

## Material Transfer Agreement

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

This Material Transfer Agreement ("MTA") is between the "Purchaser" [ \_\_\_\_\_ (End User's Name), \_\_\_\_\_ (Organization)], and Applied Biological Materials Inc, a for-profit organization, having its principal place of business at Suite #1-3671 Viking Way, Richmond, BC, Canada V6V 2J5 ("ABM"). This MTA is effective for a period of ten (10) years as of the last date of execution by the parties and governs the purchase and use of all ABM Materials under the terms and conditions set forth below.

### **TERMS AND CONDITIONS**

#### **Definitions**

"**ABM Material(s)**" means Cat. No. \_\_\_\_\_, Product Name: \_\_\_\_\_ acquired from ABM as documented on ABM Sales Order No. \_\_\_\_\_.

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

"**Biological Material(s)**" means ABM 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 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. Commercial Use specifically does not include Industry Sponsored Academic Research.

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

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

"**Modification(s)**" mean substances created by Purchaser which contain and/or incorporate a significant or substantial portion of ABM Materials.

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

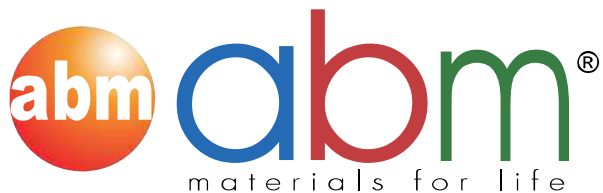
"**Purchaser(s)**" means the organization purchasing and receiving ABM Material pursuant to this MTA.

"**Contributor(s)**" means any organization(s), entity and/or individual(s) providing technology and/or patent rights related to the Biological Material, or original material to ABM Inc. for deposit.

"**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 ABM Materials provided by ABM. Unmodified Derivatives include, but are not limited to, subclones of unmodified cell lines, purified or fractionated subsets of materials provided by ABM, proteins expressed by DNA/RNA supplied by the ABM Materials, 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 ABM for research purposes only 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 person or entity not party to this MTA the Biological Material, as defined above, for any reason, without ABM's prior written agreement.**

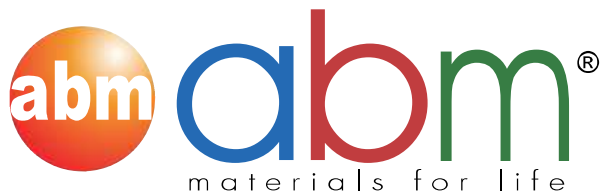
**Any Commercial Use of the Biological Material is strictly prohibited without ABM's prior written consent.** Purchaser acknowledges and agrees that Purchaser's use of certain Biological Material may require a license from a person or entity not party to this MTA, or be subject to restrictions that may be imposed by a person or entity not party to this MTA ("Third Party Terms"). 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, the existence of which rights may or may not be identified in the ABM catalog or website, and ABM 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. Purchaser expressly acknowledges that the Biological Materials provided under this MTA does not grant the license aforementioned or imply any ownership rights of any intellectual properties rights relating to the Biological Materials.

**The use permitted under this MTA 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 nonprofit 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 ABM and/or its Contributors and that ABM and/or its Contributors are under no obligation hereunder to license any Biological Materials to any such industry sponsor.

#### **Warranty; Warranty Disclaimer**

ABM warrants that (a) cells and microorganisms included in the ABM Material shall be viable upon initiation of culture for a period of thirty (30) days after shipment thereof from ABM and (b) any ABM Material other than cells and microorganisms shall meet the specifications on the applicable ABM Material product information sheet, certificate of analysis, and/or catalog description until the expiration date on the applicable ABM 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 ABM's sole liability, for breach of the warranties set forth in this paragraph is for ABM to, at ABM's sole option, either (i) refund the fee paid to ABM for such ABM Material (exclusive of shipping and handling charges), or (ii) replace the ABM Material. The warranties set forth in this paragraph apply only if Purchaser handles and stores the ABM Material as described in the applicable ABM Material product information sheet. To obtain the exclusive remedy, Purchaser must report the lack of viability or non-conformation to specifications to ABM's Technical Service Department within the applicable Warranty Period. Any expiration date specified on the ABM 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 ABM Material and any technical information and assistance provided by ABM 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 Canada must comply with all applicable foreign and Canadian laws, including the Canadian export control laws and related regulations. Distribution by ABM of Budapest Treaty patent deposits are made pursuant to, and in compliance with, all applicable laws and regulations, including the Budapest Treaty and related 37 C.F.R. provisions. 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 ABM from the stock of a Budapest Treaty deposit, then the terms of the applicable law or regulation shall govern.

