Standard Material Transfer Agreement for Dissemination of EUCOMM Project Materials For Non-Commercial Purposes Only

This Standard Material Transfer Agreement (the "SMTA") is concluded by and between:

(1) VIß vzw, Rijvisschestraat 120, 9052 Zwijnaarde, ßelgium (the "Provider") acting also on behalf of the ("Originator"):

(2) and xxxxx (the "Recipient") on behalf of (the "Researcher/s").

1. Definitions

1.1 *"Material"* means all material(s) supplied to *Recipient*, as described in the Annex of this *SMTA*, as amended from time to time by written agreement between the parties together with, any progeny or descendants of the foregoing which have not been intentionally modified and, any substances, functional subunit(s) or product(s) expressed by any of the foregoing materials which have not been intentionally modified.

1.2 *"Modifications"* are substances created by the *Recipient* or *Staff* which contain/incorporate the *Material*, e.g. but not limited to homologous recombination products, cassette exchange products, germ line transmission products, crosses, breeding varieties, cell fusions, sub-cloning products etc. Mice created from supplied targeting vectors or embryonic stem cells shall be considered *Modifications* together with any portion of such mice including embryos and gametes.

1.3 *"Commercial"* means the sale, lease, licence, disposal or other transfer of *Material* to a for-profit organisation and, any use by any organisation, including the *Recipient* or *Staff*, to perform contract research on behalf of a for-profit organisation, to produce or manufacture products for general sale, or to conduct research activities that result in any sale, lease, license, or transfer of the *Material* to a for-profit organisation.

1.4 *"Staff"* means the *Researcher/s* and those individuals under the direct supervision of the *Researcher/s*.

2. Use of the *Material* and *Modifications*

2.1 Upon acceptance of this *SMTA*, *Provider* shall supply to the *Recipient* the *Material* identified in the Annex (and in such amounts identified therein). *Recipient* shall itself, and procure that *Staff* shall, hold all *Material* subject to the terms herein.

2.2 *Recipient* shall itself, and procure that *Staff*, shall comply with all laws, regulations and codes of practice applicable to the *Material* and its use, storage and disposal as exist in the *Recipient's* place and country, including all guidelines for research on biological materials and animals. The *Material* shall not be used in humans or for diagnostic testing of human tissue or samples.

2.3 The *Material* shall only be used for non-*Commercial* purposes and only by the *Recipient* and *Staff* and must not be released to any other person or entity or used for any other purpose without the prior written consent of the *Originator*. Where attempts are made to generate mice from supplied embryonic stem cells, the *Recipient* shall inform the *Provider* by email at (eucomm.germline@helmholtz-muenchen.de) in confidence as soon as possible if germline contribution was obtained or not obtained as the case may be. This information is intended to document the quality of the resource. In addition, the Recipient is requested to: (i) register the alleles carried by mice generated from supplied vectors and/or embryonic stem cells in a public database such as Mouse Genomic Informatics (MGI); and (ii) submit breeding pairs to a public repository such as the European Mouse Mutant Archive (EMMA) or a similar repository of the Recipient's choice for cryopreservation and distribution to third parties for non-commercial purposes, using this *SMTA* in substantive form.

2.4 All *Material* supplied pursuant to Section 2.1 is supplied Ex Works (EXW Incoterms 2000) from *Provider's* facility. Subject to the terms of this *SMTA*, risk and title in the physical *Material* shall pass to *Recipient* upon its or its agent's collection of the *Material* from *Provider's* facility. *Recipient* is responsible for obtaining all import and export clearances and licences and arranging itself for the import of the *Material* to its local jurisdiction and facility.

2.5 *Recipient* shall pay *Provider* the handling fee and shipping costs identified in the Annex plus any applicable taxes (e.g. VAT) within thirty (30) days after receipt of *Provider's* invoice.

2.6 *Recipient* shall, subject to Section 2.7 and Section 3, own title in any physical *Modifications* that it or the *Staff* create(s).

2.7 *Modifications* shall only be used for non-*Commercial* purposes and only by the *Recipient* and *Staff*. *Recipient* may release *Modifications* to non-profit organizations for non-*Commercial* use, under an Material Transfer Agreement at least as protective as this Agreement.

