



MATERIAL TRANSFER AGREEMENT (MTA)

IMPORTANT! PLEASE READ CAREFULLY BEFORE SUBMITTING ORDER. THIS IS A CONTRACT.

This Material Transfer Agreement ("Agreement") is between you (hereinafter, "Purchaser" or "you") and CELPROGEN Inc., a California corporation (hereinafter, "CELPROGEN," "we," or "us"). Note that you must have an approved, current CELPROGEN account to place an order. CELPROGEN is providing you the Material based on the following conditions.

1. Definitions:

- 1.1 As used in this Agreement, "Material" means the biological or chemical Material(s) listed on the Exhibit, and includes all copies, associated know-how, data, derivatives, parts and progeny thereof.
- 1.2 "Replicate" means any biological or chemical material that represents a substantially unmodified copy of the Material including, but not limited to, material produced by growth of cells or microorganisms or by amplification of Material(s).
- 1.3 "Derivative" means material created from the Material that is substantially modified to have new properties, such as, but not limited to, recombinant-DNA-clones made using a vector purchased from CELPROGEN.

2. Scope of Use:

The Material represents a significant investment on the part of CELPROGEN and is considered proprietary to CELPROGEN. YOU may make and use the Material provided to YOU by CELPROGEN and all Replicates and Derivatives for investigational use and research purposes *in vitro* or in laboratory animals ONLY and not for resale or for transfer to any other person or entity without prior approval from CELPROGEN. YOU agree not to transfer the Material to any person or entity other than those under YOUR direct control and supervision and for whom YOU are responsible, unless YOU have received the prior written approval of CELPROGEN, and such person or entity agrees in writing to the terms of this Agreement. In addition, YOU will obtain the agreement of all persons under YOUR direct control and supervision and for whom YOU are responsible that they are bound by the terms of this Agreement. The Material is not intended for use in humans. YOU agree that Material designated as Biosafety Level 2 or 3 constitutes known pathogens and that other Material not so designated as well as any Replicates or Derivatives thereof may be pathogenic under certain conditions. YOU assume all risk and responsibility in connection with the receipt, handling, storage, disposal, transfer and use of the Material, including, without limitation, all appropriate safety and handling

precautions to minimize health or environmental risk. YOU agree that any activity YOU undertake with the Material and any Replicates or Derivatives thereof will be conducted in compliance with all applicable guidelines, laws, and regulations. THIS AGREEMENT INVOLVES NO OTHER EXCHANGE OF PERSONNEL OR RESOURCES. CELPROGEN shall be free, in its sole discretion, to distribute the Material to others and to use it for its own purposes.

3. Use For Non-Commercial Purposes:

Nothing in this Agreement shall be deemed to grant the Purchaser any rights under any patents, nor any rights to use the Material for any products or processes for profit-making or commercial purposes. The Purchaser shall not distribute, sell, lend or otherwise transfer the Material or Replicates and Derivatives thereof for ANY REASON. Any commercial use of the Material, Replicates, and Derivatives is prohibited without CELPROGEN's prior written authorization. The Purchaser's use of the Materials may require a license from CELPROGEN which the Purchaser may learn about in the catalog description for the particular Material listed in Exhibit A to this Agreement or made available at www.celprogen.com. Use of the Material may be subject to CELPROGEN's intellectual property rights, which may not be listed in the CELPROGEN catalog or website, and CELPROGEN makes no representation or warranty that such rights do not exist. The Purchaser will be solely responsible for obtaining any intellectual property licenses necessitated by its possession and use of the Material(s) from CELPROGEN.

