

## TEXAS INSTITUTE FOR GENOMIC MEDICINE

### AGREEMENT FOR MURINE EMBRYONIC STEM CELLS

THIS AGREEMENT FOR MURINE EMBRYONIC STEM CELLS (the "Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ (the "Effective Date"), by and between the Texas Institute for Genomic Medicine, a 501(c)3 corporation organized under the laws of the State of Texas ("TIGM"); and the entity and/or persons signing this Agreement below as Customer ("Customer").

A. TIGM is engaged in the business of creating and supplying murine embryonic stem cells ("ES Cells") with specified mutation in a specified portion of a gene (the "Requested Mutation");

B. Customer, shall, from time to time, submit orders for ES Cells offered by TIGM;

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

#### ARTICLE I ORDERS

1.01 Orders. Subject to the terms and conditions herein, TIGM shall provide to Customer ES Cells with a Requested Mutation specified in Orders that are accepted by TIGM. The Customer shall place the Order for the ES Cells by delivering to TIGM a signed completed Order Form in the form attached as *Exhibit 1* hereto. An Order shall not be deemed accepted by TIGM until TIGM has received payment and signed the Order Form and returned a copy to Customer.

1.02 Delivery. TIGM will arrange for a shipper at Customer's sole expense and risk. TIGM shall not be liable for any damage arising from shipper's default or actions. TIGM shall have no liability for the ES Cells once they are delivered to the shipper. Customer shall be responsible for paying shipping costs and any insurance it desires for any Order.

1.03 Inspection. Upon receipt, Customer shall inspect the ES Cells and notify TIGM within twenty-one (21) days of receipt of any rejection of the ES Cells and the reason for such rejection. If the Customer fails to provide notice of rejection in such time period, the ES Cells will be deemed accepted. If a Researcher rejects the ES Cells for a valid reason, TIGM may, in its sole discretion, (a) terminate the Order or (b) deliver replacement ES Cells.

1.04 Compliance with Laws. The Customer shall be responsible for complying with all laws, customs, regulations, handling procedures and protocols, and obtaining any and all permits, forms or permissions that may be required for the shipment, receipt and use of the ES Cells.

#### ARTICLE II PRICE AND PAYMENTS

2.01 Price. The price for each Order purchased prior to the first anniversary hereof shall be as provided on Exhibit 1 hereto. TIGM may adjust its prices thereafter.

2.02 Payments. Payment of the price is due with placement of the Order.

2.03 Requirement to Provide Breeding Pair. If Customer uses the cells to produce live mice carrying Requested Mutation, such Customer shall deliver to TIGM, without cost to TIGM, either (i) two pairs of live breeding mice or (ii) frozen embryos of at least two breeding pairs, in either case carrying the mutation and with no other intentionally introduced mutations. Customer shall deliver such mice or embryos no later than six (6) months after confirmed successful germline transmission unless TIGM agrees to some later date in writing. Upon TIGM's request, Customer shall provide TIGM with information regarding the process used to produce the mice or embryos delivered pursuant to this section.

TIGM will not accept any changes or modifications to this Agreement.

2.04 LATE FEE. IF CUSTOMER FAILS TO PAY ANY AMOUNT OWED HEREUNDER WITHIN FIVE WEEKS OF WHEN SUCH AMOUNT IS DUE, CUSTOMER SHALL ALSO PAY INTEREST ON SUCH AMOUNT FROM THE DATE DUE UNTIL THE DATE PAID AT AN INTEREST RATE OF THE LESSER OF (I) 1.0% PER MONTH OR (II) THE MAXIMUM RATE PERMITTED BY APPLICABLE LAW. TIGM MAY TERMINATE THIS AGREEMENT FOR FAILURE TO MAKE PAYMENT WHEN DUE.

### ARTICLE III OWNERSHIP, USE AND CONFIDENTIALITY

**PROVISIONS 3.01, 3.02, 3.03, 3.04 and 3.05 ARE REQUIRED PURSUANT TO THE LICENSE AND/OR SUBLICENSE UNDER WHICH TIGM SUPPLIES THE ES CELLS AND CANNOT BE MODIFIED.**

3.01 Ownership. This Agreement does not transfer any of TIGM's rights in any Requested Mutation, and TIGM retains its ownership of the Requested Mutation in any "Materials," as hereafter defined. TIGM shall have no ownership interest with respect to any mutation, other than the Requested Mutation, contained in any Materials. "Materials" means the ES Cells, "Progeny," as defined hereafter, cells, tissues and other biological materials derived from any of the foregoing; **provided that "Materials" shall not include Progeny, cells, tissues or other biological materials that do not contain the Requested Mutation.** "Progeny" means mice, including successive generations thereof, that are produced, developed or derived by Customer directly or indirectly from the ES Cells. **Any patents and other intellectual property rights in inventions (the "Customer IP") that are created by Researcher(s) using the Requested Mutation and other Materials shall be owned by the Customer and/or Researcher(s).**

3.02 Limitations on Use of Materials. **The Customer shall use Materials solely for Customer's research purposes. The Customer may not sell any Materials or use them for any commercial purpose including, but not limited to, contract research services and any research activities in which a third party has rights to obtain the assignment, sale, lease, license (including an option for a license) or transfer of resulting invention(s);** provided, however, that the foregoing shall not be deemed to restrict Customer from performing research funded by the United States government in which the United States government has rights under 35 U.S.C. All ES Cells are made available on a non-exclusive basis.

3.03 No Transfer of Materials. **Customer shall not transfer, by sale or otherwise, any of the Materials to any third party** other than a transfer without consideration to (a) a university or non-profit entity or (b) any agency or unit of any federal, national, state, provincial, county, city or other government, domestic or foreign. Provide further, any such permitted transfer shall be made pursuant to an agreement between TIGM and the transferee that includes the restrictions in Sections 3.01, 3.02, 3.03, 3.04 and 3.05 herein. Customer may also transfer Materials to a third party contractor for purposes of such contractor's performance of fee-for-service contract research services for Customer, subject to a material transfer agreement that (A) permits the use of Materials by such contractor solely for the research purposes of Customer, (B) assigns exclusively to Customer any and all rights to all data and information generated or developed, and all discoveries and inventions made (including, without limitations, all patent and other intellectual property rights therein) by such contractor through the use of such Materials, (C) prohibits the sale or transfer of such Materials by such contractor to any third party, and (D) obligates such contractor to return or destroy such Materials upon the completion of its services for Customer. Customer shall give TIGM written notice of any permitted transfer and a copy of the relevant agreement; TIGM's receipt of such agreement shall not constitute its approval of any deviation from these requirements therein.

3.04 Additional Limitations on Use and Transfer. Customer agrees that the Materials (a) will not be used in human subjects, in clinical trials, or for diagnostic purposes involving human subjects, and (b) will be used only in a laboratory under the direction of the Researcher signing the Order Form or others working under his or her direct supervision. If any other Customer researcher will use any

TIGM will not accept any changes or modifications to this Agreement.

Materials, such researcher shall sign and deliver to TIGM a copy of the "Researcher Agreement" on the applicable Order Form.

3.05 Third Party Beneficiary. A third party beneficiary of this Agreement shall have the right to enforce all restrictions on the transfer and use of the Materials.

#### **ARTICLE IV CANCELLATION**

4.01 Termination On 30 Days Notice. Either party may terminate this Agreement for its convenience upon 30 days prior notice to the other party; provided that if at the time of such notice there are any unfulfilled accepted Orders, this Agreement shall not terminate until TIGM has completed all of the services and made available for shipment any ES Cells under any Order accepted prior to delivery of such notice.

4.02 Effects of Termination. Termination of this Agreement shall not relieve either Party of any obligation or liability accrued hereunder prior to such termination, nor affect or impair the rights of either Party arising under this Agreement prior to such termination, except as expressly provided herein. Articles III and V, and this Section 4.02, shall survive any termination of this Agreement.

4.03 Customer acknowledges the development of ES Cells into mice involves a number of technologically complex steps, and technical obstacles may, on occasion, prevent the Customer from producing mice from the ES Cells. In no event shall TIGM have any obligation to refund the payment or be held liable for the Customer's inability to produce mice from the requested ES Cells.

