

## **MATERIALS TRANSFER AGREEMENT for exclusive use by kConFab (“Agreement”)**

### **SCHEDULE OF MATERIAL:**

### **TRANSFeree:**

In consideration for Peter MacCallum Cancer Institute (“PMCI”), per the Kathleen Cuninghame Foundation National Consortium for Research on Familial Breast Cancer (“kConFab”) agreeing to supply the Materials, the Recipient Institution agrees that the Materials will be used in accordance with the following terms and conditions, to be read and understood in conjunction with Schedule A attached hereto.

1. Except as provided in clause 2, the Materials are to be kept confidential and used only for the research and academic purpose of undertaking the project described in the Permitted Purpose in the laboratory of the Recipient Scientist. The Materials must not be released to any person not under direct supervision of the Recipient Scientist, or to any organisation without the prior written permission of PMCI, except that the Recipient Institution may allow or permit such authorised representatives or legal advisers to have access to or inspect the Materials where such access is necessary for the Permitted Purpose and provided that each person to whom the Materials are provided is aware of and abides by the terms and conditions of this Agreement in the same manner and form as the Recipient Institution.
2. The obligations of confidence under clause 1 do not apply to Materials the nature of which:
  - are public knowledge, other than as a result of a breach of this Agreement or of any other obligation of confidentiality relating to those Materials;
  - are already known to the Recipient Institution at the time of being provided by PMCI; or
  - the Recipient Institution is required by law to disclose, provided that PMCI is notified in advance of such disclosure.
3. The Materials are not for use in humans, or in contact with any cells or other materials to be used in humans, or for diagnostic purposes without the express written consent of PMCI.
4. The Materials are not to be used directly or indirectly for any commercial purpose without express written consent of PMCI.
5. The Recipient Institution is responsible for ensuring and must ensure compliance with all applicable legislation relating to the possession, use, handling and disposal of the Materials. Without limiting the foregoing, the Materials and any data derived from those Materials must be stored securely in accordance with any reasonable directions from time to time of PMCI.
6. kConFab, through PMCI remains the custodian of the Materials and unused Materials will be returned to PMCI or destroyed upon PMCI’s request. Receipt of PMCI’s Materials does not imply transfer of any intellectual property or other rights with respect to the Materials other than as provided under the Permitted Purpose.
7. Upon completion of the research study conducted for the Permitted Purpose, kConFab (c/o PMCI) will be advised in writing of the results and outcomes of the study, including notification of the production of any modifications or derivatives of the Materials or any

inventions, know-how, data or any intellectual property rights created through use of the Materials.

8. Any publication arising from use of the Materials shall duly acknowledge the contribution of kConFab (c/o PMCI). A copy of the proposed publication is to be provided to kConFab (c/o PMCI) for review and comment thirty (30) days before submission and the Recipient Institution shall consider in good faith any comments received from kConFab (c/o PMCI) during that review period. The parties shall attempt to amicably resolve any differences of opinion regarding the manuscript. If the authors disagree on the analysis or interpretation of the results, then an author who does not agree with the conclusions may withdraw, or the issue may be submitted to the journal for resolution in peer review, or both views may be included in the manuscript, or independent publications may be submitted in accordance with the policies of the publishing journal. The dissenting author(s) should not have a right to block the publication. The parties agree to abide by the decision of the journal editor. If kConFab (c/o PMCI) determines that the proposed publication includes potentially patentable materials, the Recipient Institution shall, at PMCI's request, postpone such publication for an additional sixty (60) days from the receipt of such request in order to allow patent applications to be filed.
9. If the Recipient Institution, Recipient Scientist or any person acting for or on behalf of the Recipient Institution or the Recipient Scientist makes an invention, discovery or any other intellectual property right that is derived or generated as a result of use of the Materials, the Recipient Institution will promptly inform PMCI. Inventorship shall be determined in accordance with Australian Patent Law (if patentable) or by mutual agreement between the parties (if not patentable), taking into account the respective roles and contributions of the parties to that invention, discovery or intellectual property right. In the case of a joint invention, PMCI and the Recipient Institution agree to negotiate in good faith any intellectual property ownership rights regarding such inventions, which may provide, *inter alia*, for the sharing of income, patent costs and the administration of the patent. Where the ownership of any invention, results or know-how arising from use of the Materials vests in the Recipient Institution, PMCI shall have a perpetual non-exclusive royalty-free license to use such invention, results or know-how for the sole purposes of PMCI's internal research and teaching.
10. THE RECIPIENT INSTITUTION ACKNOWLEDGES THAT THE MATERIALS ARE EXPERIMENTAL IN NATURE AND ARE PROVIDED BY PMCI WITHOUT WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED (EXCEPT FOR THAT STATED IN CLAUSE 11 BELOW OR THE EXTENT THAT SUCH WARRANTIES MAY BE IMPLIED BY LAW), AND WITHOUT REPRESENTATION THAT USE OF THE MATERIALS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PMCI SHALL HAVE NO LIABILITY FOR ANY USE, HANDLING STORAGE OR DISPOSAL OF THE MATERIALS BY THE RECIPIENT INSTITUTION, OR FOR ANY LOSS, CLAIM, DAMAGE OR LIABILITY OF ANY KIND OR NATURE WHICH MAY ARISE FROM OR IN CONNECTION WITH THIS AGREEMENT OR FROM THE USE, HANDLING, STORAGE OR DISPOSAL OF THE MATERIALS.
11. kConFab (c/o PMCI) warrants that the Materials were collected under appropriate Institutional Review Board or ethics committee approval and that the uses contemplated here are consistent with the informed consent, or other authorisation signed by the individuals from whom the Materials were obtained. kConFab (c/o PMCI) shall not supply

