



EVERCYTE GmbH
the pharmacocellomics™ company
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Material Transfer Agreement

between Evercyte and a not-for-profit-organization

This Material Transfer Agreement ("MTA") is between

Organization:

Authorized Person: _____
Function: _____
Address: _____
City: _____
Country: _____
T: _____
F: _____
E: _____

Principal Investigator of Purchaser: _____
Function: _____
Address: _____
City: _____
Country: _____
T: _____
F: _____
E: _____

(together referred to as "Purchaser") and

Evercyte GmbH, Muthgasse 18, 1190 Vienna, Austria
("Evercyte").

This MTA is effective as of the last date of execution by the parties and governs the purchase and use of all Evercyte Materials under the terms and conditions set forth below.

TERMS AND CONDITIONS

Definitions

"Biological Material(s)" means Evercyte Materials, Progeny, Unmodified Derivatives and any Unmodified Derivatives within Modifications, either individually or jointly.

"Commercial Use" means the sale, license, lease, export, transfer or other distribution of the Biological Materials to a person or entity not party to this MTA for financial gain or other commercial purposes and/or the use of the Biological Material: (a) to provide a service to a person or entity not party to this MTA for financial gain; (b) to produce or manufacture products for general sale or products for use in the manufacture of products ultimately intended for general sale (c) in connection with ADME (Absorption, Distribution, Metabolism and Excretion) testing; (d) in connection with drug potency or toxicity testing which does not include either screening multiple cell lines for potential inclusion in a screening assay system or screening multiple compounds in a system for internal research purposes only; (e) in connection with proficiency testing service(s), including but not limited to, providing the service of determining laboratory performance by means of comparing and evaluating calibrations or tests on the same or similar items or materials in accordance with predetermined conditions; or (f) for research conducted under an agreement wherein a for-profit entity receives a right whether actual or contingent to the results of the research. In addition, Commercial Use means the sale, license, lease, export, transfer or other distribution of any research result(s) developed in Purchaser's Investigator's laboratory by the use of Evercyte Material(s) for financial gain or other commercial purposes. Commercial Use specifically does not include Industry Sponsored Academic Research.

"Evercyte Material(s)" means materials acquired from Evercyte as documented in the Evercyte Sales Order.

"Evercyte Sales Order" means an order submitted for Evercyte Materials in a form and format as determined by Evercyte from time to time.

"Industry Sponsored Academic Research" means research sponsored by a for-profit carried out at a non-profit organization and by the non-profit organization's employees.

"Investigator" means the Purchaser's principal scientist or researcher using the Biological Material(s).

"License Term" means an unlimited period beginning with the subsequent month of the delivery of Evercyte Material(s)

"Modification(s)" means substances created by Purchaser, which contain and/or incorporate a significant or substantial portion of Evercyte Material.

"Progeny" means an unmodified descendant from the Evercyte Materials, such as virus from virus, cell from cell, or organism from organism.

"Purchaser(s)" means the organization purchasing and receiving Evercyte Material pursuant to this MTA.

“Unmodified Derivative(s)” mean substances created by Purchaser that constitute an unmodified functional sub-unit or product not changed in form or character and expressed by the Evercyte Material provided by Evercyte. Unmodified Derivatives include, but are not limited to, subclones of unmodified cell lines, purified or fractionated subsets of materials provided by Evercyte, proteins expressed by DNA/RNA supplied by Evercyte, antibodies, or any fragments thereof.

Scope of Use

Subject to the terms of this MTA, Purchaser’s investigator may make and use the Biological Materials provided to Purchaser by Evercyte for research purposes only in Purchaser Investigator’s laboratory only. The Biological Materials are not intended for use in humans. Purchaser agrees that Biological Materials designated as biosafety level 2 or 3 constitute known pathogens and that other Biological Materials not designated this way may be pathogenic under certain conditions. Purchaser assumes all risk and responsibility in connection with the receipt, handling, storage, disposal, transfer and Purchaser’s use of the Biological Materials including without limitation taking all appropriate safety and handling precautions to minimize health or environmental risk. Purchaser agrees that any activity undertaken with the Biological Materials will be conducted in compliance with all applicable guidelines, laws and regulations, and that Purchaser will obtain all permits, licenses or other approvals required by any governmental authority in connection with purchaser’s receipt, handling, storage, disposal, transfer and use of the Biological Materials.

