

Material Transfer Agreement

between

University Medical Center of Johannes Gutenberg-University Mainz (UMC-Mainz)

represented by its Board of Directors which, in turn, is represented by Univ.-Prof. Dr. Ulrich Förstermann, Chief Scientific Officer, Dean

Langenbeckstr. 1

D-55131 Mainz

Germany

executing unit: Center for Thrombosis and Hemostasis (CTH)

scientific director CTH: Univ.-Prof. Dr. Wolfram Ruf

executing scientist: Univ.-Prof. Dr. med Philip Wenzel

- PROVIDER -

And

...

- RECIPIENT -

Preamble

TBCEtm2c (TBCEfl/fl) strain (EM:13235)

ORIGINAL MATERIAL: ...

§ 1 Definitions

- (1) ORIGINAL MATERIAL: The description of the material being transferred specified above.
- (2) MATERIAL: ORIGINAL MATERIAL, PROGENY, and UNMODIFIED DERIVATIVES. The MATERIAL shall not include: (a) MODIFICATIONS, or (b) other substances created by the RECIPIENT through the use of the MATERIAL which are not MODIFICATIONS, PROGENY, or UNMODIFIED DERIVATIVES.
- (3) PROGENY: Unmodified descendant from the ORIGINAL MATERIAL, such as virus from virus, cell from cell, or organism from organism.
- (4) UNMODIFIED DERIVATIVES: Substances created by the RECIPIENT which constitute an unmodified functional subunit or product expressed by the ORIGINAL MATERIAL. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the ORIGINAL MATERIAL, proteins expressed by DNA/RNA supplied by the PROVIDER, or monoclonal antibodies secreted by a hybridoma cell line.
- (5) MODIFICATIONS: Substances created by the RECIPIENT which contain/incorporate the MATERIAL.
- (6) COMMERCIAL PURPOSES: The sale, lease, license, or other transfer of the MATERIAL or MODIFICATIONS to a for-profit organization. COMMERCIAL PURPOSES shall also include uses of the MATERIAL or MODIFICATIONS by any organization, including RECIPIENT, to perform contract research, to screen compound libraries, 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 or MODIFICATIONS to a for-profit organization. However, industrially sponsored academic research shall not be considered a use of the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES per se, unless any of the above conditions of this definition are met.

- (7) NONPROFIT ORGANIZATION(S): A university or other institution of higher education or any nonprofit scientific or educational organization. As used herein, the term also includes government agencies.
- (8) PURPOSE: The planned research and work plan to be executed by RECIPIENT. The purpose is specified in Annex 1.

§ 2 Ownership and Use

- (1) PROVIDER agrees to provide ORIGINAL MATERIAL to RECIPIENT for the PURPOSE.
- (2) The PROVIDER retains ownership of the MATERIAL, including any MATERIAL contained or incorporated in MODIFICATIONS. The original concept of the creation and concept of ORIGINAL MATERIAL, MATERIAL is considered proprietary to PROVIDER.
- (3) The RECIPIENT retains ownership of: (a) MODIFICATIONS (except that, the PROVIDER retains ownership rights to the MATERIAL included therein), and (b) those substances created through the use of the MATERIAL or MODIFICATIONS, but which are not PROGENY, UNMODIFIED DERIVATIVES or MODIFICATIONS (i.e., do not contain the ORIGINAL MATERIAL, PROGENY, UNMODIFIED DERIVATIVES). If there are results from collaborative efforts of the PROVIDER and the RECIPIENT, joint ownership will be negotiated.
- (4) The RECIPIENT and the RECIPIENT SCIENTIST agree that the MATERIAL:
 - a. is to be used solely for teaching and academic research purposes exclusively in the field of PURPOSE
 - b. will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects without the written consent of the PROVIDER;
 - c. is to be used only at the RECIPIENT organization and only in the RECIPIENT SCIENTIST's laboratory under the direction of the RECIPIENT SCIENTIST or others working under his/her direct supervision; and
 - d. will not be transferred to anyone else within the RECIPIENT organization without the prior written consent of the PROVIDER;
 - e. will be provided to RECIPIENT free of charge except for shipping costs, which will be borne by RECIPIENT.
- (5) RECIPIENT hereby acknowledges that MATERIAL may not be transferred to any third party.
- (6) The RECIPIENT and the RECIPIENT SCIENTIST agree to refer to the PROVIDER any request for the MATERIAL from anyone other than those persons working under the RECIPIENT SCIENTIST's direct supervision.
- (7) The Recipient acknowledges that the Recipient shall send any draft publication to UMC for its review at the latest sixty (60) days before its submission to a journal, publisher or the organizer of a scientific event. The results shall not be published before the initial publication by UMC. In order to enable UMC to take steps necessary to protect its Intellectual Property rights, the Recipient ensures that the Recipient scientist shall postpone the aforementioned submission with another ninety (90) days upon the UMC's request. Recipient and the Recipient Scientist shall acknowledge or credit the UMC Scientist as the source of the Material in any publication of the Research according to academic practice and will provide UMC with a copy of the manuscript of such publication as early as possible.

§ 3 Distribution

- (1) The RECIPIENT and/or the RECIPIENT SCIENTIST shall have the right, without restriction, to distribute substances created by the RECIPIENT through the use of the ORIGINAL MATERIAL only if those substances are not PROGENY, UNMODIFIED DERIVATIVES, or MODIFICATIONS.
- (2) Without written consent from the PROVIDER, the RECIPIENT and/or the RECIPIENT SCIENTIST may NOT provide MODIFICATIONS for COMMERCIAL PURPOSES. It is recognized by the RECIPIENT that such COMMERCIAL PURPOSES may require a commercial license from the PROVIDER and the PROVIDER has no obligation to grant a commercial

license to its ownership interest in the MATERIAL incorporated in the MODIFICATIONS. Nothing in this paragraph, however, shall prevent the RECIPIENT from granting commercial licenses under the RECIPIENT's intellectual property rights claiming such MODIFICATIONS, or methods of their manufacture or their use.