any information that would allow determination of the identities of the individuals. The Recipient Institution shall not make any attempt to identify the individuals or to make contact with them.

12. The Recipient Institution will indemnify and hold harmless kConFab and PMCI from any liability, damage, loss or expense (including reasonable attorneys' fees and expense of litigation) incurred by or imposed upon kConFab or PMCI in connection with any claims, suits, actions, demands or judgements arising out of the Recipient Institution's or the Recipient Scientist's use, handling, storage or disposal of the Materials, except to the extent that the liability is due to the gross negligence or wilful misconduct of kConFab or PMCI.
13. The Recipient Institution agrees that its rights and obligations hereunder are not assignable.
14. Any dispute or difference ("Dispute") between PMCI and the Recipient Institution arising out of or in connection with this Agreement (including but not limited to where PMCI and the Recipient Institution can not agree intellectual property ownership rights pursuant to clause 9) will be submitted to mediation administered by the Australian Commercial Disputes Centre Limited. The mediator will be an independent person agreed between the parties or, failing agreement, a mediator will be appointed by the President of the Law Institute of Victoria. Any mediation meetings and proceedings under this clause must be held in Melbourne, Victoria. If the Dispute is not settled within 28 days after the appointment of a mediator, the Dispute will be submitted to arbitration in accordance with, and subject to, the Rules of Conciliation and Arbitration of the International Chamber of Commerce. Subject to any contrary provisions in the Rules of Conciliation and Arbitration of the International Chamber of Commerce, the appointing and administering body must be the Australian Centre for International Commercial Arbitration (Melbourne), there must be one arbitrator, the language of the arbitration must be English and the place of arbitration must be Melbourne, Victoria.
15. This Agreement is governed by the laws of the State of Victoria, Australia, and the parties unconditionally submit to that exclusive jurisdiction.
16. This Agreement does not constitute any party the agent of another or imply that the parties intend constituting a partnership, joint venture or other form of association in which any party may be liable for the acts or omissions of another.

#### **Schedule A**

<p><b>A. MATERIALS</b> Brief description of Materials to be provided</p>	<p>Without limiting the above, for the purposes of this Agreement, "Materials" also includes any progeny, derivatives or replicates of any materials supplied and any combination or mixture of any materials with other substances as well as any associated data supplied under this Agreement.</p>
<p><b>B. TERM OF AGREEMENT</b></p>	<p>The right to use the Materials commences on the date of signature of the PMCI signatory and shall survive for a period of five years from that date unless PMCI otherwise requests that the Materials be returned or destroyed pursuant to clause 6.</p>

<p><b>C. RECIPIENT INSTITUTION</b> Name and full address of recipient institution</p>	
<p><b>D. RECIPIENT SCIENTIST</b> Scientist responsible for use of Materials within Recipient Institution.</p>	
<p><b>E. PERMITTED PURPOSE</b> Brief description of research to be undertaken with Materials</p>	
<p><b>F. RECIPIENT INSTITUTION'S AUTHORISED SIGNATORY</b></p>	<p>Signed: _____</p> <p><b>(WHO WARRANTS THAT THEY ARE DULY AUTHORISED TO EXECUTE THIS AGREEMENT ON BEHALF OF THE RECIPIENT INSTITUTION)</b></p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>
<p><b>G. PMCI'S AUTHORISED SIGNATORY</b></p>	<p>Signed: _____</p> <p><b>(WHO WARRANTS THAT THEY ARE DULY AUTHORISED TO EXECUTE THIS AGREEMENT ON BEHALF OF PMCI)</b></p> <p>Name: _____</p> <p>Title: _____</p> <p>Date: _____</p>