

Tasmanian Government Logo




Confidentiality deed

[relating to certain information disclosed in connection with a proposed clinical trial study]

**The party described in the Details**

**(Disclosing party)**

And

**Tasmanian Health Service**

(continued as a body corporate by operation of section 15 of the *Tasmanian Health Service Act 2018* (Tas))

**(Receiving Party)**

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Confidentiality deed

# Details and recitals

|  |  |
| --- | --- |
| **Date:** |  |
| **Parties:** |  |
| Name | **As described in Item 1** |
| Short Form Name | **Disclosing Party** |
| Notice details | As set out in Item 1 |
|  |  |
| Name | **Tasmanian Health Service** (continued as a body corporate by operation of section 15 of the *Tasmanian health Service Act* 2018 (Tas)) |
| Short Form Name | **Receiving Party** |
| Notice details | Site:<insert details>  Street: <insert details>  Email: <insert details>  Attention: <insert details> |
|  |  |

**Recitals:**

1. The Disclosing Party is seeking to identify potential investigation sites for the conduct of one or more clinical trials.
2. The Disclosing Party has agreed to disclose certain Confidential Information to the Receiving Party for the sole purpose of the Specified Purpose.
3. The Receiving Party has agreed to be bound by the terms of this Deed.

## Information Table

|  |  |
| --- | --- |
| **Item 1 (clause 1.1):** | **Disclosing Party** |
| **Name** | <insert details> |
| **ACN** | <insert details> |
| **ABN** | <insert details> |
| **Notice details** | **Address:**  <insert details> |
|  | **Email:**  <insert details> |
|  | **Attention:**  <insert details> |

|  |
| --- |
| **Item 2 (clause 1.1):**  **Specified Purpose** |
| The Specified Purpose means the purpose of the Receiving Party considering the Confidential Information for assessing the Receiving Party’s proposed participation in the Study. |

|  |  |
| --- | --- |
| **Item 3:** | **Special terms and conditions** |
| The special terms and conditions (each a Deed Special Condition) set out below apply to this Deed.  If there is any inconsistency between a Deed Special Condition and another provision of this Deed, the special condition overrides the other provision to the extent of that inconsistency.  A Deed Special Condition is taken not to be inconsistent with another provision of this Deed if the Deed Special Condition and the other provision of this Deed are both capable of being complied with.  There are no Deed Special Conditions. | |

Operative provisions

The parties agree as follows:

|  |
| --- |
| **1 Definitions and interpretation** |
| **1.1 Definitions** |
| In this Deed, unless the context otherwise requires: |
| **Business Day** means a day that is not a Saturday, a Sunday, Easter Tuesday, or a statutory holiday (as defined in the Statutory Holidays Act 2000 (Tas)) generally observed in Hobart.  **Confidential Information** means information, material and/or data disclosed by the Disclosing Party to the Receiving Party on or after the date of this Deed relating to the proposed clinical study of the Disclosing Party and which is of a confidential nature, including:   1. information which the Disclosing Party designates in writing as 'confidential' before disclosing it to the Receiving Party. 2. the protocol and any information related to the protocol. 3. research information and data; and 4. other business information.   **Crown** means the Crown in Right of Tasmania.  **this Deed** means this deed and includes all its annexures, appendices, attachments, and schedules (if any).  **Details** means the details and recitals set out above.  **Government Body** includes a body politic, a government (federal, state, or local), a governmental, judicial, or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.  **Information Table** means the table titled ‘Information Table’ set out above.  Item means an item in the Information Table.  **Law** means:   1. principles of law or equity established by decisions of courts. 2. legislation and subordinate legislation; and 3. requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.   **month** means calendar month.  **Right** includes a right, a power, a remedy, a discretion, or an authority.  **Specified Purpose** means the purpose described in Item 2.  **Study** means the clinical study proposed to be conducted by the Disclosing Party as described in the Confidential Information. |
| **1.2 Interpretation** |
| In this Deed, unless the context otherwise requires: |
| 1. the singular includes the plural and vice versa;   (b) words importing a gender include all genders;  (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;  (d) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;  (e) a reference to a group of persons includes a reference to any one or more of those persons;  (f) a reference to an annexure, an appendix, an attachment, a schedule, a party, a clause or a part is a reference to an annexure, an appendix, an attachment, a schedule or a party to, or a clause or a part of, this Deed;  (g) a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;  (h) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;  (i) a reference to a document includes:  (i) anything on which there is writing.  (ii) anything from which sounds, images or writings can be reproduced with or without the aid of anything else;  (iii) an amendment or supplement to, or replacement or novation of, that document; or  (iv) a map, plan, drawing or photograph;  (j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;  (k) a reference to a 'person' includes a natural person, a partnership, a body corporate, a corporation sole, an association, a Government Body, or any other entity;  (l) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;  (m) a reference to a Minister includes, as applicable, that Minister’s predecessors and successors in office;  (n) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words;  (o) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;  (p) reference to a time or date in connection with the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere; and  (q) references to '$' and 'dollars' are to Australian dollars. |
| **1.3 Headings** |
| Headings are included for convenience only and do not affect the interpretation of this Deed. |
| **1.4 No rule of construction applies to disadvantage party** |
| In relation to the interpretation of this Deed, no rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it. |
| **1.5 Information Table** |
| 1. An Item that has not been completed will be taken to be 'not applicable'. 2. Unless the context otherwise requires, expressions defined in the Information Table have the same meanings when used in other parts of this Deed |
| **2 No obligation to disclose particular information** |
| Nothing in this Deed imposes any obligation on the Disclosing Party to disclose any particular Confidential Information to the Receiving Party |
| **3 Acknowledgement by Receiving Party** |
| The Receiving Party acknowledges that: |
| 1. the Confidential Information constitutes valuable and proprietary information of the Disclosing Party; and 2. this Deed does not grant to the Receiving Party any licence or other right in relation to the Confidential Information except as expressly provided in this Deed |
| **4 Confidentiality and related obligations** |
| **4.1 Confidentiality obligations** |
| The Receiving Party must: |
| 1. keep the Confidential Information confidential;   (b) ensure that its officers, employees, contractors, agents and advisors keep the Confidential Information confidential;  (c) take all reasonable steps to:  (i) maintain the confidentiality of the Confidential Information disclosed to the Receiving Party pursuant to this Deed;  (ii) prevent any unauthorised use or disclosure of the Confidential Information disclosed to the Receiving Party pursuant to this Deed. |
| **4.2 Restrictions on disclosure** |
| The Receiving Party must: |
| 1. not disclose the Confidential Information to any person other than to those officers, employees, contractors, agents, and advisors of the Receiving Party (and/or the Crown) who are concerned with the conduct of the Specified Purpose; and 2. ensure that none of its officers, employees, contractors, agents and advisors disclose the Confidential Information to any person other than to another officer, employee, contractor, agent or advisor of the Receiving Party (and/or the Crown) who is concerned with the conduct of the Specified Purpose. |
| **4.3 Restrictions on use of Confidential Information** |
| Except with the prior written consent of the Disclosing Party, the Receiving Party must not use the Confidential Information for any purpose other than the Specified Purpose |
| **4.4 Return or destruction of documents that include Confidential Information** |
| 1. Subject to subclause 4.4(b), upon the completion of the Specified Purpose, or upon the written request of the Disclosing Party, the Receiving Party at the cost of the Disclosing Party must:   (i) deliver to the Disclosing Party, or delete or destroy, all documents given by the Disclosing Party to the Receiving Party containing Confidential Information;  (ii) destroy all documents, records or materials created by the Receiving Party which include Confidential Information.   1. The Receiving Party may retain one copy of any Confidential Information to the extent that it is required to do so by an applicable Law. |
| **4.5 Exceptions** |
| The Receiving Party is not bound to keep confidential any Confidential Information if, and to the extent that, any one or more of the following circumstances are applicable: |
| 1. the Confidential Information is required to be disclosed pursuant to the operation of an applicable Law;   (b) the Confidential Information is in, or comes into, the public domain otherwise than by breach of this Deed by the Receiving Party or as a result of any disclosure by an officer, employee, contractor, agent or advisor of the Receiving Party (and/or the Crown) in breach of this Deed;  (c) prior to the disclosure of the Confidential Information by the Disclosing Party to the Receiving Party, the Confidential Information was already in the Receiving Party’s possession as a result of the Confidential Information having been lawfully obtained by the Receiving Party from another person without any restriction as to use or disclosure;  (d) after the disclosure of the Confidential Information by the Disclosing Party to the Receiving Party, the Confidential Information is lawfully obtained by the  Receiving Party from another person without any restriction as to use or disclosure; or  (e) the Disclosing Party has given its written consent to the disclosure of the Confidential Information by the Receiving Party. |