4. Warranty; Disclaimer of Warranty:

CELPROGEN warrants that cells shall be viable upon shipment from CELPROGEN for a period of thirty (30) days ("warranty period"). CELPROGEN warrants that any Material other than cells shall meet the specifications provided on the product information sheet, certificate of analysis, and/or catalog description until the expiration date on the product label. The exclusive remedy for breach of this warranty is, at CELPROGEN's option, (a) a refund of the fee paid to CELPROGEN for such Material (exclusive of shipping and handling charges), or (b) replacement of the Material. This exclusive remedy only applies under the condition that the Purchaser handles and stores the Material as described in the product sheet. To obtain the exclusive remedy, the Purchaser must report the lack of viability of cells or other Material to CELPROGEN's Technical Service Department within the warranty period. Any expiration date specified on the 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 MATERIAL AND ANY TECHNICAL INFORMATION AND ASSISTANCE PROVIDED BY CELPROGEN ARE PROVIDED AS IS AND WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TYPICALITY, SAFETY, ACCURACY, AND WITHOUT ANY REPRESENTATION OR WARRANTY THAT THE USE OF THE MATERIAL AND TECHNICAL INFORMATION WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHT OF THIRD PARTIES. It is the intention of PURCHASER that CELPROGEN not be liable for any claims or damages arising from PURCHASER's use of the Materials, Replicates, or Derivatives.

5. Compliance with Applicable Laws:

PURCHASER is responsible for compliance with all applicable domestic and foreign laws, federal, state and local statutes, ordinances and regulations. Without limiting the above, any shipment of the Material to countries outside the United States of America must comply with all applicable U.S. laws including the U.S. export control laws and related regulations.

6. Indemnification:

PURCHASER hereby agrees to indemnify and hold harmless CELPROGEN, its successors and assigns, from and against all third party claims, losses, liability, expenses and damages (including reasonable attorneys' fees and costs) arising out of or relating to any claims, demands, actions, or lawsuits resulting from the PURCHASER's use, receipt, handling, storage, transfer, disposal and other activities relating to the Material(s), Replicates, or Derivatives, except when the loss or damage is caused by the gross negligence or willful misconduct of CELPROGEN. All non-monetary settlements will be subject to CELPROGEN's consent. Notwithstanding anything in this Agreement stating the contrary, PURCHASER'S rights and obligations shall in no event be greater than its obligations would be were the PURCHASER to be sued directly.

7. Limitation of Liability:

In no event will CELPROGEN be liable for any indirect, special, incidental, or consequential damages of any kind in connection with or arising out of the Agreement, or relating to the use of the Materials, Replicates, or Derivatives (whether arising due to contract, tort, negligence, strict liability, statute, or otherwise) even if CELPROGEN has been advised of the possibility of such liability or damages, except only when the damage, liability, or injury has been caused by CELPROGEN's gross negligence or willful misconduct. IN NO EVENT, shall CELPPROGEN's cumulative liability exceed the fees paid by PURCHASER under this Agreement during the twelve (12) month period preceding the date of the event giving rise to the damage or liability claim. PURCHASER agrees that the limitations of liability set forth in this Agreement shall apply even if a limited remedy provided hereunder fails of its essential purpose.

8. Intellectual Property:

CELPROGEN shall retain ownership of all right, title, and interest in the Material, Replicates, or Derivatives. PURCHASER shall acknowledge CELPROGEN as the source of the Material(s) in all oral or written publications and patent applications that reference the Material(s). CELPROGEN retains all right, title and interest in the trademarks registered and/or owned by CELPROGEN as well as in any and all CELPROGEN catalog numbers or specific designations of the Material(s) sold by CELPROGEN. To the extent permitted by law, PURCHASER agrees to treat in confidence any of CELPROGEN's written information about the Material(s) that is stamped "CONFIDENTIAL," or any of

CELPROGEN's oral information about the Material that is identified in writing as "CONFIDENTIAL" within ten (10) days of the oral disclosure, except for information that was previously known to PURCHASER or that is or becomes publicly available or is disclosed to PURCHASER by a third party without a confidentiality obligation. PURCHASER may publish or otherwise publicly disclose the results of its use of the Material(s), but if CELPROGEN has given confidential information to PURCHASER, such public disclosure may be made only after CELPROGEN has had thirty (30) days to review the proposed disclosure to determine if it contains any CONFIDENTIAL information, except when a shortened period under a court order, or the Freedom of Information Act applies.