### **Indemnification**

Purchaser hereby agrees to indemnify, defend and hold harmless ABM and its Contributors against all person or entity not party to this Agreement 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 ABM's gross negligence or wilful misconduct. All non-monetary settlements of any such Claims are subject to ABM's prior written consent, such consent not to be unreasonably withheld.

### **Limitation of Liability**

In no event will ABM 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 ABM has been advised of the possibility of such damages. In no event shall ABM'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.

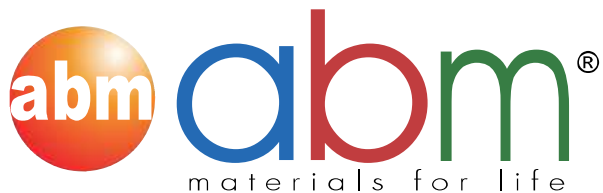
### **Intellectual Property; Identification**

As between the parties, ABM shall retain ownership of all right, title and interest in the ABM Materials, Progeny, Unmodified Derivatives and ABM Materials contained or incorporated in Modifications. Purchaser retains ownership of: (a) Modifications (except that, as between the parties, ABM retains ownership rights to ABM Material included therein) and (b) those substances created through the use of ABM Material, but which do not contain ABM 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 ABM 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 ABM retains all right, title and interest in the ABM trademarks, trade-names, logos, ABM catalog numbers and ABM specific designations of ABM Materials sold by ABM.

### **Payment; Taxes; Shipping**

Payments may be made by check, wire transfer or credit card. Unless payment in advance is required by ABM or its exclusive distributors, payments due to ABM 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 ABM Material. Purchaser shall, upon demand, pay to ABM 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 ABM or its exclusive distributors. ABM and/or its exclusive distributors shall have no obligation hereunder to accept an order from Purchaser unless Purchaser has satisfied the requirements of ABM's applicable credit approval process and has satisfied any additional credit requirements imposed by ABM, which may include providing ABM with a deposit, letter of credit, or payment in advance, as requested.

ABM will package the ABM 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 ABM. ABM 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 ABM Materials are shipped Freight on Board (FOB) point of shipment, freight prepaid via carrier of ABM's choice and added to Purchaser's invoice. If the ABM Material is lost or damaged during shipment, ABM will replace such ABM Material at no additional charge, provided that Purchaser has reported lost or damaged shipments to the applicable carrier and notified ABM's Customer Service Department or exclusive distributor within fourteen (14) days from invoice date. Each invoice will be mailed the following day after ABM Material is shipped from the point of shipment.

**Miscellaneous**

Any disputes arising under this Agreement shall be tried exclusively in the Court of British Columbia, Canada. And Purchaser hereby expressly consents to, submits to and waives any objection to the jurisdiction of such courts. 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 ABM to immediately cease without notice to Purchaser further shipments of Biological Materials and shall create such irreparable injury as to entitle ABM to seek temporary restraining orders and other preliminary or permanent injunctive relief in addition to all other equitable and legal remedies that may be afforded under Canadian 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 ABM and Purchaser with respect to the Biological Material and supersedes all previous agreements or representations (whether written or oral) between ABM 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 ABM 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 ABM Material Transfer Agreement should be addressed to ABM, Attention: Suite #1-3671 Viking Way, Richmond, BC, Canada V6V 2J5 Phone: (604) 247-2416 or contact us by email at [bd@abmgood.com](mailto:bd@abmgood.com).

**IN WITNESS WHEREOF**, the parties or the duly authorised officers of the parties have executed this Agreement. Both parties have read and understood this Agreement and agree to be bound by the terms and conditions therein.

**Applied Biological Materials Inc.**

**Purchaser – Recipient Scientist**

Authorised Official:

Name:

Title:

Title:

Signature:

Signature:

Date:

Date: