

**MATERIALS TRANSFER AGREEMENT; for exclusive use by kConFab ("Agreement")**

<b>SCHEDULE OF MATERIAL:</b>	
<b>TRANSFeree :</b>	

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 here to.

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 PETER MAC, 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
  - was developed independently by the Recipient Scientist and/or Recipient Institution
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 PETER MAC.
4. The Materials are not to be used directly or indirectly for any commercial purpose without express written consent of PETER MAC.
5. The Recipient Institution is responsible for ensuring and must ensure compliance with all applicable legislation relating to the possession, use, handling, storage and disposal of the Materials.
6. kConFab, through PETER MAC remains the custodian of the Materials and unused Materials will be returned to PETER MAC or destroyed upon PETER MAC's request. Receipt of PETER MAC'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, PETER MAC 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 PETER MAC and the PETER MAC researcher providing the Materials in a scientifically appropriate manner. A copy of the proposed publication is to be provided to PETER MAC thirty (30) days before submission and PETER MAC shall have the right to review the publication and identify any potentially patentable technology so that appropriate steps may be taken to protect such technology. The Recipient Institution shall, at PETER MAC's request, postpone such publication for an additional sixty (60) days from 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 PETER MAC. Ownership shall be determined on the basis of inventorship, taking into account the respective roles and contributions of the parties to that invention, discovery or intellectual property right. For the avoidance of doubt, mere supply of Materials with no inventive input will not result in any ownership rights. In the case of a joint invention, PETER MAC 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, PETER MAC shall have a perpetual non-exclusive royalty-free license to use such invention, results or know-how for the sole purposes of PETER MAC's internal research and teaching.

10. To the extent permitted by law, the Recipient Institution will indemnify and hold harmless PETER MAC from any liability, damage, loss or expense (including reasonable attorneys' fees and expense of litigation) incurred by or imposed upon PETER MAC 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 PETER MAC.
11. THE RECIPIENT INSTITUTION ACKNOWLEDGES THAT THE MATERIALS ARE EXPERIMENTAL IN NATURE AND ARE PROVIDED BY PETER MAC WITHOUT WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED (EXCEPT TO 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, PETER MAC 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.
12. kConFab (c/o PETER MAC) 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.
11. The Recipient Institution agrees that its rights and obligations hereunder are not assignable.
12. Any party seeking to resolve a dispute relating to this Agreement (the "Dispute") must notify the other party in writing and both parties must use their best endeavours to resolve by negotiation for a period of 30 days from the date of the written notice. If the parties fail to resolve the dispute in that thirty-day period they must refer the dispute to mediation or arbitration under rules agreed by the parties. If the dispute is not resolved within 30 days from the date of referral to the mediator or arbitrator, either party is free to commence court or tribunal proceedings. Nothing in this clause will prevent a party from seeking interlocutory relief through courts of appropriate jurisdiction. A party who chooses to take a legal action or proceeding will have that action or proceeding governed by the laws in which the other party resides and against whom the action or proceeding will be taken.
13. 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

<b>A. MATERIALS</b> Brief description of Materials to be provided	<b>Description of Materials:</b>  Without limiting the above, for the purposes of this Agreement, "Materials" also includes any progeny, unmodified derivatives or replicates of any materials supplied and any combination or mixture of any materials with other substances.
<b>B. TERM OF AGREEMENT</b>	The right to use the Materials commences on the date of signature of the PETER MAC signatory and shall survive for a period of five years from that date unless PETER MAC otherwise requests that the Materials be returned or destroyed pursuant to clause 6.
<b>C. RECIPIENT INSTITUTION</b> Name and full address of recipient institution	
<b>D. RECIPIENT SCIENTIST</b> Scientist responsible for use of Materials within Recipient Institution	
<b>E. PERMITTED PURPOSE</b> Brief description of research to be undertaken with Materials	
<b>F. RECIPIENT INSTITUTION'S AUTHORISED SIGNATORY</b>	Signed: _____  <b>(WHO WARRANTS THAT THEY ARE DULY AUTHORISED TO EXECUTE THIS AGREEMENT ON BEHALF OF THE RECIPIENT INSTITUTION)</b>  Name: _____ Title: _____ Date: _____
<b>G. PETER MAC'S AUTHORISED SIGNATORY</b>	Signed: _____  <b>(WHO WARRANTS THAT THEY ARE DULY AUTHORISED TO EXECUTE THIS AGREEMENT ON BEHALF OF PETER MAC)</b>  Name: _____ Title: _____ Date: _____