GENETIC REPOSITORIES AUSTRALIA
SERVICES AND MATERIAL TRANSFER AGREEMENT

Project			
GRA		**Recipient**	
POWMRI Ltd (ACN 94 050 110 346) trading as Genetic Repositories Australia			
Address	Neuroscience Research Australia, Barker Street, Randwick, NSW 2031, Australia	Address	
Contact	Steve Turner	Contact	
Email	gra@neura.edu.au	Email	
Phone	+61 2 9399 1068	Phone	
Fax	+61 2 9399 1005	Fax	
Recipient Scientist			
GRA Services			
If the Recipient is providing the Materials to GRA for processing, does the Recipient agree to deposit the Materials with GRA so it can make them available to other researchers? (see clause 3)			
Original Materials			
Fees			
Special Terms			
Signed			
Date Signed:			

Signed for **GRA** by:	Signed for **Recipient** by:	Signed by **Recipient Scientist**:
Signature of Authorised Officer	Signature of Authorised Officer	Signature of Recipient Scientist
Name of Authorised Officer (BLOCK LETTERS)	Name of Authorised Officer (BLOCK LETTERS)	Name of Recipient Scientist (BLOCK LETTERS)

BACKGROUND:

A. The Recipient Parties have requested GRA to provide the GRA Services and/or Original Materials for use in the Project.

B. GRA has agreed to provide the GRA Services and/or Original Materials on the terms of this agreement.

AGREEMENT:

1. Application and Project details

1.1 **Accuracy of Application information:** GRA relies on the information provided by the Recipient Parties in or in relation to the Application. The Recipient Parties warrant that this information is accurate and not misleading.

1.2 **Recipient Scientist:** The Recipient warrants that the Recipient Scientist is the Principal Investigator of the Project and is responsible for ensuring all researchers under his or her supervision in relation to the Project comply with the terms of this agreement.

1.3 **Updates:** The Recipient Parties must promptly let GRA know if there is a material change in the information provided in or in relation to the Application (including the Project). This includes any withdrawal of consents in relation to the Project or the use or processing of Recipient provided Original Materials.

1.4 **Approval:** GRA may reconsider its approval for the Recipient Parties to use the GRA Services (including any Original Materials distributed to the Recipient by GRA) if there is any inaccuracy or change in the information provided by the Recipient Parties.

2. GRA Services

2.1 **Services:** GRA will perform the GRA Services according to this agreement (including the GRA Policies and Procedures).

2.2 **Delivery:** The Recipient must ensure that its personnel are available and have the necessary equipment to receive and store the processed or distributed Original Materials.

3. Recipient provided Original Materials

This clause 3 only applies to the processing of Original Materials provided by the Recipient.

3.1 **Availability for distribution:** If the Recipient agrees to deposit the Original Materials with GRA so it can make them available to other researchers (as set out in the cover page):

(1) GRA will treat those Original Materials according to GRA Policies and Procedures (which may include further processing of those materials for other researchers); and

(2) the Recipient will provide a minimal clinical dataset (clinical diagnosis, variant / subtype, race, year of birth, age at diagnosis, age at sampling and sex) as set out in the GRA Policies and Procedures for the Original Materials that will subsequently be made available for distribution. (This dataset must be provided prior to shipment of processed Original Materials back to the Recipient.)

3.2 **Consents:** The Recipient Parties warrant that they have or will obtain written informed consent of the Participant/Donor prior to shipment, and has the relevant Human Research Ethics Committee Approval for GRA to:

(1) perform the GRA Services on the Original Materials; and

(2) if the Recipient agrees to deposit the Original Materials with GRA so it can make them available to other researchers (as set out in the cover page), make those Original Materials available for distribution to other researchers according to the GRA Policies and Procedures.

3.3 **Withdrawal of consent:** If the Participant/Donor withdraws his or her consent to use the Original Materials, the Recipient Parties must immediately inform GRA of this. GRA will then use reasonable endeavours to:

(1) notify the researchers to whom GRA has distributed the Original Materials that the Participant/Donor withdraws his or her consent for the researchers to use the Original Materials; and

(2) at GRA's option, destroy the Original Materials or return the Original Materials to the Recipient (including the Original Materials GRA has distributed to other researchers).

