MATERIAL TRANSFER AGREEMENT

This agreement is made by and between **University Clinical Centre of Heidelberg** represented in law by its Commercial Director Ms. Irmtraut Gürkan, Im Neuenheimer Feld 672, 69120 Heidelberg on behalf of the Ruprecht-Karls-University Heidelberg

- hereinafter referred to as **"PROVIDER"** -

and

- hereinafter referred to as **RECIPIENT**-

1. Definitions

1.1 Upon request the PROVIDER shall provide to the RECIPIENT _____ , for use in the laboratory of _____- hereinafter named “RECIPIENT’s RESEARCHER” ("ORIGINAL MATERIAL”) described and quantified in Annex 1, which constitutes an integral part of this Agreement.

1.2 "PROGENY" is defined as unmodified descendant from the ORIGINAL MATERIAL including, but not limited to, virus from virus, Bacterium from Bacterium, Cell from Cell, or organism from organism.

1.3 "UNMODIFIED DERIVATIVES" are substances created by the RECIPIENT which constitute an unmodified functional subunit or product expressed by the ORIGINAL MATERIAL, e.g. sub-clones 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 RECIPIENT which contain/incorporate the MATERIAL, e.g. crosses, breeding varieties, cell fusions, subcloning etc.

1.5 The "MATERIAL” which, regarding the inherent intellectual property rights, is and remains the exclusive property of PROVIDER, comprises the ORIGINAL MATERIAL, any PROGENY, UNMODIFIED DERIVATIVES, the ORIGINAL MATERIAL contained in MODIFICATIONS and proprietary information concerning the ORIGINAL MATERIAL.

RECIPIENT retains ownership of: (a) MODIFICATIONS (except that 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 (a) or (b) results from the collaborative efforts of PROVIDER and RECIPIENT, joint ownership may be negotiated.

2. Use of the MATERIAL

2.1 The RECIPIENT shall use the MATERIAL in compliance with all laws and regulations applicable to such MATERIAL in the RECIPIENT's place and country, including guidelines for work with recombinant DNA. The MATERIAL being experimental in nature must not be used in humans, in clinical trials, or for diagnostic purposes involving human subjects,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 released to any person other than the 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 PROVIDER’s prior written approval.

2.3 After conclusion of the studies according Annex 1 on the MATERIAL or at the expiry of this MTA, whichever occurs first, the RECIPIENT shall, at the discretion of the PROVIDER, either destroy or return to the PROVIDER the remaining MATERIAL and Modifications incorporating the MATERIAL. Upon request, the RECIPIENT shall inform PROVIDER on the status of its research.

2.4 RECIPIENT shall have the right to distribute substances created by RECIPIENT through the use of the ORIGINAL MATERIAL, only if those substances are not PROGENY, UNMODIFIED DERIVATIVES or MODIFICATIONS.

2.5 Under a separate agreement at least as protective of PROVIDER’s rights as this Agreement, RECIPIENT may distribute MODIFICATIONS to non-profit organizations for research and teaching purposes only.

2.6 Without written consent of PROVIDER, RECIPIENT may not provide MODIFICATIONS for commercial purposes. It is recognized by RECIPIENT that such commercial purposes may require a commercial license from PROVIDER and that PROVIDER has no obligation to grant a commercial license to its ownership interest in the MATERIAL incorporated in the MODIFICATIONS.

2.7 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 PROVIDER, including any altered forms of the MATERIAL made by 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 profit-making or commercial purposes. The MATERIAL will not be used in research that is subject to consulting or licensing obligations to another corporation, company, or business entity unless written permission is obtained from PROVIDER.

3. Publications

The RECIPIENT shall have the right to publish its findings and results related to the MATERIAL, provided that the PROVIDER researcher/s are either named as co-authors of the publication or cited as the source of the MATERIAL, according the respective contribution of the MATERIAL to the publication. The RECIPIENT shall submit all publications four weeks prior to their public disclosure to PROVIDER.

4. Intellectual Property

4.1 Where the research involving the MATERIAL or a MODIFICATION results in an invention or patentable MODIFICATION of the MATERIAL, the RECIPIENT and its researcher/s shall promptly disclose this development to the PROVIDER. RECIPIENT and PROVIDER shall decide in common about the inventorship, taking in due consideration the PROVIDER's contribution to the invention through its MATERIAL. Decisions about all further proceedings, such as filing of a patent application or exploitation, shall be made after inventorship is determined.

4.2 At PROVIDER's request RECIPIENT agrees to provide PROVIDER for its internal research use with reasonable quantities of published MATERIALs developed, made or discovered in the course of RECIPIENT's research studies using the MATERIAL, always provided that RECIPIENT may fulfil this obligation with reasonable effort. Such transfer shall be free of charge, but RECIPIENT may charge an appropriate handling/shipping fee.

4.3 RECIPIENT hereby grants PROVIDER a royalty-free, world-wide, non-exclusive license for its internal research purposes under any technology, any patent thereon and any MATERIAL resulting from the use of the MATERIAL by RECIPIENT. If RECIPIENT commercially evaluates the research results, the parties shall start good faith negotiations leading to a sufficient participation of PROVIDER in RECIPIENT's benefits.

5. Warranties and Liability

5.1 Any MATERIAL provided to this MTA is understood to be experimental in nature. It may have hazardous properties. The PROVIDER makes no representations and extends 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 In no event shall PROVIDER be liable for any use by RECIPIENT of the MATERIAL or any loss, claim, damage or liability, of whatsoever kind or nature, which may arise from or in connection with this Agreement or the use, handling or storage of the MATERIAL by RECIPIENT.

5.3 RECIPIENT assumes all and any liability for damages, which may arise from the use of the MATERIAL, its storage or disposal. The RECIPIENT shall hold harmless the PROVIDER and its researcher/s for any loss, claim or demand, which could be raised 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 caused by the gross negligence or wilful misconduct of PROVIDER.

6. Miscellaneous

6.1 The Original MATERIAL is provided cost-free; however, a handling fee may be charged for its preparation and shipment to the RECIPIENT. As applicable, both items are specified in an accompanying letter to this MTA.

6.2 This MTA shall be construed according to the laws of the Federal Republic of Germany, except its provision on conflicts of law (*Internationales Privatrecht*). Any dispute arising from the interpretation and/or implementation of this MTA, which cannot be settled amicably, shall be brought before a competent court of first instance in the city of Heidelberg, Federal Republic of Germany.

6.3 This MTA shall enter into force on the date of the last signature to it. It expires after five years or after conclusion of the experiments according to Annex 1, without prior notice by any of the parties. The provisions concerning Publications, Intellectual Property and Liability shall survive this expiration.

6.4 In the event the MATERIAL or part of it should be under physical control of the RECIPIENT before this MTA is signed, the terms and provisions shall apply for this MATERIAL retroactively.
Should any provision of this agreement be invalid or unenforceable or should the contract contain an omission, the remaining provisions shall be valid. In the place of an invalid provision, a valid provision is presumed to be agreed upon by the parties, which comes economically closest to the invalid provision. The same shall apply in the case of an omission. This wording contains the entire agreement between the parties; any changes of the agreement have to be made in writing.

7. If the Research Material requested includes infectious proviral HIV-1 derivatives: the recipient ensures that a P3 certified laboratory and trained personnel is available at the recipient's institution for storage, handling and disposal of the material in accordance with appropriate rules and regulations. (Plasmid pNLC4-3 has been constructed based on the proviral plasmid pNL4-3 (Adachi et al., J. Virol 1986), which has been obtained through the NIH AIDS Research and Reference Reagents Program).

2 Originals – 1 X RECIPIENT, 1 X PROVIDER

For PROVIDER:	For RECIPIENT:
	(Name of Institution)
……	……
Name:	Name: RECIPIENT SCIENTIST
……	……
Name: PROVIDER SCIENTIST	Name: Position: Legal representative of RECIPIENT
Heidelberg, Germany	
Date:	Date:.....

Annex 1

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The MATERIAL:

The requested material comprises HIV proviral constructs (note above, paragraph 7!)

_____ Yes **_____ No**

Aims of the intended experiments: