

MATERIAL EVALUATION LICENSE AGREEMENT

THIS AGREEMENT is made and entered into as of this [date] day of [month], 200[year] (hereinafter "Effective Date") by and between Emory University, a non-profit Georgia corporation with offices located at 1599 Clifton Road NE, 4th Floor, Mailstop 1599/001/1AZ Atlanta, Georgia 30322, (hereinafter "EMORY") and [insert company name], having its principal place of business at [insert company address here] (hereinafter "COMPANY").

COMPANY, through its below-identified scientist (hereinafter "COMPANY's SCIENTIST"), has requested that EMORY, through its below-identified scientist (hereinafter "EMORY's SCIENTIST") provide COMPANY the below-described ORIGINAL MATERIAL for COMPANY's internal, non-commercial research and evaluation in accordance with COMPANY's RESEARCH PROJECT (as defined below).

COMPANY's SCIENTIST: (name) "[insert scientist name]"
(title) "[insert scientist title]"

EMORY's SCIENTIST: (name) "[insert scientist name]"
(title) "[insert scientist title]"

Article 1. Definitions

1.1 "COMPANY's RESEARCH PROJECT" shall mean the research project described with specificity in Appendix A attached hereto and incorporated herein by reference as a part of this Agreement.

1.2 MATERIAL shall mean MODIFICATIONS, ORIGINAL MATERIAL, PROGENY and UNMODIFIED DERIVATIVES.

1.3 MODIFICATIONS shall mean substances created by COMPANY which contain/incorporate the MATERIAL.

1.4 ORIGINAL MATERIAL shall mean "[insert material description]" as described in EMORY invention disclosure no. [number] entitled "[insert title]", in U.S. Patent/Patent Application no. [number] entitled "[insert title]" and corresponding foreign patents and patent applications.

1.5 PROGENY shall mean an unmodified descendant from the MATERIAL, such as virus from virus, cell from cell, or organism from organism.

1.6 UNMODIFIED DERIVATIVES shall mean substances created by COMPANY which constitute an unmodified functional subunit or product expressed by the ORIGINAL MATERIAL. Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the ORIGINAL MATERIAL, proteins expressed by

DNA/RNA supplied by EMORY, or monoclonal antibodies secreted by a hybridoma cell line.

Article 2. Use of MATERIAL by COMPANY

2.1 The MATERIAL is the property of EMORY and is to be used by COMPANY solely for internal, non-commercial research and evaluation in accordance with COMPANY's RESEARCH PROJECT at COMPANY's facilities only and only under the direction of COMPANY's SCIENTIST. Use for any commercial purpose, including but not limited to the sale, manufacture, lease, license, or other transfer of the MATERIAL to a third party, is prohibited under this Agreement.

2.2 This Agreement is used only to transfer MATERIAL. Except as expressly provided under this Agreement, no rights are provided to COMPANY under any patents, patent applications, trade secrets or other proprietary rights of EMORY. In particular, no rights are provided to use the MATERIAL or any related patents for profit-making or commercial provision of a service to a third party in exchange for consideration.

2.3 Neither COMPANY nor COMPANY's SCIENTIST shall transfer the MATERIAL to anyone who does not work under COMPANY's SCIENTIST's direct supervision at COMPANY's facilities without the prior written consent of EMORY. COMPANY's SCIENTIST shall refer any request for the MATERIAL to EMORY's SCIENTIST.

2.4 COMPANY agrees that this Agreement does not preclude EMORY from distributing the MATERIAL to third parties for research or commercial purposes.

2.5 COMPANY shall use the MATERIAL in compliance with all applicable statutes and regulations, including, for example, those relating to research involving the use of animal subjects or recombinant DNA.

2.6 The MATERIAL is not to be used by COMPANY, COMPANY's SCIENTIST or any other person obtaining MATERIAL from either of these, on human subjects without the express written approval of EMORY and in accordance with regulatory approval. COMPANY agrees to use the MATERIAL in compliance with all applicable statutes and regulations, including, for example, those relating to research involving the use of human subjects.

