

UC DAVIS MATERIAL TRANSFER AGREEMENT FOR THE NIH KNOCK-OUT MOUSE PROGRAM

This Material Transfer Agreement (“Transfer Agreement”) is made by and between The Regents of the University of California as represented by and solely limited to its Davis campus (“UC Davis” or “We” or “Us”), having a place of business at UC Davis InnovationAccess, Technology Transfer Services, University of California, Davis; 1850 Research Park Drive, Suite 100; Davis CA 95618-6134, U.S.A., and the Institution as defined and identified below (“Recipient” or “You”). UC Davis and Recipient are referred to collectively hereinafter as the “Parties” and individually as a “Party.” The material supplied under this Transfer Agreement was created under the National Institutes of Health (NIH) Knock-Out Mouse Program (the “KOMP”).

1. DEFINITIONS.

“*Change of Control*” means a merger, acquisition or reorganization involving all or substantially all of the voting securities and/or assets of a Party.

“*Claim*” means any third party claim, demand, action or proceeding.

“*Commercial Entity*” means any entity that is not an Institution, including for-profit corporations and commercial *spin-offs* or *spin-outs* from an Institution.

“*KOMP Materials*” means any ES Cells and Targeting Vectors delivered to You hereunder from time to time, and any copies (including regenerated or regrown lines), KO Mice, portions (including, without limitation, Embryos) or progeny thereof.

“*Embryos*” means embryos derived from KO Mice.

“*ES Cells*” means embryonic stem cells used to produce or derived from KO Mice.

“*Field of Use*” means use for any research purpose, including research directed toward the discovery, development or commercialization of therapeutic and diagnostic products, resulting from any and all teaching, research and development activities conducted by faculty, researchers, students or other employees of any Institution or Commercial Entity, whether or not resulting in patentable inventions and whether or not published, but excluding any fee-for-service conducted for the benefit of a third party.

“*Institution*” means any academic, non-profit, or governmental entity or institution worldwide.

“*KO Line*” means any of the knockout lines available from Children’s Hospital and Research Center Oakland, UC Davis, Wellcome Trust Sanger Institute or Regeneron in the form of ES Cells, having a disruption in a particular Target Gene.

“*KO Mice*” means KO Lines in the form of live mice and any unmodified progeny or unmodified derivative thereof.

“*Loss*” means any cost, loss, settlement, award, judgment, liability, damages, or expense (including attorneys’ fees).

“*Target Gene*” means the specific gene that is the target for disruption.

“*Targeting Vectors*” means DNA constructs used to produce ES Cells.

2. USE AND DELIVERIES. We are providing You with the KOMP Materials specified in Exhibit A attached hereto for You to use only in the Field of Use. Upon receipt of an original, signed version of this Transfer Agreement and payment of applicable administrative, shipping, and handling charges plus, for Commercial Entities only, fifteen thousand dollars (US \$15,000) per KO Line, We shall deliver or cause to be delivered to You such KOMP Materials in reasonable quantities and forms, subject to availability and compliance with all customs and other laws and regulations applicable to the shipment and acceptance of the KOMP Materials.

3. RESTRICTIONS ON TRANSFER. You acknowledge and agree that You have no right or authority to, and you shall not without prior written authorization, distribute, sell or transfer any KOMP Materials to any Commercial Entity or any other third party.

4. PUBLICATION AND PATENTING. You are free to publish, present, display, disclose or seek patent or other intellectual property protection on any inventions arising from the use of the KOMP Materials, with no restrictions or obligations of any kind, so long as You use reasonable efforts to credit or otherwise acknowledge the KOMP as the creator of the KOMP Materials.

5. RECIPIENT REPRESENTATIONS. You represent that: (a) You will use the KOMP Materials solely within the Field of Use and in accordance with all applicable laws and regulations; and (b) You will not make any unauthorized transfer or sale of the KOMP Materials.

6. KOMP DISCLAIMERS, LIABILITY.

- (a) **No Indemnity/Liability.** You acknowledge and agree that We have no obligation or liability to indemnify You for any Loss arising from any Claim arising from your use of the KOMP Materials, including, without limitation, that the KOMP Materials (or any use thereof) infringe any third party’s intellectual property rights, or any Claim related to the performance, functionality, use or results of the KOMP Materials. Except to the extent prohibited by law, You assume all liability for Losses which may arise from your use, storage or disposal of the KOMP Materials.
- (b) **NO REPRESENTATIONS OR WARRANTIES. YOU ACKNOWLEDGE THAT THE KOMP MATERIALS ARE PROVIDED “AS-IS, WHERE-IS, WITH ALL FAULTS.” WE DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, RELATED TO THE KOMP MATERIALS INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.**
- (c) **INDEMNIFICATION.** IF YOU ARE A COMMERCIAL ENTITY YOU AGREE TO INDEMNIFY AND HOLD HARMLESS CHILDREN’S HOSPITAL AND RESEARCH CENTER OAKLAND, UC DAVIS, WELLCOME TRUST SANGER INSTITUTE, REGENERON AND THE NIH FOR ANY CLAIMS ARISING FROM YOUR USE OF THE KOMP MATERIALS.

7. EXCLUSION OF LIABILITY FOR CONSEQUENTIAL DAMAGES. WE WILL NOT BE LIABLE TO YOU FOR DAMAGES ARISING OUT OF OR RELATED TO THIS TRANSFER AGREEMENT FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS, COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES AND ANY INDIRECT, SPECIAL, INCIDENTAL, ECONOMIC OR CONSEQUENTIAL LOSS OR DAMAGE, LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF OPPORTUNITIES OR SAVINGS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.

8. TERMINATION. In the event that any party is in default in the performance of any material obligation under this agreement and the default has not been remedied within thirty (30) days written notice of such default, the non-defaulting party may terminate this agreement; and if the RECIPIENT is in default, then the RECIPIENT will, as directed by the PROVIDER, return, destroy or dispose of all the KOMP Materials.

9. GENERAL.

- (a) This Transfer Agreement may not be assigned by You without UC Davis’s express written consent. However, in the event of a Change of Control, this Transfer Agreement shall be binding upon your successor in the event of a Change of Control.
- (b) This Transfer Agreement is the final and entire agreement regarding the subject matter herein, and supersedes all previous oral and written understandings, negotiations, term sheets, and agreements on the subject matter herein.
- (c) This Transfer Agreement may not be revised, amended, interlined, addended or otherwise modified by You without the prior written consent of UC Davis.

IN WITNESS WHEREOF, the parties have each caused a duly authorized representative to execute this Transfer Agreement.

UC Davis

Recipient



Authorized Signature

Rafael A. Gacel

Associate Director, Technology Transfer Services

Authorized Signature

Printed Name

Title

Telephone Number

Effective Date

Recipient Name and Principal Address

Delivery Address for the KOMP Materials

Exhibit A

KO Line Identification

Embodiments (ES cells/Targeting Vectors)