3. Intellectual Property

3.1 All intellectual property rights, results, data and discoveries arising out of *Recipient's* and/or *Staff's* use of the *Material* shall belong to the *Recipient* save that, notwithstanding Section 2.4, the *Originator* retains sole ownership of any intellectual property rights in the form of the *Materials*. *Recipient* shall acknowledge VIB vzw and the EUCOMM Consortium as the source of the *Material* in any publication/presentation reporting on the use of the Material..

3.2 If the *Recipient* or *Staff* create, own, benefit from or acquire any intellectual property rights in respect of (i) any *Modifications*, or (ii) any inventions which directly relate to the use of the *Material* and which are conceived of or first actually reduced to practice in the performance of the research under this *SMTA* (together, "IPR") the Recipient shall, to the extent it is legally able to do so (and except where the Recipient is a U.S. Public Health Service agency), grant to the *Originator* a non-exclusive, worldwide, royalty-free, sub-licensable, fully paid-up licence to use such IPR for the *Originator's* own internal, non-profit making research and teaching purposes and to allow *Originator/Provider* to continue to distribute the *Material* and applicable *Modifications* to third parties for non-*Commercial* research and teaching purposes. Where the *Recipient* is an agency of the U.S. Public Health Service ("PHS", which includes NIH, FDA and CDC), it is PHS policy to permit and encourage use of the IPR for the *Originator's* own internal, non-profit making research and teaching purposes and to allow the *Originator* and *Provider* to continue to distribute the *Material* and applicable *Modifications* to third parties for non-*Commercial* research and teaching purposes on a non-profit basis.

4. WARRANTY AND LIABILITY

RECIPIENT ACCEPTS THAT *MATERIAL* IS EXPERIMENTAL IN NATURE, MAY HAVE HAZARDOUS PROPERTIES AND IS SUPPLIED WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, FOR EXAMPLE (BUT WITHOUT LIMITATION) AS TO FITNESS FOR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. *RECIPIENT* AGREES THAT ANY AND ALL LIABILITY OF *ORIGINATOR* AND *PROVIDER* ASSOCIATED WITH THE TRANSFER OF THE *MATERIAL* OR USE OF *MODIFICATIONS* IS EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. *RECIPIENT* ASSUMES ALL AND ANY LIABILITY FOR CLAIMS WHICH MAY ARISE FROM (I) ITS OR ITS *STAFF'S* USE, STORAGE OR DISPOSAL OF THE *MATERIAL* OR *MODIFICATIONS* OR (II) AS BETWEEN *RECIPIENT* AND *PROVIDER*, ANY THIRD PARTY'S USE, STORAGE OR DISPOSAL OF THE *MODIFICATIONS* WHERE SUCH THIRD PARTY HAS RECEIVED *MODIFICATIONS* FROM THE *RECIPIENT*.

5. Miscellaneous

5.1 This *SMTA* shall be construed according to the laws of the place of incorporation or seat of the *Provider*, under exclusion of any of its choice of law and venue principles. Any dispute arising from the interpretation and/or implementation of this *SMTA*, which cannot be settled amicably, shall be brought before a competent court of first instance in the city of the country of incorporation or seat of the *Provider*. Section 5.1 shall not be applicable for state related educational institutions in the United States of America (e.g. universities) and United States of America Federal Government funded research institutes if such institutions/institutes cannot enter into agreements governed by foreign laws and/or jurisdiction in which case this *SMTA* shall be construed with the laws and/or jurisdiction of the place of incorporation or seat of such United States of America institution/institute.

5.2 This *SMTA* shall remain in force until conclusion of the experiments shown in the Annex or for as long as the *Recipient* and/or *Staff* have possession of any of the *Materials* or *Modifications*, whichever is the longer. Sections 3 and 4 shall survive the expiration or termination of this *SMTA* for any reason.

5.3 If any special conditions are set out in the Annex they shall apply to this *SMTA*. This *SMTA* is personal and non-assignable by the *Recipient* and it, together with its Annex, constitutes the entire agreement and understanding between the parties relating to its subject matter.

Signatures

Provider : VIß vzw

Recipient: