

## **Very important!**

### **Please read this before submitting your order to TIGM!**

1. Exhibit 1 of the agreement needs to be signed by the requesting scientist or PI as Researcher only.
2. Page 5 and Exhibit 1 need to be signed by an authorized official (Technology Transfer office, Vice President, or Department Head) as Customer on behalf of the Institution.

**Please make sure all signatures are obtained; incomplete or incorrectly signed agreement may result in significant delays of your order.**

**Thank you very much!**

**TEXAS A&M 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 AgriLife Research ("AgriLife"), a Member of the Texas A&M University System ("SYSTEM") and an agency of the State of Texas on behalf of the Texas A&M Institute for Genomic Medicine ("TIGM"), an institute of AgriLife; and the entity and/or persons signing this Agreement below as Customer ("Customer"). The parties to this Agreement are collectively referred to as the "Parties" and individually as a "Party."

A. TIGM is engaged in the business of creating and supplying murine embryonic stem cells ("ES Cells") 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 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 ship to Customer ES Cells with the Requested Mutation. Risk of lost shall transfer to Customer upon delivery to the shipper and 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 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 from receipt by Researcher 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 as determined by TIGM in its sole discretion, TIGM shall deliver replacement ES Cells. If Customer rejects delivery of replacement ES cell, the order is terminated without any further obligations by TIGM (material or financial) to Customer.

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 will be determined in accordance with the price schedule listed in Exhibit 1 at the time of Order.

2.02 Payments. Payment of the price is due prior to shipment.

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

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

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.

### ARTICLE III OWNERSHIP, USE AND CONFIDENTIALITY

3.01 Ownership. This Agreement does not transfer any of AgriLife's rights in any Requested Mutation, and AgriLife retains its ownership of the Requested Mutation in any "Materials," as hereafter defined. AgriLife 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. AgriLife claims no ownership in any patents or other intellectual property rights in inventions created using the Requested Mutation and other Materials.

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 any Materials;** 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 that includes the restrictions in Sections 3.01, 3.02, 3.03, 3.04 and 3.05 herein for the benefit of TIGM, who shall be a third-party beneficiary of the transfer agreement and shall be provided with a copy of that agreement by Customer. 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 principal investigator or scientist indicated on Exhibit 1 who will direct the research in which the Requested Materials are intended for use ("Researcher") signing the Order Form (Exhibit 1), 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 applicable Order Form.

3.05 Third Party Beneficiary. Lexicon Pharmaceuticals, Inc., a Delaware corporation, is 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 Inability to Produce Mice 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. AGRILIFE HEREBY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, AGRILIFE DOES NOT MAKE ANY WARRANTY OF MUTAGENICITY OF ANY ALLELE OR THAT A MUTANT PHENOTYPE WILL BE OBSERVED IN ANY MUTANT MICE OR PROGENY. AGRILIFE 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, AGRILIFE HEREBY REPRESENTS TO CUSTOMER THAT AGRILIFE 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. AGRILIFE 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, AGRILIFE 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 AgriLife's Liability. AgriLife 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 AgriLife'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 AgriLife's exclusive control shall be limited to AgriLife'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 AgriLife from any and all third-party claims, fines, and penalties including reasonable attorney's fees incurred by AgriLife 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 binding on the parties, their successors and assigns, provided this agreement may not be assigned by Customer without the written consent of AgriLife which may be withheld in its sole discretion.

- (a) Confidentiality. Customer acknowledges that TIGM must strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information. This obligation supersedes any conflicting provisions of this Agreement.
- (b) Force Majeure. Each party must excuse any breach of this Agreement by the other which is proximately caused by government regulation, war, strike, act of God, or other similar circumstance normally deemed outside the control of well-managed businesses.
- (c) Non-Waiver. SYSTEM is an agency of the State of Texas and nothing in this Agreement waives or relinquishes SYSTEM's right to claim any exemptions, privileges, and immunities as may be provided by law.
- (d) Severability. If any provision or provisions of this Agreement is held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

Acknowledgement in Publications and Presentations The Customer will acknowledge TIGM in any presentations and publications reporting use of the Materials. Customer shall give TIGM written notice of any such publication at least 14 days prior to publication.

5.06 Disputes. Customer must use the dispute resolution process provided in Chapter 2260, Texas Government Code, and the related rules adopted by the Texas Attorney General to attempt to resolve any claim for breach of contract made by Customer that cannot be resolved in the ordinary course of business. Customer must submit written notice of a claim of breach of contract under this Chapter to Michael E. McCasland, CPA, Assistant Director for Fiscal Services at Texas AgriLife Research, who will examine Customer's claim and any counterclaim and negotiate with Customer in an effort to resolve the claim.

5.07 Export Controls. TIGM is subject to United States laws and regulations controlling the export of technical data and other commodities, and its obligations under this Agreement are contingent on compliance with applicable laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government or written assurances by Customer that Customer will not export data or commodities to certain countries without advance approval of that agency. TIGM neither represents that a license will not be required nor that, if required, it will be issued. TIGM must comply with all applicable export laws and regulations and may not

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export or allow the export or re-export of commodities or technical data in violation of those laws or regulations.

**ACCEPTED AND AGREED:**

**PRINT NAME OF CUSTOMER ENTITY:**

**Texas A&M Institute for Genomic Medicine,  
an institute of the Texas AgriLife  
Research**

\_\_\_\_\_

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

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

**Address for Notices to Customer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Address for Notices to TIGM:  
Texas A&M Institute for Genomic  
Medicine**

Attn.: Ben Morpurgo, Ph.D., Deputy  
Director

670 Raymond Stotzer Pkwy, MS 4485

College Station, TX 77843

**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 (Authorized Official):**

**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 A&M Institute for Genomic Medicine**

By: \_\_\_\_\_  
Name: Andrei Golovko, Ph.D.  
Title: Research Scientist  
Date: \_\_\_\_\_