of the Depositor in relation to any amount payable by the Depositor to CellBank under the Agreement for the relevant Collection.

“**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 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 the sample of Cell Lines (or other similar material) deposited by the Depositor with CellBank for the purpose of CellBank storing those Cell Lines (or other similar material) pursuant to the Agreement, its Replicates and further Derivatives, and any Products derived from those Cell Lines (or other similar material).

“**PC1**” means Physical Contaminant Level 1, as defined in the Australian and New Zealand Standard titled “*AS/NZS 2243.3:2010 Safety in laboratories – Microbiological safety and containment*”.

“**PC2**” means Physical Contaminant Level 2, as defined in the Australian and New Zealand Standard titled “*AS/NZS 2243.3:2010 Safety in laboratories – Microbiological safety and containment*”.

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

“**Purchase Order**” means a request by the Depositor to store Material with CellBank and includes an acceptance of a Quote.

“**Quote**” means any quotation from CellBank to the Depositor in relation to storing any Material, provided to the Depositor after the date of the Agreement.

“**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.

“**Research Purposes**” means activities undertaken for the advancement of knowledge. It specifically excludes use of the Material, its 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.

“**Retrieval Fee**” has the meaning given to that term in clause 3.3(b).

“**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.

“**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.

“**Vial**” means:

- (a) a 1-2 mL cryogenic storage vial, being the container in which a single piece of Material is contained for storage; or
- (b) where the Material is stored in a different manner, means one position in the liquid nitrogen storage tank or other refrigeration system, such that one piece of Material may constitute multiple Vials.

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 include 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 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. STORAGE OF MATERIAL

2.1 CellBank will only store Material that:

- (a) is not hazardous or harmful when handled by humans;
- (b) can be appropriately handled in PC1 or PC2 conditions; and
- (c) can be appropriately stored in research grade storage conditions (e.g., does not require GLP or GMP certified storage).

2.2 In storing the Material, CellBank agrees to make all reasonable efforts to:

- (a) store the Material using the relevant refrigeration system, as agreed in writing with the Depositing Individual, that may include:

- (i) the vapour phase of liquid nitrogen, typically at -150°C or below;
 - (ii) an ultra-low temperature freezer, typically at -80°C or below;
 - (iii) another relevant refrigeration system with an associated typical storage temperature;
- (b) store the Material in a manner that is appropriately safe and secure; and
 - (c) return the Material stored by the Depositor in the same condition as it was deposited, allowing for any degradation or change in the Material that may reasonably be expected to follow storage of Material in the above conditions.

2.3 The Depositor represents and warrants to CellBank that:

- (a) on the Deposit Date, the Material is Viable;
- (b) the Depositor has provided written notification to CellBank of the relevant refrigeration system for the Material;
- (c) the Material is suitable for storage in the vapour phase of liquid nitrogen at -150°C or below or in another refrigeration system according to the written notification in 2.3.b;
- (d) the Material can be appropriately handled in PC1 or PC2 conditions;
- (e) the Material is not hazardous or harmful when handled by humans;
- (f) the Material will only be used for Research Purposes; and
- (g) the Material meets the description provided to CellBank at the time of deposit.

3. DEPOSITS AND FEES

3.1 Any Quote given by CellBank is a mere invitation to treat and does not constitute an offer. Each Quote lapses thirty (30) days after issue but CellBank may vary or withdraw a Quote at any time.

3.2 A contract for storage comes into existence for the relevant Material once written acceptance has been made by CellBank of a Purchase Order or once CellBank has accepted the Purchase Order by its performance.

3.3 In consideration for CellBank storing the Material for the Depositor, the Depositor will pay CellBank the fees set out in each Accepted Purchase Order which are relevant to the particular storage services provided by CellBank to the Depositor, including, but not limited to:

- (a) a fee for the receipt, processing and transfer of each Collection into storage, and for storage of each Collection (“**Annual Fee**”) until 30 June;
- (b) a retrieval or handling fee for transfer of some or all of the Material out of storage, and the processing and return of such Material to the Depositor or the transfer of such Material to a person nominated by the Depositor (“**Retrieval Fee**”); and
- (c) a disposal fee for transfer of some or all of the Material out of storage and the destruction of such Material (“**Disposal Fee**”).

3.4 In addition to any such fees, the Depositor will also pay the delivery costs associated with both the deposit of any Material with CellBank and the retrieval of any Material from CellBank, and any

applicable customs duties and taxes.