Purchaser shall not distribute, sell, lend or otherwise transfer, to a person other than the Purchaser’s Investigator, or entity not party to this MTA, the Biological Material, as defined above, for any reason, without Evercyte’s prior written agreement.

Any Commercial Use of the Biological Material is strictly prohibited without Evercyte’s prior written consent. Purchaser acknowledges and agrees that Purchaser’s use of certain Biological Material may require a license from a person or entity not party to this MTA, or be subject to restrictions that may be imposed by a person or entity not party to this MTA (“Third Party Terms”). To the extent of Evercyte’s knowledge of the existence of any such applicable rights or restrictions, Evercyte will take reasonable steps to identify the same, and to the extent they are in the possession of Evercyte, Evercyte shall make information regarding such Third Party Terms reasonably available for review by Purchaser upon request. Purchaser expressly acknowledges that if there is a conflict between this MTA and the Third Party Terms, the Third Party Terms shall govern. Use of the Biological Materials may be subject to the intellectual property rights of a person or entity not party to this MTA. Evercyte makes no representation or warranty regarding the existence or the validity of such rights. Purchaser shall have the sole responsibility for obtaining any intellectual property licenses necessitated by its possession and use of the Biological Materials.

The use permitted under this MTA for Industry Sponsored Academic Research extends only to academic research carried out at the non-profit organization and the non-profit organization’s employees and only for the extent of the Project.

The non-profit organization using the Biological Materials in connection with Industry Sponsored Academic Research agrees to notify the industrial sponsor that any use of the Biological Materials by the industry sponsor will require a separate license from Evercyte and that Evercyte is under no obligation hereunder to license any Biological Materials to any such industry sponsor.

If Purchaser stops to use Evercyte Material(s) Purchaser will confirm in writing by authorized persons the destruction of remaining Evercyte Material(s) in Purchaser's Investigator's laboratory. The Certificate of Destruction is available online (<http://www.evercyte.com/certificate-of-destruction>) or upon request.

Warranty; Warranty Disclaimer

Evercyte warrants that (a) cells and microorganisms included in the Evercyte Material shall be viable upon initiation of culture for a period of thirty (30) days after shipment thereof from Evercyte and (b) any Evercyte Material other than cells and microorganisms shall meet the specifications on the applicable Product Data Sheet (PDS) and/or certificate of analysis until the expiration date on the applicable Evercyte Material's product label (such thirty (30) day period, or period until the expiration date, referred to herein as the "Warranty Period"). Purchaser's exclusive remedy, and Evercyte's sole liability, for breach of the warranties set forth in this paragraph is for Evercyte to, at Evercyte's sole option, either (i) to grant a fair and reasonable price reduction for such Evercyte Material (exclusive of shipping and handling charges), or (ii) replace the Evercyte Material. The warranties set forth in this paragraph apply only if Purchaser handles and stores the Evercyte Material as described in the applicable Product Data Sheet (PDS). To obtain the exclusive remedy, Purchaser must report the lack of viability or non-conformation to specifications to Evercyte, Muthgasse 18, 1190 Vienna, Austria (email: office@evercyte.com) within the applicable Warranty Period. Any expiration date specified on the Evercyte Material shipment documentation states the expected remaining useful life, but does not constitute a warranty or extend any applicable Warranty Period. **Except as expressly provided above, the Evercyte Material and any technical information and assistance provided by Evercyte are provided as-is, without warranties of any kind, express or implied, including but not limited to any implied warranties of merchantability, fitness for a particular purpose, typicality, safety, accuracy and/or non-infringement.**

Compliance with Laws

Purchaser is solely responsible for compliance with all foreign and domestic, federal, state and local statutes, ordinances and regulations applicable to use of the Biological Material. Without limiting the generality of the foregoing, any shipment of Biological Materials to countries outside of Austria must comply with all applicable foreign and Austrian laws, including the Austrian export control laws and related regulations. If there is any conflict between the terms of this MTA and any applicable law or regulation with respect to Materials that are supplied hereunder by Evercyte, then the terms of the applicable law or regulation shall govern.

