

TEXAS INSTITUTE FOR GENOMIC MEDICINE

AGREEMENT FOR MUTANT MICE

THIS AGREEMENT FOR MUTANT MICE 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 Service Agreement below as Customer ("Customer").

A. TIGM is engaged in the business of creating and supplying mice ("Knockout Mice") with a specific mutation in a specified portion of a gene (the "Requested Mutation");

B. Customer, shall, from time to time, submit orders for specific Knockout Mice 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 Knockout Mice with a Requested Mutation (each a "Mouse Line") specified in Orders that are accepted by TIGM. The Customer shall place the Order for the Requested Mice 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 the "Initiation Payment," as provided in Section 2.04, signed the Order Form and returned a copy to Customer. Once an Order is accepted, TIGM will commence the preparation of the Requested Mice.

1.02 Delivery. When an Order of Requested Mice is ready for delivery, TIGM will give the Customer notice that the Order is ready for shipment ("Ready For Shipment Notice"). Provided Customer has paid the full price, TIGM will deliver the Requested Mice, FOB TIGM's offices. Customer shall arrange for pickup and delivery of the Requested Mice to the Researcher. If Customer fails to arrange for or identify a shipper, TIGM may 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 Requested Mice 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 Requested Mice and notify TIGM within twenty-one (21) days of any rejection of the Requested Mice and the reason for such rejection. If the Customer fails to provide notice of rejection in such time period, the Requested Mice will be deemed accepted. If a Researcher rejects the Requested Mice for a valid reason, TIGM may, in its sole discretion, (a) terminate the Order or (b) deliver replacement Requested Mice.

1.04 Compliance with Laws. The Customer shall be responsible for complying with all laws, customs, regulations, veterinary 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 Requested Mice.

ARTICLE II ORDER, PRICE AND PAYMENTS

2.01 Order. Each "Order" will be for Knockout Mice from a single Mouse Line; each Order will be filled by the delivery of four (4) of the Requested Mice, including at least one breeding pair. TIGM shall maintain a colony of each Mouse Line for a period of up to 12 months. Customer may order additional Requested Mice from this colony at the price for Additional Requested Mice listed in Section 2.03. Upon depletion of the colony, subsequent orders for the same Requested Mice shall be in accordance with the prices listed in Section 2.02. The prices in Sections 2.02 and 2.03 may be revised

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by TIGM effective each anniversary of the Effective Date. TIGM will provide to Customer a new price list as of each anniversary upon request.

2.02 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.

2.03 Price of Additional Mice. The price for each additional Requested Mouse, of a type delivered in a previous Order, ordered prior to the first anniversary of the Effective Date, shall be one hundred dollars (\$100).

2.04 Invoices and Payments. Upon receipt of an Order and/or completion of Quality Control, TIGM will send Customer an invoice for the "Initiation Payment" in the amount as provided on Exhibit 1 hereto. TIGM will send an invoice for the balance of the price of the Order 30 days prior to when TIGM expects to send the Ready For Shipment Notice. Customer will pay such invoices within thirty (30) days following receipt thereof. If this Agreement is terminated pursuant to Section 5.04, TIGM shall retain the Initiation Payment but not be entitled to any additional payment.

2.05 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 REQUESTED MICE AND CANNOT BE MODIFIED.

3.01 Ownership. This Mutant Mouse Agreement does not transfer any of TIGM's rights in the 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 Requested Mice, "Progeny," as defined hereafter of the Requested Mice, and 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 a Requested Mouse progenitor including, without limitation, by breeding or rederivation. **Any patents and other intellectual property rights in inventions (the "Customer IP") that are created by Researcher(s) using the Requested Mice 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 Requested Mice 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-**

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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 Materials, such researcher shall sign and deliver to TIGM a copy of the "Researcher Agreement" on the 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 Requested Mice 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 Termination of an Order For Inability to Produce Requested Mice. The development of genetically-modified mice involves a number of technologically complex steps, and technical obstacles may, on occasion, prevent TIGM from producing a requested Knockout Mouse. TIGM will promptly notify the Customer of any such technical obstacle encountered and its analysis of whether the obstacle can be overcome using commercially reasonable efforts and the time required to do so. If TIGM determines that production of a requested mouse line is not feasible using commercially reasonable efforts, TIGM may, upon notice to the Customer, terminate the Order for such Knockout Mouse. Upon termination of such efforts, (a) TIGM shall have no further obligation to the Customer with respect to such Order; (b) TIGM shall retain the fees, if any with respect to such requested Mouse Line that became payable prior to such termination; and (c) Customer shall have no further payment obligations to TIGM with respect to such Order.