9. Payment; Taxes; Shipping:

Payments may be made by check, wire transfer, or credit card. Unless payment in advance is required by CELPROGEN or its exclusive distributors, payments shall be due within thirty (30) days after the date of the invoice. Any payments not made within the thirty (30) day period will be subject to an interest charge of one percent (1%) per month or the maximum rate allowed by applicable law, whichever is greater. PURCHASER is responsible for all taxes, duties, tariffs and permit fees assessed in connection with the Agreement and the Material(s). PURCHASER shall, upon demand, pay to CELPROGEN or its exclusive distributors the monies equal to any taxes, duties, tariffs, and/or permit fees that have been actually paid or are required to be collected or paid by CELPROGEN or its exclusive distributors. CELPROGEN and/or its exclusive distributors shall have no obligation hereunder to accept an order from PURCHASER unless PURCHASER has satisfied the requirements of CELPROGEN's applicable credit approval process and has satisfied any additional credit requirements that may be imposed by CELPROGEN, including providing CELPROGEN with a deposit, a letter of credit, or a payment in advance.

CELPROGEN will package the Material(s) for shipping in accordance with applicable laws and regulations. PURCHASER is responsible for ensuring that all permits required for PURCHASER to receive its order have been obtained and that sufficient proof of these permits has been provided to CELPROGEN. CELPROGEN will notify PURCHASER when orders are submitted without the necessary permits, and PURCHASER will have two (2) months after receiving such notification to provide the proof of the necessary permit(s) before an order is cancelled. A processing fee will be charged if special processing or packaging is necessary. All Materials will be shipped Free-On-Board (FOB) point of shipment, freight prepaid via a carrier of CELPROGEN's choice, and the costs will be added to PURCHASER's invoice. If the Material is lost or damaged during the shipment, CELPROGEN will replace it at no additional charge provided that PURCHASER reports the lost or damaged shipments to the applicable carrier and notifies CELPROGEN's Customer Service Department or exclusive distributor within fourteen (14) days from the invoice date. Each invoice will be mailed the following day after the Material is shipped from the point of shipment.

10. Assignment:

The PURCHASER may not assign or transfer this Agreement or any rights or obligations under it, either by operation of law or otherwise, without the written consent of CELPROGEN. Any attempts to assign or transfer this Agreement or any rights or obligations hereunder shall be deemed void and have no force and effect.

11. Force Majeure:

Both PURCHASER and CELPROGEN may be excused from performance under this Agreement upon giving notice to the other party, in the event their performance was prevented by acts of God, severe weather conditions, fire, flood, riot, strike, national calamity, lockout, war, civil disturbance, or any law, order, proclamation, regulation, ordinance, demand or requirement of any governmental agency or public authority.

12. Severability:

If any provision of this Agreement is declared or found to be invalid, illegal, unenforceable, or void by a court or governmental agency of competent jurisdiction, such decision shall not affect the validity of any remaining portion of the Agreement, and the parties acknowledge and agree that the remainder of the Agreement shall remain valid and enforceable to the extent permitted by law.

13. Governing Law:

This Agreement shall be governed and construed according to the laws of California without reference to its choice of laws. Any dispute arising under this Agreement that is not disposed of by agreement of the principals of CELPROGEN and the PURCHASER shall be resolved through binding mediation. Costs of the mediation shall be shared by the parties in proportion to their degree of liability under any rendered decision.

14. Modification:

This Agreement can only be modified by a written instrument signed by an authorized representative of the PURCHASER and CELPROGEN.

15. No Waiver:

A breach or default of any provision of this Agreement shall not be deemed as a waiver of a breach or default of a like or similar nature or provision under this Agreement.

16. Notices:

All notices pertaining to or required by this Agreement shall be in writing and shall be signed by an authorized representative of the PURCHASER and CELPROGEN, and shall

be sent by certified mail, return receipt requested, with postage prepaid, to the addresses indicated on the signature page for the PURCHASER and CELPROGEN.

17. Termination:

Either the PURCHASER or CELPROGEN may terminate this Agreement by giving written notice at least sixty (60) days prior to the desired termination date.

18. Entire Agreement:

This Agreement constitutes the entire agreement between the PURCHASER and CELPROGEN concerning the transfer of the Material(s), and supersedes any prior understandings or written or oral agreements and representations. The version of the Material Transfer Agreement applicable to any Material(s) order by the PURCHASER shall be the version in effect at the time of order placement.

This Agreement shall be effected on the date of full execution by the parties.

CELPROGEN, INC.

By: _____
Jay Sharma
CEO & CSO

PURCHASER

By: _____

EXHIBIT