§ 4 Patent Application

- (1) The RECIPIENT acknowledges that the MATERIAL is or may be the subject of a patent application. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the RECIPIENT under any patents, patent applications, trade secrets or other proprietary rights of the PROVIDER, including any altered forms of the MATERIAL made by the PROVIDER. In particular, no express or implied licenses or other rights are provided to use the MATERIAL, MODIFICATIONS, or any related patents of the PROVIDER for COMMERCIAL PURPOSES.
- (2) The RECIPIENT is free to file patent application(s) claiming inventions made by the RECIPIENT through the use of the MATERIAL but agrees to notify the PROVIDER upon filing a patent application claiming MODIFICATIONS or method(s) of manufacture or use(s) of the MATERIAL.

§ 5 Commercial Use

- (1) If the RECIPIENT desires to use or license the MATERIAL or MODIFICATIONS for COMMERCIAL PURPOSES, the RECIPIENT agrees, in advance of such use, to negotiate in good faith with the PROVIDER to establish the terms of a commercial license. It is understood by the RECIPIENT that the PROVIDER shall have no obligation to grant such a license to the RECIPIENT, and may grant exclusive or non-exclusive commercial licenses to others, or sell or assign all or part of the rights in the MATERIAL to any third party(ies), subject to any pre-existing rights held by others and obligations to the Federal Government.

§ 6 Liability

- (1) Any MATERIAL delivered pursuant to this Agreement is understood to be experimental in nature and may have hazardous properties. The PROVIDER MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.
- (2) Except to the extent prohibited by law, the RECIPIENT assumes all liability for damages which may arise from its use, storage or disposal of the MATERIAL. The PROVIDER will not be liable to the RECIPIENT for any consequential damages, lost profits, loss, claim or demand made by the RECIPIENT, or made against the RECIPIENT by any other party, due to or arising from the use of the MATERIAL by the RECIPIENT, except to the extent permitted by law when caused by the gross negligence or willful misconduct of the PROVIDER.
- (3) The Recipient and the Recipient Scientist shall acknowledge or credit the PROVIDER and PROVIDER Scientist as the source of the MATERIAL in any publication of the Research according to academic practice and will provide PROVIDER with a copy of the manuscript of such publication as early as possible.

§ 7 Termination

- (1) This Agreement will terminate on the earliest of the following dates: (a) when the MATERIAL becomes generally available from third parties, for example, through reagent catalogs or public depositories or (b) on completion of the RECIPIENT's current research with the MATERIAL, or (c) on thirty (30) days written notice by either party to the other, provided that:

- a. if termination should occur under § 7 (3) (a), the RECIPIENT shall be bound to the PROVIDER by the least restrictive terms applicable to the MATERIAL obtained from the then-available resources; and
- b. if termination should occur under § 7 (3) (b) above, the RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS; and
- c. in the event the PROVIDER terminates this Agreement other than for breach of this Agreement or for cause such as an imminent health risk or patent infringement, the PROVIDER will defer the effective date of termination for a period of up to one year, upon request from the RECIPIENT, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, RECIPIENT will discontinue its use of the MATERIAL and will, upon direction of the PROVIDER, return or destroy any remaining MATERIAL. The RECIPIENT, at its discretion, will also either destroy the MODIFICATIONS or remain bound by the terms of this agreement as they apply to MODIFICATIONS.

§ 8 Miscellaneous

- (1) This agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of the MATERIAL or the MODIFICATIONS. RECIPIENT SCIENTIST shall mention the source of the MATERIAL and the PROVIDER SCIENTIST and responsible PROVIDER members in any publication as co-authors or other appropriate way unless otherwise agreed between PROVIDER SCIENTIST and RECIPIENT SCIENTIST.
- (2) The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations, such as, for example, those relating to research involving the use of animals or recombinant DNA.
- (3) The RECIPIENT shall, at the request of the PROVIDER, return or destroy all unused MATERIAL.
- (4) Paragraphs 4, 5, 6, 7, 8 shall survive termination.
- (5) The MATERIAL is distributed free of charge as a service to the research community, or with an optional transmittal fee solely to reimburse the PROVIDER for its preparation and distribution costs. RECIPIENT will bear the shipping costs.
- (6) It is assured that the material transfer is performed independently from any business transactions and decisions, e.g. on supply purchases.
- (7) No modification of this Agreement will be deemed effective unless in writing and signed by each of the parties. No waiver under this Agreement will be effective unless in writing and signed by the party to be bound and then only to the extent expressly waived in such signed writing.
- (8) This Agreement shall be governed by and construed in accordance with German law except its provision on conflicts of law (*Internationales Privatrecht*). English legal terms are interpreted according to German legal interpretation. Place of jurisdiction is Mainz, Germany.
- (9) This agreement shall come into force on the date of the last signature.

[Remainder of page intentionally left blank; signature page to follow.]

PROVIDER:

Mainz, _____

Recipient:_____,
_____Philip Wenzel
Univ.-Prof. Dr. med
(Investigator)<Name>
<Titel>
(Recipient)Wolfram.Ruf
Univ.-Prof. Dr.
(Director of Clinic/Department/Institute)<Name>
<Titel>
(Scientist)Univ.-Prof. Dr. Ulrich Förstermann
Chief Scientific Officer, Dean (Wiss. Vorstand)
(Provider)<Name>
<Titel>
(additional signature, if applicable)**Annex 1:**

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