

Standard Material Transfer Agreement of the German Gene Trap Consortium

(for non-commercial purposes of U.S. government institutions only)

This Standard Material Transfer Agreement - hereinafter referred to as the "SMTA"- is concluded by and between **Helmholtz Zentrum München – Deutsches Forschungszentrum für Gesundheit und Umwelt (GmbH)**, Ingolstädter Landstrasse 1, D-85764 Neuherberg, Germany (hereinafter referred to as the "*Provider*") on behalf of the **German Gene Trap Consortium** (hereinafter referred to as the "*GGTC-Partners*") and

hereinafter referred to as the "*US Government Recipient*" -

for its researcher/s

hereinafter referred to as the "*Researcher/s*" -.

1. Definitions

- 1.1 Upon request the *Provider* shall provide to the *US Government Recipient* the *Material* as described and quantified in **Annex 1**, hereinafter referred to as the "*Original Material*". **Annex 1** constitutes an integral part of this *SMTA*.
- 1.2 "*Progeny*" is defined as unmodified descendant from the *Original Material*, such as virus from virus, cell from cell, or organism from organism.
- 1.3 "*Unmodified Derivatives*" are substances created by the *US Government Recipient* which constitute an unmodified functional subunit or product expressed by the *Original Material*, e.g. subclones of unmodified cell lines, purified or fractionated subsets of the *Original Material*, proteins expressed by DNA/RNA, or monoclonal antibodies secreted by a hybridoma cell line.
- 1.4 "*Modifications*" are substances created by the *US Government Recipient* which contain/incorporate the *Material*, e.g. crosses, breeding varieties, cell fusions, subcloning etc.
- 1.5 The "*Material*" is and remains the exclusive property of the *GGTC-Partners* and comprises the *Original Material*, any *Progeny*, *Unmodified Derivatives* and the *Original Material* contained in *Modifications*.
- 1.6 "*Commercial Purposes*" mean the sale, lease, license, or other transfer of the *Material* to a profit organisation. *Commercial Purposes* shall also include use by any organisation, including the *US Government Recipient*, to perform contract research with the exception of government funded projects with for-profit entities, 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.
- 1.7 "*Information*" includes, without limitation, any scientific, technical, trade or business information delivered to the *US Government Recipient* by the *GGTC-Partners* in the context of this *SMTA*.

2. Use of the *Material*

- 2.1 The *US Government Recipient* shall use the *Material* in compliance with all laws and regulations applicable to such *Material* in the *US Government Recipient's* place and country, including guidelines for work with recombinant DNA. The *Material* being experimental in nature must not be used in humans or animals unless - where applicable - explicitly admitted by an ethics committee or regulations on the treatment of laboratory animals.
- 2.2 The *Material* shall be used exclusively for the purposes described in **Annex 1**. It must not be used for any *Commercial Purposes*. It must not be released to any person other than the *US Government Recipient's Researcher/s* named above and staff under their direct supervision who are bound by obligations not less strict than those set out herein. It shall be handled confidentially and forwarded to third parties only to the extent of the *Provider's* prior written approval.

3. Publications

The *US Government Recipient* shall have the right to publish its findings and results related to the *Material*, provided that the *GGTC-Partners'* researcher/s are either named as co-authors of the publication or cited as the source of the *Material*, according to the respective contribution of the *Material* to the publication. The *US Government Recipient* shall submit to the *Provider* all publications at least four weeks prior to their public disclosure. The *Provider* and the *GGTC-Partners* agree to keep the *US Government Recipient's* publication confidential until published by the *US Government Recipient*.

4. Intellectual Property

- 4.1 Where the research involving the *Material* or a *Modification* thereof results in an invention or a patentable *Modification* of the *Material*, the *US Government Recipient* and its *Researcher/s* shall promptly disclose this development to the *Provider*. *US Government Recipient* and the *GGTC-Partners* shall decide in common about the inventorship, taking in due consideration the *GGTC-Partners'* contribution through their *Material*. Inventorship shall be determined according to applicable laws in the individual countries where the patent application is filed. Decisions about all further proceedings, such as filing of a patent application or exploitation, shall be made after inventorship is determined.
- 4.2 At the *GGTC-Partners'* request *US Government Recipient* agrees to provide the *GGTC-Partners* for their internal research use with reasonable quantities of published materials developed, made or discovered in the course of *US Government Recipient's* research studies using the *Material*, always provided that *US Government Recipient* may fulfil this obligation with reasonable effort and with an equivalent Material Transfer Agreement. Such transfer shall be free of charge, but an appropriate handling/shipping fee may be charged by *US Government Recipient*.
- 4.3 *US Government Recipient* agrees not to file for any intellectual property protection for *Original Material*.