3.4 **No hazardous Original Materials:** The Recipient Parties warrant to the best of their knowledge that the Original Materials are not infectious, carrying viruses or other pathogenic agents.

3.5 **Warranty:** The Recipient Parties warrant that the Materials (and GRA's use of the Original Materials) do not infringe anyone's Intellectual Property or other rights which will interfere with GRA's ability to process the Original Materials under this agreement and distribute them according to clause 3.1.

4. GRA distributed Original Materials:

This clause 4 only applies to the Original Materials distributed to the Recipient by GRA.

4.1 **According to GRA Policies and Procedures:** GRA will distribute the Original Materials to the Recipient according to the GRA Policies and Procedures.

4.2 **Subject to availability:** The GRA Services are subject to the availability of the Original Materials. GRA will let the Recipient know as soon as practicable if the Original Materials are unavailable.

4.3 **Withdrawal of consent:** GRA will advise the Recipient if a Recruiting Scientist informs GRA that the Participant/Donor has withdrawn their original consent. The Recipient must then, at GRA's discretion, promptly destroy or return to GRA all Materials which were derived from that Participant/Donor's biological specimen.

4.4 **No exclusivity:** Nothing in this agreement prevents GRA from distributing, or otherwise making available the Original Materials it provides to the Recipient to any other parties at any time.

4.5 **Discoveries that affect Participant/Donor and family:** If the Recipient Parties discover any clinically significant result that may impact on the health of a particular Participant/Donor or their family, the Recipient must notify GRA in writing as soon as possible. GRA will then facilitate contact between the Recipient Parties and the Recruiting Scientist so the Recipient Parties can communicate such information to that Recruiting Scientist for communication to the relevant Participant/Donor.

5. Use of Materials

5.1 **For Project only:** The Recipient Parties must only use the Materials for research and experimentation as described in the Project and not in any other way.

5.2 **Comply with law and policies:** The Recipient Parties are responsible for complying with all applicable Laws, Regulatory Requirements, and GRA's Policies and Procedures including all those relating to personal information, the environment, occupational health and safety and hazardous materials.

5.3 **Only to be used at Recipient Scientist's laboratories:** Subject to clause 5.5, the Recipient Parties must only use the Materials in the Recipient Scientist's laboratories at the Recipient's premises (or as otherwise set out in the Application).

5.4 **No re-distribution:** Subject to clause 5.5, the Recipient Parties must not give, sell, loan or otherwise provide the Materials to any other party for any purpose.

5.5 **Contracted service providers:** The Recipient Parties may provide the Materials to a contracted service provider for the purposes of providing services to the Recipient Parties for the Project only. The Recipient Parties must ensure that the contracted service provider complies with the terms of this agreement. To avoid any doubt, the Recipient Parties are responsible for all of the contracted service provider's acts or omissions.

6. Reporting, publications, and acknowledgements

6.1 **Annual and completion reports:** The Recipient must provide (or ensure that the Recipient Scientist provides) GRA with an annual report and a completion report, in the format prescribed by GRA, on the work undertaken using the Materials and any subsequent findings.

6.2 **Publications:** The Recipient must provide (or ensure that the Recipient Scientist provides) GRA with a copy of all publications that arise from use of the Materials.

6.3 **Acknowledgment:** In all oral presentations or written publications that describe or refer to the Materials or that describe research which utilised or will utilise the Materials, the Recipient Parties will acknowledge GRA's contribution of this Material according to the GRA Policies and Procedures. Oral presentations are to include either a written (such as PowerPoint) and /or verbal acknowledgement of the use of GRA. Publications must include an acknowledgement as set out in the GRA Policies and Procedures.

7. Fees

7.1 **Invoicing:** GRA will invoice the Recipient for the Fees.

7.2 **Payment:** The Recipient must pay GRA's invoice within 14 days of receiving the invoice.

8. Intellectual Property

8.1 **GRA makes no IP claim:** GRA makes no claim to any Intellectual Property in the Materials other than those rights consistent with its role as custodian of a public bio-repository, including its care-taking responsibility for bio-specimen collection, management, documentation and the right to determine the conditions under which the bio-specimens are accessed, stored and used.