- 3.5 Unless otherwise stated, all amounts payable by the Depositor to CellBank under the Agreement must be paid within thirty days of the date of the relevant Invoice.
- 3.6 CellBank reserves the right to offer terms of credit or require payment of the relevant fee in advance from the Depositor before undertaking any action or providing any service under the Agreement.
- 3.7 CellBank reserves the right to change the fees associated with any service provided or to be provided by CellBank under the Agreement, at any time, without notice to the Depositor, except where an Accepted Purchase Order indicates certain fees for certain services for a specified period of time. CellBank will provide a schedule of its current fees to the Depositor on request.
- 3.8 Where any amounts are not paid by the Depositor in accordance with clause 3.5 and/or the terms of the relevant Invoice, CellBank reserves the right to charge interest on the unpaid amount at an interest rate per annum equivalent to the Reserve Bank of Australia's prime rate at the relevant time plus 2% and/or withhold any deposited Material, until such time as the relevant unpaid amount is paid.
- 3.9 All Invoiced amounts shall include applicable GST, and any other applicable taxes or regulatory charges.
- 3.10 CellBank's invoice for the Annual Fee will either state or be deemed to state under this Agreement, that CellBank has complied with clauses 2.2(a) and 2.2(b) for the previous year. By paying the Annual Fee, the Depositor accepts CellBank's warranty to this effect.

4. DEPOSIT

- 4.1 Subject to clause 4.2, the date of physical receipt of Material deposited by a Depositing Individual of the Depositor with CellBank shall be deemed to be the Deposit Date for all Material forming the relevant Collection.
- 4.2 Where the Material is already in the possession of CellBank prior to the Depositor depositing such Material with CellBank for storage pursuant to the Agreement, such as where the Material is provided to CellBank to perform a Culture and Return service for the Depositor, the Deposit Date for that Material will be the date specified in the documentation relating to the transfer of the Material into the storage service provided by CellBank pursuant to the Agreement.
- 4.3 If the Material is to be delivered to CellBank, the Depositor must package the Material and procure the delivery of the Material to CellBank in compliance with all applicable laws and regulations. Delivery of the Material to CellBank is at the Depositor's cost, pre-paid by the Depositor if using the Depositor's carrier of choice or payable as a separate charge in addition to the Annual Fee if using CellBank's carrier of choice.
- 4.4 The Depositor must ensure that all permits required for the delivery of the Material to CellBank, and the deposit of the Material by the Depositor with CellBank, are obtained prior to such delivery and deposit.
- 4.5 The Annual Fee is payable by the Depositor to CellBank in respect of each deposit of any Material by the Depositor via the Depositing Individual with CellBank. CellBank makes use of an annual billing cycle, 1 July to 30 June. The Annual Fee is payable on the Deposit Date, and calculated on a pro rata basis to 30 June.

5. ANNUAL RENEWAL

- 5.1 The Annual Fee for any Material is payable yearly in advance for the period from 1 July to 30 June. It will be charged by CellBank on 1 July for that Material, and will be based on the number of Vials of

the Material in the relevant Collection stored by CellBank for Depositor as at 1 July, notwithstanding multiple deposits of the Material into this Collection by the Depositor in the preceding year. Each Annual Fee is non-refundable even if Vials of the Material are retrieved during the year covered by the Annual Fee.

- 5.2 On 1 July, CellBank will be entitled to require Depositor to warrant that the Material is Viable and even if CellBank does not require this warranty to be made, the warranty will be deemed made on the Depositor paying the Annual Fee.

6. **RETRIEVAL OF MATERIAL**

- 6.1 The Depositor may initiate the retrieval of all or some Vials of Material at any time by notifying CellBank of its intention in writing and completing the retrieval documentation made available by CellBank.
- 6.2 All outstanding Invoices and fees for any services provided by CellBank to the Depositor, including the Retrieval Fee, must be paid in advance of the return of the relevant Vials of Material by CellBank.
- 6.3 CellBank will package the relevant Vials of Material in compliance with applicable shipping laws and regulations and will procure the delivery of the Vials to the Depositor or to a location designated by the Depositor by prepaid delivery via CellBank's carrier of choice, at the Depositor's cost which shall be payable together with the Retrieval Fee.
- 6.4 CellBank will not be liable for the safety or security of any Vials of Material once possession of the Vials has been given to any carrier for delivery to the Depositor or to a location designated by the Depositor.
- 6.5 The Depositor must ensure that:
- (a) all permits required for the receipt of the Vials of Material are obtained before possession of the Vials is given by CellBank to a carrier for delivery to the Depositor or to a location designated by the Depositor; and
 - (b) someone accepts delivery of the Vials at the place of delivery, at the estimated time of delivery as advised by CellBank to the Depositor, such acceptance of delivery being deemed an acceptance of the Material.

