

MATERIAL TRANSFER AGREEMENT ("MTA")

Last updated February 1, 2008

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

This Material Transfer Agreement ("MTA") is between the Board of Regents of the University of the Wisconsin System, on behalf of the University of Wisconsin-Madison, a public educational type of organization, having its principal place of business at 21 North Park Street, Suite 8401, Madison, Wisconsin 53715-1218 ("Purchaser") and the American Type Culture Collection, a not-for-profit organization, having its principal place of business at 10801 University Boulevard, Manassas, VA 20110-2209 ("ATCC"). Purchaser must have an approved, current ATCC account to place an order. This MTA is effective for a period of five (5) years as of the last date of execution by the parties and governs the purchase and use of all ATCC Materials under the terms and conditions set forth below.

TERMS AND CONDITIONS**Definitions**

- "**ATCC Material(s)**" means materials acquired from ATCC as documented on an ATCC Sales Order.
- "**ATCC Sales Order**" means an order submitted for ATCC Materials in a form and format as determined by ATCC from time to time.
- "**Biological Material(s)**" means ATCC Materials, Progeny, Unmodified Derivatives and Modifications, either individually or jointly.
- "**Commercial Use**" means the sale, license, lease, export, transfer or other distribution of the Biological Materials to a third party for financial gain or other commercial purposes and/or the use of the Biological Material: (a) to provide a service to a third party 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. Commercial Use specifically does not include Industry Sponsored Academic Research.
- "**Contributor(s)**" means an organization(s) and/or individual(s) providing original material to ATCC for deposit.
- "**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).
- "**Modification(s)**" mean substances created by Purchaser which contain and/or incorporate a significant or substantial portion of ATCC Material.
- "**Progeny**" means an unmodified descendant from the ATCC Materials, such as virus from virus, cell from cell, or organism from organism.
- "**Purchaser(s)**" means the organization purchasing and receiving ATCC 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 ATCC Material provided by ATCC. Unmodified Derivatives include, but are not limited to; subclones of unmodified cell lines, purified or fractionated subsets of materials provided by ATCC, proteins expressed by DNA/RNA supplied by ATCC, or monoclonal antibodies secreted by a hybridoma cell line.

Scope of Use

Subject to the terms of this MTA, Purchaser's investigator may make and use the Biological Materials provided to Purchaser by ATCC for research purposes in Purchaser's 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 so designated 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 third party the Biological Material, as defined above, for any reason, without ATCC's prior written agreement.

Any Commercial Use of the Biological Material is strictly prohibited without ATCC's prior written consent. Purchaser acknowledges and agrees that Purchaser's use of certain Biological Material may require a license from a third party, or be subject to third party restrictions ("Third Party Terms"). ATCC's catalog of ATCC Materials and/or customer service representative will identify any Biological Material that is subject to such Third Party Terms, and ATCC shall make 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 third party not listed in the ATCC catalog or website, and ATCC makes no representation or warranty that such rights do not exist. Purchaser shall have the sole responsibility for obtaining any intellectual property licenses necessitated by its possession and use of the Biological Materials. Notwithstanding anything in this paragraph, all distributions of ATCC patent deposits are made pursuant to, and in compliance with, all Budapest Treaty or 37 C.F.R. requirements.

The use permitted under this Agreement for Industry Sponsored Academic Research extends only to the academic research carried out at the non-profit organization and the non-profit organization's employees. Any non-profit Purchaser 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 ATCC and/or its Contributors and that ATCC and/or its Contributors are under no obligation hereunder to license any Biological Materials to any such industry-sponsor.

Warranty; Warranty Disclaimer

ATCC warrants that (a) cells and microorganisms included in the ATCC Material shall be viable upon initiation of culture for a period of thirty (30) days after shipment thereof from ATCC and (b) any ATCC Material other than cells and microorganisms shall meet the specifications on the applicable ATCC Material product information sheet, certificate of analysis, and/or catalog description until the expiration date on the applicable ATCC 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 ATCC's sole liability, for breach of the warranties set forth in this paragraph is for ATCC to, at ATCC's sole option, either (i) refund the fee paid to ATCC for such ATCC Material (exclusive of shipping and handling charges), or (ii) replace the ATCC Material. The warranties set forth in this paragraph apply only if Purchaser handles and stores the ATCC Material as described in the applicable ATCC Material product information sheet. To obtain the exclusive remedy, Purchaser must report the lack of viability or non-conformance to specifications to ATCC's Technical Service Department within the applicable Warranty Period. Any expiration date specified on the ATCC 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 ATCC Material and any technical information and assistance provided by ATCC 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 the United States must comply with all applicable foreign and U.S. laws, including the U.S. export control laws and related regulations.