#### **ARTICLE V GENERAL TERMS AND CONDITIONS**

5.01 Disclaimer of Warranties. ALL REQUESTED CELLS ARE SUPPLIED WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED. TIGM HEREBY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, TIGM DOES NOT MAKE ANY WARRANTY OF MUTAGENICITY OF ANY ALLELE OR THAT A MUTANT PHENOTYPE WILL BE OBSERVED IN ANY MUTANT MICE OR PROGENY. TIGM DOES NOT MAKE ANY REPRESENTATION OR WARRANTY THAT THE USE OF THE REQUESTED CELLS, MICE OR PROGENY WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHTS OF THIRD PARTIES. NOTWITHSTANDING THE FOREGOING, TIGM HEREBY REPRESENTS TO CUSTOMER THAT TIGM HAS BEEN GRANTED RIGHTS BY THE THIRD PARTY BENEFICIARY TO USE THE THIRD PARTY BENEFICIARY'S INTELLECTUAL PROPERTY TO PRODUCE AND PROVIDE MUTANT CELLS TO CUSTOMER ON THE TERMS PROVIDED HEREIN.

5.02 Limitation of Liability. TIGM SHALL NOT IN ANY EVENT BE LIABLE TO CUSTOMER OR ANY RESEARCHER FOR ANY LOSS, CLAIM, DAMAGE OR LIABILITY, OF WHATEVER KIND OR NATURE, WHICH MAY ARISE FROM OR IN CONNECTION WITH THE USE, HANDLING OR STORAGE OF THE ES CELLS OR ANY OTHER MATERIALS BY CUSTOMER OR RESEARCHER OR ANY OF THEIR AFFILIATES OR CONTRACT SERVICE PROVIDERS. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE TO THE CONTRARY, TIGM WILL NOT BE LIABLE WITH RESPECT TO ANY MATTER ARISING UNDER THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR (A) ANY PUNITIVE, EXEMPLARY, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS OR (B) COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES.

5.03 TIGM's Liability. TIGM shall not be liable for any interruption in Customer's or a Researcher's project, which occurs as a result of any cause not exclusively in TIGM's sole control.

TIGM will not accept any changes or modifications to this Agreement.

Subject to the provisions hereof, any liability on account of any cause within TIGM's exclusive control shall be limited to TIGM's obligation to use reasonable efforts to correct or repair such cause.

5.04 Compliance With Laws. Customer will utilize the Materials in accordance with all applicable laws and regulations. Customer shall indemnify and hold harmless TIGM from any and all third-party claims, fines, and penalties including reasonable attorney's fees incurred by TIGM as a result of Customer's breach of this covenant.

5.05 Miscellaneous. All notices permitted or required hereunder shall be in writing and delivered by personal delivery, registered mail with return receipt requested or overnight delivery by a nationally recognized delivery service to the addresses provided on the signature page hereto. Email and fax shall not be deemed to be sufficient delivery. Notwithstanding the foregoing, Order Forms and invoices and payments may be sent by regular mail, email or fax. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all previous discussions, representations, understandings, and agreements. This Agreement shall be governed by the laws of the State of Texas, without regard to conflict-of-law principles. This Agreement shall be binding on the parties, their successors and assigns, provided this agreement may not be assigned by Customer without the written consent of TIGM which may be withheld in its sole discretion.

5.06 Acknowledgement in Publications and Presentations The recipient will acknowledge TIGM in any presentations and publications reporting use of the materials.

**ACCEPTED AND AGREED:**

**PRINT NAME OF CUSTOMER ENTITY:**

**TEXAS INSTITUTE FOR  
 GENOMIC MEDICINE**

\_\_\_\_\_

By (signature): \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Print Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

**Address for Notices to Customer:**

**Address for Notices to TIGM:**

Attn: President  
 2121 W. Holcombe Blvd.  
 Houston, Texas 77030

Exhibit 1  
Order Form

Agreement For Embryonic Stem Cells

Customer (Institution) Name: \_\_\_\_\_

Requested ES Cells: \_\_\_\_\_

Price: OmniBank I (Strain 129)  
OmniBank II (Strain C57): \_\_\_\_\_

Customer Address For Delivery (if different than on the signature page of the Agreement for Murine Embryonic Stem Cells):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Email: \_\_\_\_\_  
Telephone: \_\_\_\_\_

Customer Signature (Technology Transfer Officer):

Customer Name: \_\_\_\_\_  
By (Signature): \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

RESEARCHER AGREEMENT:

I have read and understood the conditions outlined in the Agreement For Murine Embryonic Stem Cells and I agree to fully abide by them in the receipt and use of Materials.

Signature of Researcher \_\_\_\_\_ Date \_\_\_\_\_

Print Name of Researcher \_\_\_\_\_

ACCEPTED:

Texas Institute For Genomic Medicine

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_