

PUBLIC HEALTH SERVICE
BIOLOGICAL MATERIALS LICENSE AGREEMENT

This Agreement is entered into between the Public Health Service (“PHS”), through the National Center for Infectious Diseases, the Center for Disease and Prevention (“CDC”), 1600 Clifton Road, N.E., Mailstop E-51, Atlanta, GA 30333, U.S.A. and Emory University (“EMORY”) through the Office of Technology Transfer, 1599 Clifton Road NE, Fourth Floor, Atlanta, Georgia 30322, U.S.A. (collectively “LICENSORS”) and _____ (“LICENSEE”), a corporation of _____ having an office at _____.

1. DEFINITIONS

a. “Materials” means the following biological materials including all progeny, subclones, and derivatives thereof: Human Microvascular Endothelial Cells (HMEC-1). HMEC-1 refers to a cell line resulting from the transfection of human dermal microvascular endothelial cells with a PBR-322 based plasmid containing the coding region for the simian virus 40 A gene product and large T antigen. The cell line has been immortalized by Dr. Edwin Ades and Mr. Fransisco J. Candal of CDC and Dr. Thomas Lawley of EMORY.

2. Licensee wishes to obtain a license from LICENSORS to use the Materials provided under this Agreement in its commercial research or product development and marketing activities. LICENSEE represents that it has the facilities, personnel and expertise to use the Materials for commercial purposes and agrees to expend reasonable efforts and resources to develop the Materials for commercial use and/or commercial research.

3. LICENSORS hereby grant to LICENSEE a worldwide, non-exclusive license to make, have made and use but not to sell the Materials.
4. PHS agrees to provide LICENSEE with samples of the Materials, excluding progeny, subclones and derivatives thereof, (“Supplied Materials”), as available, and at reasonable cost may replace the supplied Materials, as available, in the event of their unintentional destruction.
5. In consideration of the grant in Paragraph 3 above, LICENSEE hereby agrees to make the following payments to LICENSORS:
 - a. Within 30 days of its execution of this Agreement, a noncreditable, nonrefundable license issue royalty of ten thousand dollars (\$10,000) to PHS or the LICENSEE may elect to make an initial payment of one thousand two hundred and fifty dollars (\$1250) and 5 installment payments in the amount of one thousand seven hundred and fifty (\$1750) each, with the initial payment due within 30 days of this Agreement’s execution. The remaining 5 payments are due within 30 day (i.e. monthly) increments thereafter and scheduled to begin six (6) months from the execution date of this Agreement. Payments to PHS shall be made payable to “Centers for Disease Control and following address: CDC, National Center for Infectious Diseases, 1600 Clifton Road, NE, Mailstop E-51, Atlanta, GA 30333
 - b. Within 30 days of its execution of this Agreement, a noncreditable, nonrefundable license issue royalty of ten thousand dollars (\$10,000) to EMORY or the Licensee may elect to make an initial payment of one thousand two hundred and fifty dollars (\$1250) and 5 installment payments in the amount of one thousand seven hundred and fifty dollars (\$1750) each, with the initial payment due within 30 days of this Agreement’s execution. The remaining 5 payments are due within 30 day (i.e.

monthly) increments thereafter and scheduled to begin six (6) months from the date of this Agreement. Payments to EMORY shall be made payable to “Emory University” and shall be mailed to the following address: Emory University, Office of Technology Transfer, 1599 Clifton Road NE, Fourth Floor, Atlanta, Georgia 30322, attn: Director Technology Transfer.

All payments required under this Agreement shall be in U.S. Dollars, net of all non-U.S. taxes, and shall be made by check or bank draft drawn on a United States bank. Late charges will be applied to any overdue payments as required by the U.S. Department of Treasury in the Treasury Fiscal Requirements Manual, Section 8025. 40. The payment of such late charges shall not prevent LICENSORS from exercising any other rights either may have as a consequence of the lateness of any payment.

6. This Agreement shall become effective on the date when the last party to sign has executed this Agreement and shall terminate five (5) years from this effective date, unless previously terminated under the terms of Paragraphs 13 or 14 below.
7. LICENSEE agrees to retain control over the Materials, and not to distribute them to third parties without the prior written consent of LICENSORS.
8. LICENSEE agrees that this Agreement does not preclude LICENSORS from distributing the Materials to third parties for research or commercial purposes.
9. By this Agreement, LICENSORS grant no patent rights expressly or by implication to any anticipated or pending PHS or EMORY patent applications or issued patents.

10. NO WARRANTIES, EXPRESS OR IMPLIED, ARE OFFERED AS TO THE MERCHANTABILITY OR FITNESS FOR ANY PURPOSE OF THE MATERIALS PROVIDED TO LICENSEE UNDER THIS AGREEMENT, OR THAT THE MATERIALS MAY BE EXPLOITED WITHOUT INFRINGING THE PATENT RIGHTS OF ANY THIRD PARTIES. LICENSEE accepts license rights to the Materials “as is”, and LICENSORS do not offer any guarantee of any kind.
11. LICENSEE agrees to indemnify and hold harmless the United States government and Emory University from any claims, costs, damages or losses that may arise from or through LICENSEE’s use of the Materials. LICENSEE further agrees that it will not by its action bring the United States government or Emory University into any lawsuit involving the Materials.
12. LICENSEE agrees in its use of any PHS-supplied Materials to comply with all applicable statutes, regulations and guidelines, including Public Health Service and PHS regulations and guidelines. LICENSEE agrees not to use the Materials for research involving human subjects or clinical trials in the United States without complying with 21 CFR Part 50 and 45 CFR Part 46. LICENSEE agrees not to use the Materials for research involving human subjects or clinical trials outside of the United States without notifying PHS, in writing, of such research or trials and complying with the applicable regulations of the appropriate national control authorities. Written notification to PHS of research involving human subjects or clinical trials outside of the United States shall be given no later than sixty (60) days prior to commencement of such research or trials.
13. LICENSEE may terminate this Agreement upon sixty (60) days written notice to LICENSORS.

14. PHS or EMORY may terminate this Agreement if LICENSEE is in default in the performance of any material obligation under this Agreement, and if the default has not been remedied within ninety (90) days after the date of written notice by PHS or EMORY of such default.
15. Upon termination of this Agreement, LICENSEE agrees to return all Materials to PHS, or provide PHS with certification of their destruction.
16. LICENSEE is encouraged to publish the results of its research projects using the Materials. In all oral presentations or written publications concerning the Materials, LICENSEE will acknowledge the contribution of Dr. Edwin Ades and Mr. Francis J. Candal of CDC and Dr. Thomas Lawley of EMORY, CDC and EMORY, unless requested otherwise by CDC, EMORY, Dr. Edwin Ades, Mr. Francis J. Candal or Dr. Thomas Lawley.
17. This Agreement shall be construed in accordance with the laws of the United States as interpreted and applied by the Federal Courts in the District of Columbia.
18. This Agreement constitutes the entire understanding of PHS, EMORY and LICENSEE and supersedes all prior agreements and understandings with respect to the Materials.
19. The provisions of this Agreement are severable, and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.
20. Paragraphs 10, 11, and 16 of this Agreement shall survive termination of this Agreement.

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SIGNATURE PAGE

In Witness whereof, the parties have executed this agreement on the dates set forth below. Any communication or notice to be given shall be forwarded to the respective addresses listed below.

FOR PHS:

Rima Khabbaz, M. D.
Director, National Center for Infectious Diseases
Centers for Disease Control and Prevention

Date

Mailing Address for Notices:
Center for Disease Control and Prevention
1600 Clifton Road, NE
Mailstop A42 –Technology Transfer
Atlanta, GA 30333

FOR EMORY:

Todd T. Sherer, Ph.D.
Assistant Vice President for Research and
Director, Office of Technology Transfer

Date

Mailing Address for Notices:
Emory University
Office of Technology Transfer
c/o Director
1599 Clifton Road, NE
Fourth Floor
Atlanta, GA 30322

FOR LICENSEE (upon information and belief, the undersigned expressly certifies or affirms that the contents of any statements of LICENSEE made or referred to in this Agreement are truthful and accurate.)

Signature

Date

Printed Name

Title

Mailing Address for Notices:

