



TERMS AND CONDITIONS

THIS AGREEMENT (this “**Agreement**”) is entered into as of the date indicated on the signature page above (the “**Effective Date**”), by and between American Type Culture Collection, a District of Columbia not-for-profit corporation, having its principal place of business address at 10801 University Boulevard, Manassas, Virginia 20110-2209 (“**ATCC**”), and the customer listed above (“**Purchaser**”), collectively referred to herein as the “parties”, or severally as the “party”.

Purchaser has engaged ATCC to provide the services specified in the ATCC Sales Order (the “**Services**”), and ATCC is willing to provide such Services to Purchaser, solely in accordance with the terms and conditions set forth herein, and no other terms and conditions, unless mutually agreed.

1. Definitions

Unless otherwise defined herein, all initially capitalized terms used in this Agreement shall have the following meanings:

- 1.1 “**ATCC Sales Order**” means an order submitted by Purchaser for the purchase of Services in a form and format as determined by ATCC from time to time.
- 1.2 “**Confidential Information**” means all information disclosed by either party hereunder, whether in writing, orally, electronically, visually or in any other form, including but not limited to traceability data, quality control data, compounds, reagents, Biological Material, techniques for the handling and use of Biological Material, know-how, formulas, processes, product ideas, inventions (whether patentable or not), improvements, copyrightable or patentable materials, trade secrets, schematics, and other technical, business, financial, and product development plans, forecasts, strategies, and information, and that the disclosing party discloses to the receiving party. The parties will use reasonable efforts to mark all Confidential Information disclosed in writing as “Confidential”, “Proprietary” or the like, and to identify information disclosed orally or in any other transitory medium as confidential at the time of disclosure; provided, that notwithstanding any failure to mark and/or identify, all information shall nonetheless be deemed Confidential Information hereunder if it is of a nature that a reasonable person would, in the context of the disclosure, understand it to be confidential.

Confidential Information shall not include information that the receiving party can demonstrate by competent written records that were in existence at the relevant time: (a) was/is at the time of disclosure in the public domain; or (b) has come into or is in the public domain through no fault of the receiving party; or (c) was/is known to the receiving party prior to disclosure thereof by the disclosing party and was not acquired directly from the disclosing party on a confidential basis; or (d) was/is lawfully disclosed to

the receiving party without obligation of confidence by a Third Party which was not under an obligation of confidence to the disclosing party with respect thereto; or (e) was/is independently developed by the receiving party without reference to or use of Confidential Information provided by the disclosing party by personnel who had no access to or knowledge of the contents of the disclosing party’s Confidential Information or (f) is required by law to be disclosed, contingent upon the receiving party using reasonable efforts to inform the disclosing party prior to any said disclosure in sufficient time to enable the disclosing party to seek a protective order or other appropriate legal remedy to protect the disclosure.

- 1.3 “**Deliverable(s)**” means any data, analysis and documentation required to be delivered to Purchaser as described in this Agreement.
- 1.4 “**Purchaser Materials**” means any materials provided by Purchaser under these Terms and Conditions to ATCC for performance of the Services.
- 1.5 “**Specifications**” means the written specifications for the Deliverables that are agreed upon by the parties and set forth in this Agreement.

2. Services

- 2.1 **Delivery.** ATCC agrees to perform the Services within the time specified on the ATCC Sales Order.
- 2.2 **Changes.** Any changes to the scope of the ATCC Sales Order shall be set forth in a written amendment executed by an authorized representative of the Purchaser and ATCC.
- 2.3 **Acceptance.** Purchaser shall immediately accept or reject the Deliverables upon delivery from ATCC, and provide a prompt written statement of nonconformities to be corrected by ATCC prior to Purchaser’s acceptance of the Deliverables; provided, however, that if Purchaser fails to provide such written notice of non-conformance within ten (10) days of Purchaser’s receipt of such Deliverables, the Deliverables will be deemed to have been accepted by Purchaser. ATCC shall promptly dispute Purchaser’s findings of non-conformity, or proceed as provided in Section 3.1.
- 2.4 **Purchaser Cooperation.** Purchaser will provide all materials or information to ATCC by the dates specified in the ATCC Sales Order. Purchaser acknowledges and agrees that ATCC’s performance under this Agreement is dependent on Purchaser’s timely and effective cooperation with ATCC, and that delays in providing such materials or information may result in ATCC being released from an obligation or schedule deadline or in Purchaser having to pay extra fees in order for ATCC to meet a specific obligation or deadline despite the delay.