8.2 **GRA receives no right in Recipient's discoveries:** GRA will not receive any right, title or interest in any product or process that is developed or invented by the Recipient Parties' use of the Original Materials in the course of that research and experimentation.

8.3 **No IP warranties:** Any Original Materials distributed by GRA are or may be the subject of a patent or patent application by third parties. GRA makes no representation and provides no warranty that the Original Materials (and the use of the Original Materials) will not infringe anyone's Intellectual Property or other rights which will interfere with the Recipient Parties' ability to use the Materials according to this agreement.

9. Confidential Information

9.1 **Confidential:** Each party must keep the other's Confidential Information confidential and not disclose it to anyone else without the other party's approval.

9.2 **Use:**

(1) The Recipient Parties may only use the GRA's Confidential Information to carry out the Project. The Recipient Parties must however only use the Non-Disease Genetic Markers for quality assurance and quality control.

(2) GRA may use the Recipient Parties' Confidential Information to perform its obligations and exercise its rights under this agreement.

9.3 **Security:** Each party must:

(1) put together and maintain effective security measures to keep the other's Confidential Information secure; and

(2) tell the other party as soon as it finds out about any suspected or actual unauthorised use or disclosure of its Confidential Information.

9.4 **Disclosure:** Each party may disclose the other's Confidential Information to:

(1) its officers, employees, researchers, and contracted service providers who need to be disclosed the information for the purposes set out in clause 9.2 (as applicable). Those persons must first be bound by a confidentiality obligation no less stringent than this; and

(2) any person if required by law.

The party receiving the Confidential Information (**Receiving Party**) will be responsible for any unauthorised disclosure by any person that the Receiving Party is permitted to disclose the Confidential Information to under this agreement.

9.5 **Rights:** These rights are in addition to any other rights a party may be entitled to at law.

10. Warranties and liability

10.1 **Delays and unavailability of Original Materials:** GRA will not be liable for any loss by the Recipient arising out of or in connection with GRA's delay in processing the Original Materials or the unavailability of Original Materials for distribution (if GRA is providing them).

10.2 **Accuracy of minimal clinical data set and Non-Disease Genetic Markers:**

(1) The Recipient Parties acknowledge that the minimal clinical data set provided by GRA with any Original Materials it distributes to the Recipient Parties under this agreement was provided by a 3rd party. GRA has not verified the accuracy of the clinical data set and cannot be liable for its accuracy.

(2) GRA will use reasonable endeavours to ensure that any Non-Disease Genetic Markers it provides with the Original Materials are accurate. However, it is not liable for the accuracy of these markers.

The Recipient Parties use the minimal clinical data set and Non-Disease Genetic Markers at their own risk.

10.3 **Risk passes to Recipient on delivery:** All risk in the Original Materials passes to the Recipient once they are delivered to the Recipient by GRA, its agents, or its contractors.

10.4 **Materials could be hazardous:** The Recipient Parties acknowledges that DNA, cell lines, or other materials derived from blood or other biological samples should be assumed to be potentially infectious, carrying viruses or other pathogenic agents. The Recipient Parties are responsible for screening the Materials for infectious agents.

10.5 **Recipient Parties carries risk for use of Materials:** Since the Materials are experimental in nature, the Recipient Parties use the Materials at its own risk and agrees to accept sole responsibility and liability for the use of the Materials. GRA takes no responsibility for personal injury, illness or death that may occur to the Recipient Parties (including its personnel and contracted service providers) handling any Materials.

10.6 **Maximum:** GRA's maximum aggregate liability to the Recipient and Recipient Scientist together whether in contract, tort (including negligence) or under statute is limited to the amount of the Fees set out in the cover page.

10.7 **No consequential loss:** GRA's liability to the Recruiting Parties (including its officers, employees, contractors, researchers, and agents) will not include any indirect, incidental, special or consequential damages, including loss of revenue, profits, anticipated profits, savings or data. It does not matter whether the loss was foreseeable, arose from negligence and even if warning was given of its possibility.