7. **DISPOSAL OF MATERIAL**

- 7.1 The Depositor may initiate the disposal of all or some Vials of Material at any time by notifying CellBank of its intention in writing and completing the disposal documentation made available by CellBank.
- 7.2 All outstanding Invoices and fees for any services provided, including the Disposal Fee, must be paid in advance of the disposal of the relevant Vials of Material by CellBank.
- 7.3 CellBank will destroy the relevant Vials of Material in compliance with applicable laws and regulations. Any third party fees or charges associated with the disposal will be passed on, in full, to the Depositor and included as a separate charge in addition to the Disposal Fee.
- 7.4 The Depositor must, at the time the Depositor initiates the disposal of the relevant Material in accordance with clause 7.1, advise CellBank in writing of any relevant laws, regulations or requirements relating to the disposal of such Material.
- 7.5 CellBank reserves the right to refuse to dispose of any Material and insist that the Material be retrieved by the Depositor instead.

8. **ABANDONMENT**

- 8.1 Material shall be considered abandoned if the Depositor fails to pay the Annual Fee or any other fee, charge or costs in respect of that Material within six months from the date on which such amount is due.
- 8.2 CellBank reserves the right to dispose and/or destroy any abandoned Material at any time at the Depositor's cost and expense.
- 8.3 All outstanding Invoices and unpaid fees or costs, including those related to the storage and disposal of abandoned Material, remain valid and due to be paid by the Depositor, notwithstanding the disposal or destruction of the abandoned Material.

9. **RISK AND TITLE**

- 9.1 Risk in and title to the Material remains with the Depositor at all times including during delivery to CellBank, while on Site and in storage at CellBank and during delivery on return to Depositor.

10. **INSURANCE**

The Depositor is responsible for any insurance or other financial protection required for the Material, including but not limited to, insurance associated with delivery of the Material to and from CellBank and during storage.

11. **TERM AND TERMINATION**

- 11.1 The Agreement commences on the date of signing by both parties and will continue in force until both the following have occurred:
- (a) the Depositor has completed the retrieval of all Material and/or CellBank has effected the disposal or destruction of all Material; and
 - (b) all outstanding invoices or other fees and costs payable by the Depositor under the Agreement, including the Annual Fee, Retrieval Fee and Disposal Fee, have been paid by the Depositor.
- 11.2 Notwithstanding clause 11.1, CellBank may, in its sole discretion, terminate the Agreement at any time by giving at least six months' written notice to Depositor. If the Agreement is terminated under this clause, the Depositor must retrieve all of the Material at the Depositor's cost before the date on which the Agreement is terminated.

12. **LIABILITY AND INDEMNITIES**

- 12.1 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.
- 12.2 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.
- 12.3 Nothing in the Agreement is to be read or applied so as to exclude, restrict or modify any or all of the consumer guarantees to the extent implied by the *Competition and Consumer Act 2010 (Cth)* and which cannot be excluded, restricted or modified by that Act.

- 12.4 Notwithstanding any other provision of this Agreement, in the event that CellBank is liable to the Depositor for breach of contract, tort, statute or otherwise, then to the extent permitted by law, CellBank's liability will be limited to the Annual Fee paid to CellBank by the Depositor in the year in which the facts giving rise to the claim arose but if CellBank's liability is for breach of a consumer guarantee implied by the *Competition and Consumer Act 2010* (Cth) in relation to a supply of services under this Agreement, CellBank's liability is limited, at CellBank's option, to:
- (a) the supplying of the services again; or
 - (b) the payment of the reasonable cost of having the services supplied again.
- 12.5 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.
13. **MISCELLANEOUS**
- 13.1 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.
- 13.2 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.
- 13.3 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.
- 13.4 The Agreement may only be varied by agreement between the parties in writing.
- 13.5 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.
- 13.6 All duties, taxes or other imposts payable on the Agreement or payable in the course of fulfilling the Agreement will be borne by the Depositor.
- 13.7 The parties will bear their own legal costs in connection with the Agreement.
- 13.8 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.
- 13.9 Neither party will, without the prior written consent of the other party, transfer or assign any of its rights or obligations under the Agreement.
- 13.10 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.

- 13.11 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by the Agreement.
- 13.12 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.
- 13.13 Except where the Agreement expressly states otherwise, the Agreement does not create a relationship of employment, trust, agency or partnership between the parties.
- 13.14 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