

# **MATERIAL TRANSFER AGREEMENT**

## **I. Definitions:**

1. **PROVIDER:** Philipps-Universität Marburg, represented by its president, Biegenstraße 10, 35032 Marburg, Germany

2. **PROVIDER SCIENTIST:**

3. **RECIPIENT:**

4. **RECIPIENT SCIENTIST:**

5. **ORIGINAL MATERIAL:**

6. **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.

7. **PROGENY:** Unmodified descendant from the MATERIAL, such as virus from virus, cell from cell, or organism from organism.

8. **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.

9. **MODIFICATIONS:** Substances created by the RECIPIENT which contain/incorporate the MATERIAL.

10. **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.

11. **NONPROFIT ORGANIZATION(S)**: A university or other institution of higher education or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute. As used herein, the term also includes government agencies.

## **II. Terms and Conditions of this Agreement:**

1. The **PROVIDER** retains ownership of the **MATERIAL**, including any **MATERIAL** contained or incorporated in **MODIFICATIONS**.

2. 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 either 2 (a) or 2 (b) results from the collaborative efforts of the **PROVIDER** and the **RECIPIENT**, joint ownership may be negotiated.

3. The **RECIPIENT** and the **RECIPIENT SCIENTIST** agree that the **MATERIAL**:

(a) is to be used solely for the following research 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**.

4. 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. To the extent supplies are available, the **PROVIDER** or the **PROVIDER SCIENTIST** agrees to make the **MATERIAL** available, under a separate agreement having terms consistent with the terms of this Agreement, to other scientists (at least those at **NONPROFIT ORGANIZATION(S)**) who wish to replicate the **RECIPIENT SCIENTIST**'s research; provided that such other scientists reimburse the **PROVIDER** for any costs relating to the preparation and distribution of the **MATERIAL**.

5(a) 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**.

(b) Without written consent from the **PROVIDER**, the **RECIPIENT** and/or the **RECIPIENT SCIENTIST** may NOT provide **MODIFICATIONS to NONPROFIT ORGANIZATION(S) and of course NOT provide 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.

6. 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**.

7. 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.

8. The Provider Institution acknowledges that the results of the research shall belong to the **RECIPIENT** (except that the **PROVIDER** retains ownership rights to any **MATERIAL** included therein) and that the **RECIPIENT** is free to file patent application(s) claiming inventions made by the **RECIPIENT** through the use of the **MATERIAL**, but if the research using the **MATERIAL** results in a discovery, invention, new use or a product (collectively, the "Invention"), the **RECIPIENT** agrees to disclose promptly such Invention to the **PROVIDER** in confidence. Legal title to the Invention shall be determined by mutual agreement between the parties, taking into account the role of the **MATERIAL** and the contributions of the individuals involved in the development of the Invention.

9. 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.

10. 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 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**.

11. This agreement shall not be interpreted to prevent or delay publication of research findings resulting from the use of the **MATERIAL** or the **MODIFICATIONS**. The **RECIPIENT SCIENTIST** agrees to provide appropriate acknowledgment consistent with academic standards of the source of the **MATERIAL** by co-authorship or acknowledgment, whichever is appropriate, in all publications.

12. The **RECIPIENT** agrees to use the **MATERIAL** in compliance with all statutes, guidelines and regulations applicable to the research, such as, for example, those relating to research involving the use of animals or recombinant DNA. **RECIPIENT** agrees to comply with all applicable laws and regulations, including laws and regulations controlling the export of goods, technology, software, and services. In particular, without limiting the generality of the foregoing, **RECIPIENT** agrees not to export, re-export or import the **MATERIAL** provided to it under this Agreement or any direct product thereof in violation of any laws or regulations.

13. This Agreement will terminate on the earliest of the following dates: (a) after three years after last signature, or (b) when the **MATERIAL** becomes generally available from third parties, for example, through reagent catalogs or public depositories, or (c) on completion of the **RECIPIENT**'s current research with the **MATERIAL**, or (d) on thirty (30) days written notice by either party to the other, or (e) on the date specified in a separate agreement consistent with this Agreement, provided that:

(i) if termination should occur under 13(a), the **RECIPIENT** shall be bound to the **PROVIDER** by the least restrictive terms applicable to the **MATERIAL** obtained from the then-available sources; and

(ii) if termination should occur under 13(b) or (d) 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

(iii) in the event the **PROVIDER** terminates this Agreement under 13(c) 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**.

14. Paragraphs 6, 9, and 10 shall survive termination.

15. The **MATERIAL** is provided at no cost. **RECIPIENT** will pay the **PROVIDER** for the cost of preparing and shipping the **MATERIAL**.

16. The MTA and all possible disputes take place under German law. Place of jurisdiction will be Marburg, Germany.

**This is agreed to by the Following Parties:**

PROVIDER

Institution: Philipps-Universität Marburg

Address: Biegenstraße 10  
35032 Marburg

Authorized  
Official: Prof.Dr.Katharina Krause

Title: President

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

RECIPIENT

Institution:

Address:

Authorized  
Official:

Title:

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Acknowledged as read by  
RECIPIENT's SCIENTIST

Name:

Title: Prof.  
Dr. \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_