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

ARTICLE V GENERAL TERMS AND CONDITIONS

5.01 Disclaimer of Warranties. ALL REQUESTED MICE 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 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 MICE 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 REQUESTED MICE 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. 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 warranty.

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, Ready For Shipment Notices and invoices and payments may be sent by regular mail, email or fax. This Services 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.

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

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

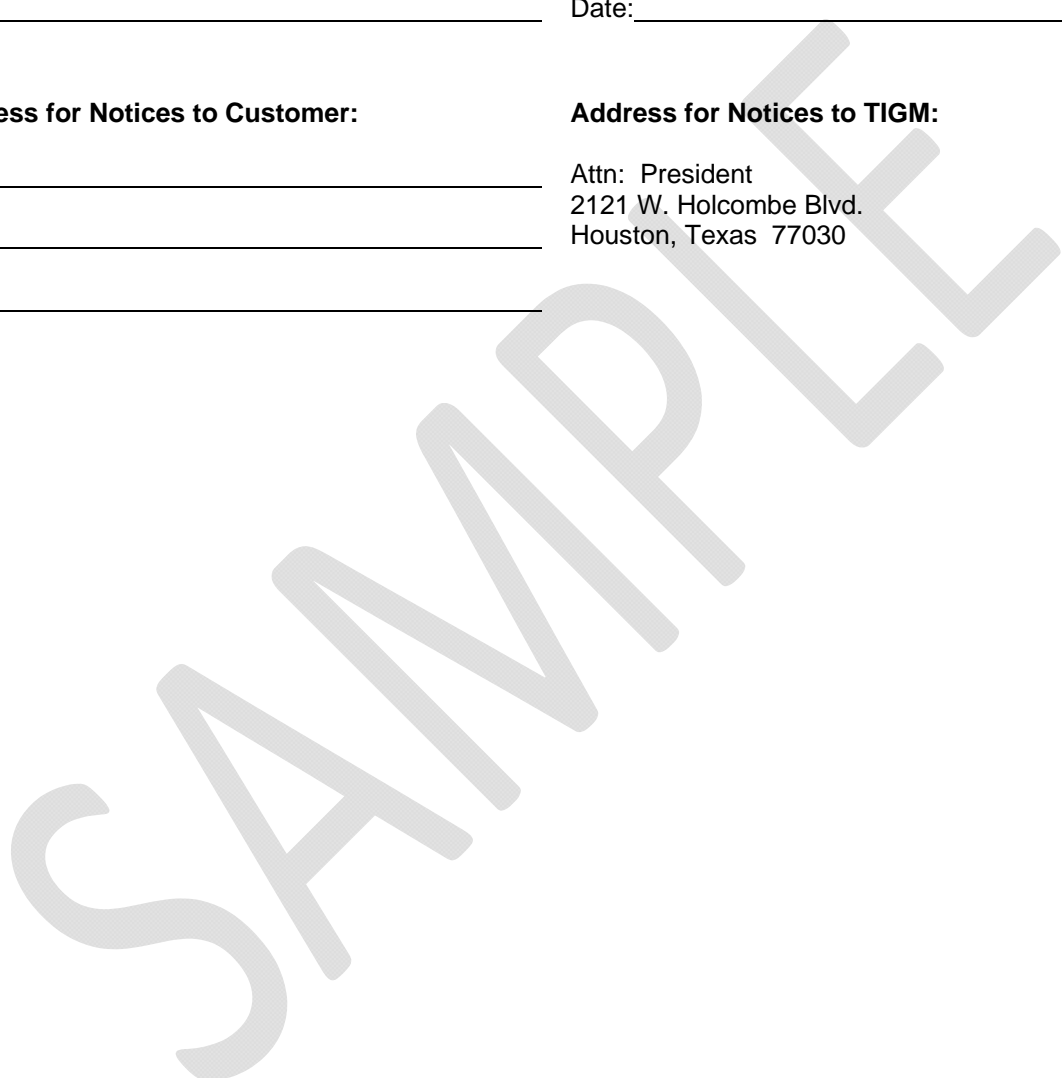


Exhibit 1
Order Form
Agreement For Mutant Mouse

Customer (Institution) Name: _____

Requested Mouse Line: _____

Total Price (including Initiation Fee): \$ _____

Initiation Fee \$ _____

Customer Address For Delivery (if different than on the signature page of the Agreement for Mutant Mice):

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 this Agreement 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: _____