10.8 **Excludable:** Any representation, warranty, condition or undertaking that would be implied in this agreement by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

10.9 **Non-excludable:** Nothing in this agreement excludes, restricts or modifies any condition, warranty, right or remedy that cannot be excluded, restricted or modified.

10.10 **Limit on non-excludable:** GRA's liability for breach of a condition or warranty that can not be excluded is limited, at its option, to re-supplying or paying the cost of re-supplying services and repairing, replacing or paying the cost of repairing or replacing goods.

11. Indemnity

The Recipient Parties indemnify GRA (including its officers, employees, contractors, researchers, and agents) against any claim, action, loss, liability, damage, cost, or expense of any kind it incurs arising out of or in connection with:

(1) GRA performing the GRA Services according to this agreement on Original Materials provided by the Recipient Parties;

(2) the Recipient Parties' (including their officers, employees, contractors, researchers, agents and Other Accessing Parties) receipt, use and disposal of:

(a) materials processed by GRA under this agreement; and

(b) Materials (including any information) provided by GRA under this agreement;

(Other Accessing Parties means any person who receives access to the items in clauses 11(2)(a) and 11(2)(b) through the Recipient Parties (including their officers, employees, contractors, researchers, and agents) with or without the Recipient Parties consent.)

(3) the Recipient Parties' breach of this agreement;

(4) the Recipient Parties' (including their officers, employees, contractors, researchers, and agents) negligence; and

(5) an infringement of the rights of any third party (including Intellectual Property) caused by materials or information provided to GRA by the Recipient Parties (including their officers, employees, contractors, researchers, and agents).

The Recipient Parties liability under this indemnity will includes claim, action, loss, liability, damage, cost, or expense was caused by GRA's acts or omissions except where those acts or omissions were willful or unlawful.

12. Ending

12.1 **Recipient default:** GRA may end this agreement immediately if the Recipient Parties:

(1) fail to comply with the ethical constraints delimiting the Project;

(2) commit a breach of this Agreement, including GRA's Policies and Procedures. If the breach is capable of remedy, GRA must first give the Recipient 14 days to remedy the breach after it asks it to do so; or

(3) have an event of insolvency.

12.2 **On ending:** Once:

(1) this agreement ends;

(2) the Project for which the Materials have been supplied discontinues or ends; or

(3) there is no further need for the Materials in connection with the Project, the Recipient Parties must stop using the Materials and arrange for the prompt disposal or destruction of all remaining or unused Materials, or if requested by GRA, return those Materials to GRA at the Recipient's expense.

If the Original Materials were provided by the Recipient for processing and the Recipient has agreed to deposit the Original Materials with GRA so it can make them available to other researchers (as set out in the cover page), GRA's rights to distribute these Original Materials survive the end of this agreement provided that this agreement was not ended because of GRA's default.

12.3 **Report:** On ending, the Recipient must provide GRA with a written report on the work undertaken before the end of this agreement using the Materials and any subsequent finding, in the format prescribed by GRA.

12.4 **Rights:** Ending will be without prejudice to the rights of either party that arose before it ended.

13. Dispute Resolution

The Recipient Parties acknowledge that it has read GRA's Policies and Procedures and agrees to comply with the rules contained in those policies and procedures, including those relating to appeals and disputes under this agreement.

14. General

14.1 **Special terms:** The Special Terms will override any other inconsistent term.

14.2 **Notices:** A notice or communication has no effect unless it is in writing and sent by email, prepaid post, faxed or delivered to the addressee.

Each party's address, fax and email details are on page 1. A party can change its details by giving notice of it to the other party.

A notice is received: if sent by email at the time the email is sent if there is no delivery failure report; if sent by post 3 (or 10 if overseas) business days after posting; if sent by fax at the time an error free confirmation is received; or if delivered when it is left at the address.

14.3 **Further assurances:** Each party must promptly (at its own cost) do all things necessary or desirable to give full effect to this agreement.

14.4 **Approvals:** A party may give or not give an approval or consent in its absolute discretion (without reasons), unless stated otherwise.

14.5 **Entire understanding:** This agreement is the entire agreement and understanding between the parties on everything connected with the subject matter of this agreement and supersedes any prior agreement or understanding between the parties.