Indemnification

Purchaser hereby agrees to indemnify, defend and hold harmless Evercyte against all third party claims, losses, expenses and damages, including reasonable attorneys' fees (collectively "Claims") arising out of or relating to Purchaser's use, receipt, handling, storage, transfer, disposal and other activities relating to Biological Materials, provided that Purchaser's liability shall be limited to the extent that any such Claim arises out of Evercyte's gross negligence or willful misconduct. All non-monetary settlements of any such Claims are subject to Evercyte's prior written consent, such consent not to be unreasonably withheld.

Limitation of Liability

In no event will Evercyte be liable for any indirect, special, incidental or consequential damages of any kind in connection with or arising out of the MTA or Biological Materials (whether in contract, tort, negligence, strict liability, statute or otherwise) even if Evercyte has been advised of the possibility of such damages. In no event shall Evercyte's cumulative liability to the Purchaser exceed the fees paid by purchaser under this MTA for the twelve (12) month period preceding the date of the event giving rise to the claim. Purchaser agrees that the limitations of liability set forth in this MTA shall apply even if a limited remedy provided hereunder fails of its essential purpose.

Intellectual Property; Identification

As between the parties, Evercyte shall retain ownership of all right, title and interest in the Evercyte Materials, Progeny, Unmodified Derivatives and Biological Materials contained or incorporated in Modifications. Purchaser retains ownership of: (a) Modifications (except that, as between the parties, Evercyte retains ownership rights to Biological Material included therein) and (b) those substances created through the use of Biological Material, but which do not contain Biological Material. Notwithstanding the foregoing, Purchaser acknowledges and agrees that the Biological Materials are subject to the restrictions noted in the "Scope of Use" section above. Purchaser agrees to acknowledge Evercyte indicated by Evercyte as the source of the Biological Material in all research, academic or scholarly publications and in patent applications that reference the Biological Material. Purchaser explicitly acknowledges that Evercyte retains all right, title and interest in the Evercyte trademarks, trade-names, logos and Evercyte specific designations of Evercyte Materials sold by Evercyte (including but not limited to PHARMACOCELLOMICSTTM). Purchaser expressly agrees not to use the Evercyte trademarks, trade-names, logos or Evercyte specific designations of Evercyte Materials sold by Evercyte in any way without Evercyte's prior written agreement.

Miscellaneous

Any disputes arising under this Agreement shall be tried exclusively in the District Court of Vienna, Austria and Purchaser hereby expressly consents to, submits to and waives any objection to the jurisdiction of this court.



Purchaser agrees that any breach of this Agreement, including but not limited to any breach of the scope of use provisions of this Agreement, will entitle Evercyte to immediately cease without notice to Purchaser further shipments of Biological Materials and may create such irreparable injury as to entitle Evercyte to seek temporary restraining orders and other preliminary or permanent injunctive relief in addition to all other equitable and legal remedies.

Purchaser may not assign or otherwise transfer this MTA or any rights or obligations under this MTA, whether by operation of law or otherwise. Any such attempted assignment or transfer will be void and of no force or effect. This MTA, including all documents incorporated herein by reference, constitutes the entire agreement between Evercyte and Purchaser with respect to the Biological Material and supersedes all previous agreements or representations (whether written or oral) between Evercyte and Purchaser relating to the same subject matter. This MTA may not be modified, waived or terminated except in writing and signed by the parties hereto. No term or provision contained herein shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the parties. If any provision of this MTA is for any reason found to be unenforceable, the remainder of this Agreement will continue in full force and effect. None of the provisions of this MTA are intended to create, nor shall be deemed or construed to create, any relationship between Evercyte or Purchaser other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this MTA.

Any correspondence concerning the Evercyte Material Transfer Agreement should be addressed to Evercyte GmbH, Muthgasse 18, 1190 Vienna, Austria, e-mail: office@evercyte.com.

The Purchaser agrees to the General Terms and Conditions of Evercyte (<http://www.evercyte.com/terms-and-conditions>).

Purchaser and Purchaser Investigator agree to the terms of this MTA:

Purchaser: _____

Authorized Person: _____ Investigator: _____

Function: _____ Function: _____

Signature: _____ Signature: _____

Date: _____ Date: _____