2.7 COMPANY agrees not to analyze, sequence, or otherwise determine the chemical structure or physical properties of the MATERIAL, or to make derivatives or otherwise modify the MATERIAL.

Article 3. Data and Publications, and Intellectual Property

3.1 COMPANY will inform EMORY's SCIENTIST of research results related to the MATERIAL by providing to EMORY's SCIENTIST a written progress report upon

completion of the RESEARCH PROJECT. If applicable, copies of manuscripts describing the results of the RESEARCH PROJECT shall be provided to EMORY's SCIENTIST at least 30 days prior to the time the manuscripts are submitted for publication. EMORY's SCIENTIST shall be cited as the source of the ORIGINAL MATERIAL in any reports, presentations, abstracts and publications pertaining to COMPANY's RESEARCH PROJECT.

3.2 If COMPANY's use of the MATERIAL results in an invention or discovery, including, without limitation, a new use of the MATERIAL, compositions or formulations comprising MATERIAL, improvements, or enhancements of the MATERIAL, whether patentable or not (an "Invention"), COMPANY will promptly disclose in confidence such Invention to EMORY and EMORY, at its sole discretion and expense, may file or arrange to have filed a patent application for said Invention. EMORY will have control of strategy and expenses with respect to patent application filing and prosecution and COMPANY will cooperate with EMORY in seeking patent coverage for such Invention. In the event that EMORY chooses not to file a patent application for such Invention, COMPANY may at their expense file a patent application for such Invention. COMPANY will provide EMORY with copies of any such patent application and any prosecution documentation related thereto. As partial consideration for the receipt of MATERIAL from EMORY under this Agreement, COMPANY hereby grants to EMORY under any patent or patent applications filed in accordance with this paragraph an exclusive, fully paid-up, royalty-free, sublicensable, worldwide license to make, use, offer to sell, sell, and import Inventions. Inventorship of Inventions will be determined according to applicable United States patent laws.

3.3 The ORIGINAL MATERIAL resulted from research by EMORY's SCIENTIST under sponsorship of "[insert description]". Any publication resulting from research with the ORIGINAL MATERIAL must acknowledge sponsor (and grant number, when available).

Article 4. Treatment of Confidential Information

4.1 COMPANY shall treat in confidence, for a period of five (5) years from the date of its disclosure, any written information pertaining to the MATERIAL provided to COMPANY by EMORY or EMORY's SCIENTIST(s). If it is not possible to provide such information in writing at the time of initial disclosure, such information shall be identified in writing and shall be provided to COMPANY in written form, marked as proprietary or confidential, within thirty (30) days of the initial disclosure. Excluded from this obligation shall be any information

- (a) that was previously known to COMPANY prior to receipt of information from EMORY;
- (b) that lawfully is, or becomes publicly available during said five (5) year period through no fault of COMPANY;

- (c) which is disclosed to COMPANY without confidentiality obligations by a third party having the right to make such disclosure; or
- (d) which is independently developed by COMPANY without the use of or reference to any information received from EMORY.

This obligation of confidentiality shall not apply to any disclosure required by law, provided that COMPANY shall notify EMORY of any disclosure required by law in sufficient time to permit EMORY to object, if EMORY so desires.

4.2 Use of Name. Neither COMPANY nor its personnel shall use, or authorize or permit the use of, the name of any EMORY organization or personnel in connection with any commercial or promotional activities relating to MATERIAL, nor in such a way as to imply any endorsement by EMORY or EMORY personnel of any MATERIAL, product or method.

Article 5. Representations and Liability

5.1 COMPANY ACKNOWLEDGES THAT ANY MATERIAL DELIVERED TO IT UNDER THIS AGREEMENT IS EXPERIMENTAL IN NATURE. EMORY MAKES NO REPRESENTATIONS NOR EXTENDS ANY WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MATERIAL. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR DOES EMORY REPRESENT THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER RIGHTS OF THIRD PARTIES.

5.2 COMPANY assumes all liability for damages that may arise from its use, storage or disposal of the MATERIAL. EMORY shall not be liable to COMPANY for any loss, claim, or demand made by COMPANY, or made against COMPANY by any other party, due to, or arising from, the use of the MATERIAL by COMPANY. To the extent permitted by law, COMPANY shall indemnify, defend and hold harmless, EMORY, its trustees, assignees, agents and employees from any claim asserted against them arising from the use of the MATERIAL by COMPANY, its agents or employees.

Article 6. Quantity of ORIGINAL MATERIAL, Shipment and Fee

6.1 Upon execution of this Agreement, EMORY shall forward to COMPANY [description]. EMORY shall make one (1) shipment scheduled by EMORY's SCIENTIST and COMPANY's SCIENTIST. The shipment shall be made no later than [number] ([number]) days after execution of this Agreement.

6.2 Within thirty (30) business days of execution of this Agreement, COMPANY shall pay EMORY a total sum of [number] dollars (\$[number]). Payment shall be made to Emory University and sent to the attention of:

Director
Office of Technology Transfer,
Emory University
1784 North Decatur Road, Suite 130
Atlanta, Georgia 30322

Article 7. Termination

7.1 This Agreement shall terminate upon the earliest of the following events:

- (i) upon thirty (30) days written notice by either party to the other; or
- (ii) upon completion of COMPANY's RESEARCH PROJECT; or
- (iii) [number] ([number]) months from the Effective Date of this Agreement

7.2 COMPANY shall discontinue its use of the MATERIAL and shall, upon the written request of EMORY, return or destroy any remaining MATERIAL upon termination of this Agreement.

7.3 In the event EMORY terminates this Agreement other than for breach of this Agreement or with cause such as an imminent health risk or patent infringement, EMORY will defer the effective date of termination for a period of up to three (3) months, upon request from COMPANY, to permit completion of COMPANY's RESEARCH PROJECT.

Article 8. Survival

Articles 3, 4, 5, 9, and 10 shall survive termination of this Agreement for any reason.

Article 9. Governing Law and Dispute Resolution

This Agreement and all amendments, modifications, alterations, or supplements hereto, and the rights of the parties hereunder, shall be construed under and governed by the laws of the State of Georgia and the United States of America. Any dispute arising under this Agreement shall be resolved solely in Atlanta, Georgia, U.S.A. by arbitration under the rules of the American Arbitration Association. The parties specifically agree not to institute any dispute resolution process in any other forums and to participate in and be bound by any such process initiated in accordance with this Article 9.

Article 10. Pre-existing Rights to the MATERIAL

The provision of the MATERIAL to COMPANY shall not alter any pre-existing right to the MATERIAL granted by EMORY to any third party.

Article 11. Severability

If any provision of this AGREEMENT is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall continue in full force and effect according to its terms.

Article 12. Entire AGREEMENT

This AGREEMENT constitutes the entire agreement of the parties hereto and supersedes all prior representations, discussions, and communications, whether oral or in writing. This AGREEMENT may not be modified except in a writing signed by the parties hereto.

[SIGNATURE PAGE FOLLOWS]

AGREED BY:

EMORY UNIVERSITY

By: _____

Name: Todd Sherer, Ph.D.

Title: Associate Vice President for Research
and Director, Office of Technology Transfer

Date: _____

COMPANY

By: "[insert name]"

Name: "[insert name]"

Title: "[insert title]"

Date: _____

READ AND UNDERSTOOD BY:

EMORY's SCIENTIST

COMPANY's SCIENTIST

By: _____

By: _____

Name: "[insert name]"

Name: "[insert name]"

APPENDIX A

Description of Evaluation Research Project