

MATERIAL TRANSFER AGREEMENT

This Material Transfer Agreement ("MTA") is by and between the Board of Regents of the University of Wisconsin System on behalf of the University of Wisconsin-Madison Waisman Clinical BioManufacturing Facility ("Purchaser"), and the American Type Culture Collection ("ATCC"), a non-profit organization located at 10801 University Blvd., Manassas, VA.

Scope of Use

PURCHASER MAY MAKE AND USE THE CRL-1658, NIH 3T3 cell line ("MATERIAL") PROVIDED BY ATCC AND ALL REPLICATES AND DERIVATIVES FOR THE PURPOSES OF CONDUCTING RESEARCH AND REPRODUCING THE MATERIAL TO PROVIDE TO OTHER RESEARCHERS. THE MATERIAL IS NOT INTENDED FOR USE IN HUMANS, AND ATCC SHALL BEAR NO LIABILITY FOR ANY SUCH USE IN HUMANS BY PURCHASER OR A SUBSEQUENT TRANSFEREE. PURCHASER AGREES THAT MATERIAL DESIGNATED AS BIOSAFETY LEVEL 2 OR 3 CONSTITUTES KNOWN PATHOGENS AND THAT OTHER MATERIAL NOT SO DESIGNATED AND REPLICATES OR DERIVATIVES MAY BE PATHOGENIC UNDER CERTAIN CONDITIONS. PURCHASER ASSUMES ALL RISK AND RESPONSIBILITY IN CONNECTION WITH THE RECEIPT, HANDLING, STORAGE, DISPOSAL, TRANSFER AND USE OF THE MATERIAL INCLUDING WITHOUT LIMITATION TAKING ALL APPROPRIATE SAFETY AND HANDLING PRECAUTIONS TO MINIMIZE HEALTH OR ENVIRONMENTAL RISK. PURCHASER AGREES THAT ANY ACTIVITY UNDERTAKEN WITH THE MATERIAL AND REPLICATES OR DERIVATIVES WILL BE CONDUCTED IN COMPLIANCE WITH ALL APPLICABLE GUIDELINES, LAWS AND REGULATIONS.

The Purchaser shall not distribute, sell, lend or otherwise transfer the Material or Replicates for any reason, except as provided in this MTA. Purchaser agrees to include the terms of this MTA in any agreements with subsequent transferees. Any commercialization of the Material, Replicates, and Derivatives using the ATCC name and/or catalog number is prohibited without ATCC's prior written authorization.

"Replicate" means any biological or chemical material that represents a substantially unmodified copy of the Material, such as material produced by growth of cells or microorganisms or amplification of Material. "Derivative" means material created from the Material that is substantially modified to have new properties, such as recombinant DNA clones made using a vector purchased from ATCC.

Warranty; Warranty Disclaimer

ATCC warrants that the Material shall be viable upon shipment from ATCC for a period of thirty (30) days ("Warranty Period"). The exclusive remedy for breach of this warranty is, at ATCC's option, (a) refund of the fee paid to ATCC for such Material (exclusive of shipping and handling charges), or (b) replacement of the Material. To obtain the exclusive remedy, Purchaser must report the lack of viability to ATCC'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 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 NON-INFRINGEMENT.**

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PURCHASER IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE FOREIGN AND DOMESTIC, FEDERAL, STATE AND LOCAL STATUTES, ORDINANCES AND REGULATIONS. Without limiting the generality of the foregoing, any shipment of the Material to countries outside the United States must comply with all applicable U.S. laws, including the U.S. export control laws and related regulations.

Hold Harmless

Purchaser agrees to hold harmless ATCC and its contributors from any and all liability for damages arising from the use, storage or disposal of the Material, Replicates or Derivatives, to the extent permitted by the laws of the states of Wisconsin.

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, MATERIALS, REPLICATES OR DERIVATIVES (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 Agreement shall apply even if a limited remedy provided hereunder fails of its essential purpose.

Intellectual Property; Identification

The Material, Replicates and Derivatives 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 Material in all publications and patent applications that reference the Material. If required by the contributor of the Material, ATCC may inform the contributor of Purchaser's identity.

Payment; Taxes; Shipping

Payments may be made by check, wire transfer or credit card. Unless payment in advance is required by ATCC, all payments due to ATCC 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 Material. Purchaser shall, upon demand, pay to ATCC an amount equal to any such tax(es), duties, tariffs and permit fees actually paid or required to be collected or paid by ATCC. ATCC 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 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 Materials are shipped FOB point of shipment, freight prepaid via carrier of our choice and added to your invoice. If the Material is lost or damaged during shipment, ATCC will replace such Material at no additional charge, provided that you have reported lost or damaged shipments to the applicable carrier and notified ATCC's Customer Service Department promptly upon discovery thereof.

Miscellaneous

This Agreement shall be governed by the laws of the Commonwealth of Virginia, without reference to its choice of law rules. Purchaser may not assign or otherwise transfer this Agreement or any rights or obligations under this Agreement, whether by operation of law or otherwise. Any attempted assignment or transfer will be void and of no force or effect. This MTA and all documents incorporated herein by reference constitute the entire agreement between ATCC and Purchaser with respect to the Material and supersede all previous agreements or representations.