| **4.6 Term of obligations** |
| The obligations of the Receiving Party under this Deed continue for a period of two years from the date of this Deed despite the termination of this Deed for any reason or the end of the Specified Purpose. |
| **5 Notices** |
| **5.1 Notice requirements** |
| (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under this Deed must be:  (i) in legible writing in the English language;  (ii) subject to clause 5.1(b), signed by or on behalf of the sender or by a lawyer for the sender;  (iii) marked for the attention of the person or position (if any) specified in the Details applicable to the intended recipient of the Notice or, if the intended recipient has notified otherwise, marked for attention in the way last notified; and  (iv) left or sent in accordance with clause 5.2.  (b) A notice sent by email is taken to have been signed by the sender.  (c) A Notice must not be given orally. |
| **5.2 Method and address for delivery** |
| 1. Subject to clause 5.2(b), a Notice must be:    1. left at the intended recipient's address set out in the Details;    2. sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out in the Details; or    3. sent by email to the intended recipient’s email address (if any) set out in the Details. 2. If the intended recipient of a Notice has notified the sender of another address or email address for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address or email address (as applicable) last notified by that intended recipient. |
| **5.3 Time of receipt** |
| 1. Subject to clause 5.3(b), a Notice is taken to have been received by the intended recipient:   (i) if left at the intended recipient's address, at the time of delivery;  (ii) if sent by prepaid ordinary mail, on the third Business Day after the day of posting, or if sent by prepaid airmail from one country to another country, on the tenth Business Day after the day of posting;  (iii) if sent by email, four hours after the time the email was sent (as recorded by the device or software used to send the email) provided that the sender has not received an automated message that the email has not been delivered.  (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.  (c) A Notice is effective from the time it is taken to have been received in accordance with clauses 5.3(a) and 5.3(b) (unless a later time is specified in the Notice, in which case the notice takes effect from that time). |
| **5.4 Other modes or places or service** |
| Nothing in this Deed limits or excludes any other mode or place of service required by an applicable Law. |
| **5.5 Email address** |
| Each party must ensure that it maintains a valid email system and email address for the receipt of Notices by email. |
| **6 Miscellaneous** |
| **6.1 Governing law** |
| This Deed is governed by the Laws applying in Tasmania. |
| **6.2 Dispute jurisdiction** |
| The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in connection with this Deed |
| **6.3 Liability** |
| An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term) under or in respect of this Deed, binds them jointly and each of them severally. |
| **6.4 Benefit** |
| An obligation, a representation, a warranty or an indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally. |
| **6.5 Severance** |
| If a provision of this Deed is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is severed from this Deed and the remaining provisions of this Deed:   1. continue to be enforceable; and 2. are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Deed. |
| **6.6 Counterparts** |
| (a) This Deed may be entered into in any number of counterparts.  (b) A party may execute this Deed by signing any counterpart.  (c) All counterparts, taken together, constitute one instrument |
| **6.7 Further assurance** |
| The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to this Deed. |
| **6.8 Business Days** |
| If the day on or by which an act, matter or thing is to be done under this Deed is not a Business Day, that act, matter or thing must be done by no later than the next Business Day. |
| **6.9 Legal costs** |
| Each party must bear their own costs in preparing and negotiating this Deed. |
| **6.10 Amendment** |
| This Deed may only be amended or supplemented in writing signed by the parties |
| **6.11 Waiver** |
| (a) A failure or delay in exercising a Right does not operate as a waiver of that Right.  (b) A single or partial exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right.  (c) A Right may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given. |
| **6.12 Successors and assigns** |
| This Deed is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns |
| **6.13 Rights cumulative** |
| Each Right provided for in this Deed: |
| (a) operates independently of any other Right provided for in this Deed; and  (b) is cumulative with, and does not exclude or limit, any other Right, whether at Law or pursuant to any other agreement, deed or document. |
| **6.14 No assignment** |
| A party must not assign any of its Rights and obligations under this Deed except with the prior written consent of each other party. |
| **6.15 Disclosure** |
| 1. Despite any confidentiality or intellectual property right subsisting in this Deed, a party may publish all or any part of this Deed without reference to another party.   (b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004 (Tas) or the Privacy Act 1988 (Cwlth).* |
| **6.16 Consent and approvals** |
| (a) This clause applies to any consent or approval which a party must obtain from another party in accordance with this Deed. For the avoidance of doubt, this clause does not apply to any consent or approval to be given under any legislation.  (b) A request for consent or approval must be made in writing.  (c) A consent or approval for the purposes of this Deed is not effective unless given in writing.  (d) A consent or approval may be given subject to conditions.  (e) A party receiving a consent or approval must comply with any conditions subject to which the consent or approval is given. To the extent that the party receiving the consent or approval fails to comply with the condition, that failure is taken to be a breach of this Deed. |
| **6.17 Doctrine of merger** |
| The doctrine or principle of merger does not apply to this Deed or to anything done under or in connection with this Deed. Accordingly, no Right or obligation of a party is merged in anything done pursuant to this Deed. |
| **6.18 No interference with executive duties or powers** |
| Nothing in this Deed is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this Deed that is inconsistent with this clause is of no legal effect to the extent of the inconsistency. |
| **Executed** as a deed |

**Signing**

|  |
| --- |
| Signing by Receiving Party |
| Executed as a deed on behalf of the **Tasmanian Health Service** (continued as a body corporate by operation of section 15 of the *Tasmanian Health Service Act 2018* (Tas)) by the person named below in the presence of the witness named below: |
| Signature: → |
| Being a person who has authority to sign this Deed on behalf of the Receiving Party |
| \*Print name and position: |
|  |
| Date |
| Use BLOCK LETTERS |
| Signing by Disclosing Party |
| Executed as a deed by <insert details> in accordance with section 127(1) of the *Corporations Act 2001 (Cwlth):* |
| Signature: → |
| Being a person who has authority to sign this Deed on behalf of the Disclosing Party |
| \*Print name and position: |
|  |
| Date |
| Use BLOCK LETTERS |

|  |
| --- |
| Signature: → |
| Being a person who has authority to sign this Deed on behalf of the Disclosing Party |
| \*Print name and position: |
|  |
| Date |
| Use BLOCK LETTERS |