5. Warranty and Liability

- 5.1 Any *Material* provided pursuant to this *SMTA* is understood to be experimental in nature. It may have hazardous properties. The *GGTC-Partners* make no representations and extend no warranties of any kind, express or implied, as to the fitness of the *Material* for a particular purpose, or that the use of the *Material* will not infringe any patent, copyright, trademark, or other proprietary rights of a third party.
- 5.2 It is the intention of *US Government Recipient* that *GGTC-Partners* not be liable to *US Government Recipient* for any claims or damages arising from *US Government Recipient's* use of the *Material*. The *GGTC-Partners* disclaim any and all liability associated with the

transfer of the *Material*. Unless prohibited by law, the *US Government Recipient* assumes any and all liability for claims for damages which may arise from the use, storage, handling or disposal of the *Material* by *US Government Recipient*, except to the extent caused by the gross negligence or wilful misconduct of the *GGTC-Partners*.

6. Confidentiality

During the term of this *SMTA* and for three years thereafter, the *US Government Recipient* shall keep confidential any *Information* transferred by the *GGTC-Partners* and shall not disclose such *Information* to any third party without prior written consent of the *Provider*. The *US Government Recipient's* rights to publication of results as defined under Section 3 remain unaffected. The secrecy obligation does not apply to *Information* as can be established by reasonable proof which

- a) was already known to the *US Government Recipient* or independently developed by him prior to the disclosure of the *Information* by the *GGTC-Partners*; or
- b) was or becomes public knowledge through no fault of the *US Government Recipient*; or
- c) was obtained by the *US Government Recipient* from a third party entitled to use and disclose the same as a matter of right; or
- d) the *US Government Recipient* is required by law to disclose.

7. Miscellaneous

- 7.1 The *Original Material* is provided cost-free; however, a handling fee may be charged for its preparation and shipment to the *US Government Recipient*. As applicable, both items are specified in an accompanying letter to this *SMTA*.
- 7.2 This *SMTA* shall be construed according to the laws of the Federal Republic of Germany. Any dispute arising from the interpretation and/or implementation of this *SMTA*, which cannot be settled amicably within 60 days between two named scientific members of *US Government Recipient* and the *Provider*, shall be settled by non-binding arbitration according to the arbitration rules of the International Chamber of Commerce, to the extent funds appropriated for this purpose are available to *US Government Recipient* and the cost to *US Government Recipient* does not exceed 25,000.- US\$.
- 7.3 This *SMTA* shall enter into force on the date of the last signature to it. *US Government Recipient* has the right to terminate this *SMTA* at any time, in which case *US Government Recipient* shall discontinue its use of the *Material* within thirty (30) days and destroy or return to the *Provider* the remaining *Original Material* and *Modifications* incorporating the *Original Material*. The provisions concerning Publications, Intellectual Property and Liability shall survive this termination.
- 7.4 In the event the *Material* or part of it should be under physical control of the *US Government Recipient* before this *SMTA* is signed, the terms and provisions shall apply for this *Material* retroactively.

The representatives hereby expressly certify and affirm that they are authorized to sign this agreement on behalf on their institution.

The signatories hereby expressly certify and affirm that this SMTA is identical with the pdf-file for download on the German Gene Trap Consortium homepage.

At _____, on _____

Signature of authorized representative

(stamp)

Name and Title

At Neuherberg, on _____

*Helmholtz Zentrum München –
Deutsches Forschungszentrum für Gesundheit und Umwelt (GmbH)*

Signature of authorized representative

ANNEX 1

Provider's principal scientist providing the Material:	Recipient principal scientist name, address, e-mail, phone and fax number:
Address to send the Material to:	Name, address, e-mail, phone and fax number of Recipient Technology Transfer officer/authorized official:
VAT number (if applicable):	
Description of the Material:	
Material (e.g. ES cell clone):	
Aims of the intended experiments:	