Indemnification

If Purchaser is a for-profit or private non-profit organization.

Purchaser hereby agrees to indemnify, defend and hold harmless ATCC and its Contributors 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 ATCC's gross negligence or willful misconduct. All non-monetary settlements of any such Claims are subject to ATCC's prior written consent, such consent not to be unreasonably withheld.

If Purchaser is a Federal or State non-profit organization or a foreign organization that is prohibited by law from entering into the indemnification obligation set forth in the above paragraph.

Purchaser assumes all liability for any and 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 ATCC's gross negligence or willful misconduct, and provided further that if the Purchaser is the U.S. federal government or a state institution such Purchaser assumes such liability only to the extent provided under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq. or under equivalent applicable State or foreign law.

Limitation of Liability

In no event will ATCC or its Contributors 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 ATCC has been advised of the possibility of such damages. In no event shall ATCC's cumulative liability 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, ATCC and/or its Contributors shall retain ownership of all right, title and interest in the ATCC Materials, Progeny, Unmodified Derivatives and ATCC Materials contained or incorporated in Modifications. Purchaser retains ownership of: (a)

Modifications (except that, as between the parties, ATCC retains ownership rights to ATCC Material included therein) and (b) those substances created through the use of ATCC Material, but which do not contain ATCC 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 ATCC and any Contributor indicated by ATCC as the source of the Biological Material in all research, academic or scholarly publications and in patent applications that reference the Biological Material. If required by the Contributor of the ATCC Material, ATCC may inform the Contributor of Purchaser's Identity. Purchaser explicitly acknowledges that ATCC retains all right, title and interest in the ATCC trademarks, trade-names, logos, ATCC catalog numbers and ATCC specific designations of ATCC Materials sold by ATCC (including but not limited to UNIPPLUS™, YOUR DISCOVERIES BEGIN WITH US®, THE GLOBAL BIORESOURCE CENTER™, Authenticult™, SafeTsource™, ATCC CULTURES™, ATCC BIOPRODUCTS™, ATCC SPECIAL COLLECTIONS™, ATCC SERVICES™, ATCC Genuine Cultures®, ATCC Licensed Derivative®, BioEscrow®, ATCC Standards Resource®, ATCC Proficiency Standard®, ATCC Standard Reference Material™). Purchaser expressly agrees not to use the ATCC trademarks, trade-names, logos, ATCC catalog numbers or ATCC specific designations of ATCC Materials sold by ATCC in any way without ATCC's prior written agreement.

Payment; Taxes; Shipping

Payments may be made by check, wire transfer or credit card. Unless payment in advance is required by ATCC or its exclusive distributors, payments due to ATCC or its exclusive distributors shall be invoiced to Purchaser and due within thirty (30) days after the date of invoice. Any payments not made within such 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 less. Purchaser is responsible for all taxes, duties, tariffs and permit fees assessed in connection with this MTA and the ATCC Material. Purchaser shall, upon demand, pay to ATCC or its exclusive distributors an amount equal to any such tax(es), duties, tariffs and permit fees actually paid or required to be collected or paid by ATCC or its exclusive distributors. ATCC and/or its exclusive distributors shall have no obligation hereunder to accept an order from Purchaser unless Purchaser has satisfied the requirements of ATCC's applicable credit approval process and has satisfied any additional credit requirements imposed by ATCC, which may include providing ATCC with a deposit, letter of credit, or payment in advance, as requested.

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

Miscellaneous

Any disputes arising under this Agreement shall be tried exclusively in the United States District Court for the Eastern District of Virginia or if subject matter jurisdiction does not exist in that court, then in the state courts of Virginia for Prince William County, and Purchaser hereby expressly consents to, submits to and waives any objection to the jurisdiction of such courts; provided however, if Purchaser is a US Federal or State non-profit organization and provides reasonable proof that it is required by the statutory law of a jurisdiction to resolve disputes in an alternative U.S. jurisdiction, then such jurisdiction shall be binding upon the parties.

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

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 ATCC and Purchaser with respect to the Biological Material and supersedes all previous agreements or representations (whether written or oral) between ATCC 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 ATCC or Purchaser other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement.

SIGNATURES ON FOLLOWING PAGE

For ATCC

By: *Gary D. Meyer*

Name: Gary D. Meyer, MBA

Title: Director, IP, Licensing and Services

Date: *Aug 31, 2009*

For PURCHASER

By: *Michael P. ...*

Name:

Title:

Date: *1/12/09*

Any correspondence concerning the ATCC Material Transfer Agreement should be addressed to ATCC, Attention: Office of IP, Licensing and Services, P.O. Box 1549, Manassas, VA 20108, Phone: (703) 365-2700 or contact us at licensing@atcc.org