14.6 **Survival:** Clauses 3, 6.2, 6.3, 8, 9, 10.1 to 10.10, 11, 12.2, 12.3, 12.4, 13,14, 15 and 16 and any other terms which by their nature are intended to survive, survive the end of this agreement.

14.7 **Severable:** If any clause of this agreement is illegal or unenforceable it is to be severed. The rest of this agreement will not be affected.

14.8 **Waiver:** If a party has a right arising from another party's failure, the delay in exercising that right does not waive any rights.

14.9 **Change:** Any change to this agreement is only effective if in writing and signed by the parties.

14.10 **Assignment:** The Recipient must not assign its rights under this agreement. GRA may assign any of its rights without the Recipient's consent.

14.11 **Governing Law and Jurisdiction:** The law of New South Wales, Australia governs this agreement. The parties submit to the non-exclusive jurisdiction of its courts.

15. Defined terms

15.1 **Defined terms:** In this agreement:

(1) **Application** means the GRA Facility Access Application completed by the Recipient and approved by the GRA Management Committee as set out in schedule A;

(2) **Confidential information** means all technical information (including Non-Disease Genetic Markers), know-how, financial information and other commercially valuable or sensitive information of whatever description which a party regards as confidential, proprietary or of a commercially sensitive nature. Confidential information excludes information which:

(a) is lawfully in the public domain before to its disclosure or enters the public domain afterwards through an authorised disclosure;

(b) becomes available to the Receiving Party from someone lawfully in possession of it who lawfully discloses it on a non-confidential basis; and

(c) is rightfully known by the Receiving Party before disclosure to it;

To avoid any doubt, the minimal clinical dataset provided by the Recipient according to clause 3.1(2) is not Confidential Information.

(3) **GRA Policies and Procedures** mean the GRA's policies and procedures found at <http://neura.edu.au/GRA> from time to time;

(4) **Intellectual Property (IP)** means any and all existing and future intellectual and industrial property rights throughout the world in the industrial, commercial, scientific, literary or artistic fields;

(5) **Laws** mean the provisions of any statute, rule, regulation, proclamation, ordinance, by-law, present or future, whether local, state, federal, and includes generally accepted industry codes and standards;

(6) **Materials** mean the Original Materials and any unmodified descendants, or propagation of cell lines or whole genome amplification of DNA, as well as any improvements, derivatives or modifications to these materials that the Recipient develops, directly or indirectly while conducting the Project or using these materials;

(7) **Non-Disease Genetic Markers** means any anonymous non-disease genetic markers provided by GRA with the Original Materials it distributes to the Recipient for the purposes of quality assurance and quality control;

(8) **Original Materials** means the materials set out in the cover page which are the subject of the GRA Services under this agreement;

(9) **Participant/Donor** means the person(s) who is the original source of the biological specimen from which any part of the Original Materials is derived;

(10) **Project** means the Recipient Scientist's research project as set out in the Application;

(11) **Recipient Parties** mean the Recipient and Recipient Scientist, together and separately;

(12) **Recipient Scientist** means the person stated on the cover page;

(13) **Recruiting Scientist** means the person(s) who holds the original consent of a particular Participant/Donor and who collected the Participant/Donor's biological specimen that has been distributed by GRA to the Recipient under this agreement;

(14) **Regulatory Requirements** mean:

(a) any industry-wide non-statutory rule or obligation;

(b) other non-statutory rules or a non-statutory mandatory code of conduct; or

(c) any non-statutory rule of any industry body.

16. Interpretation

Unless the contrary intention appears:

(1) a reference to a document includes any variation or replacement of it;

(2) a party includes its executors, administrators, successors and permitted assigns;

(3) headings and subheadings are for convenience only and do not form part of this agreement or affect it interpretation;

(4) the words include, including, for example or such as when introducing an example, do not limit the meaning of the words to the example or examples of a similar kind; and

(5) a provision of this agreement must not be construed to the disadvantage of a party merely because that party was responsible for drafting it or this agreement.

Schedule A
GRA Facility Access Application Form

[Attach the GRA approved GRA Facility Access Application Form submitted by the Recipient.]