3. Warranties

3.1 ATCC represents and warrants that (a) ATCC will provide the Services in a professional and workman-like manner consistent with industry standards; and (b) the Deliverables shall, at the time of delivery, meet the specifications set forth herein, if any, in all material respects. Purchaser's exclusive remedy, and ATCC's sole liability, for breach of the warranties set forth in this Section 3.1 is, at ATCC's sole option, to either (i) refund the fee paid to ATCC for the performance of the Services, or (ii) re-perform the Services. The exclusive warranties set forth in this Section 3.1 apply only if Purchaser reports such non-conformance in writing to ATCC within ten (10) days of the date of Purchaser's receipt of such Deliverables.

3.2 EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3.1 ABOVE, THE DELIVERABLES AND ANY OTHER DOCUMENTATION, INFORMATION AND ASSISTANCE PROVIDED BY ATCC ARE PROVIDED "AS IS", WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND ATCC HEREBY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS OR IMPLIED; INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TYPICALITY, SAFETY, ACCURACY AND/OR NON-INFRINGEMENT.

4. Intellectual Property

4.1 Pre-existing Rights. Ownership of inventions, technologies, know-how, ideas, processes, techniques, algorithms, programs, discoveries, improvements, drugs, devices, biologics, products, concepts, designs, prototypes, samples, models, technical information, materials, drawings, specifications and other works of authorship existing as of the Effective Date, and all patents, copyrights, trade secret rights and other intellectual property rights therein (collectively, "**Pre-existing Intellectual Property**"), is not affected by this Agreement, and neither party shall have any claims to or rights in any Pre-existing Intellectual Property of the other party.

4.2 Purchaser Property. Ownership of, and restrictions on the use and disclosure of the Deliverables provided to Purchaser under this Agreement shall be owned by Purchaser ("**Purchaser Property**"). ATCC hereby assigns to Purchaser, all right, title and interest that ATCC has in and to Purchaser Property, including, without limitation, all patents, copyrights, and other intellectual property and proprietary rights therein. ATCC shall not file or prosecute or support in any country any patent application which claims or uses such Purchaser Materials. ATCC shall not conduct any analysis of Purchaser Materials, other than such analyses as are specifically set forth in this Agreement. For the avoidance of doubt, ATCC retains the right to use any general "know-how", techniques, ideas, concepts, algorithms, or other knowledge acquired or developed during the performance of the Services under this Agreement, on behalf of itself, its affiliates and/or other customers thereof.

5. Confidentiality

5.1 Obligations. ATCC shall use Confidential Information of Purchaser only as necessary to perform the Services under this Agreement, and Purchaser shall use Confidential Information of ATCC only as necessary to receive the benefit of the Services. To protect Confidential Information, each party shall (a) limit dissemination of the other party's Confidential Information to only those employees, directors, consultants, agents, and contractors having a "need to know" such information in connection with the Services; (b) advise all personnel who receive such

Confidential Information of the other party of the confidential nature of such information; (c) certify that each such employee, director, consultant, agent and contractor will have agreed, either as a condition of employment (as applicable) or in order to obtain the Confidential Information, to be under an obligation to the receiving party to be bound by terms and conditions of confidentiality and nonuse at least as strict as those set forth in this Agreement prior to disclosure of such Confidential Information; and (d) hold all of the other party's Confidential Information in strict confidence and not disclose the other party's Confidential Information to any third party other than the personnel listed in subsection (a), above, and take all action reasonably necessary to protect such Confidential Information from unauthorized use, access, duplication, disclosure, loss or damage, using at least the same measures to protect the party's own Confidential Information.

5.2 Compelled Disclosure. If a party is required to disclose the other party's Confidential Information by order of any regulatory or governmental agency, applicable laws or regulations, or court order, such compelled party shall promptly notify the owning party so that the owning party may seek a protective order or other remedy. In the event that such protective order or other remedy is not obtained, disclosure shall be permitted but shall be limited to only that portion of the Confidential Information which the compelled party is advised by its counsel, in consultation with the owning party's counsel, to be legally required to be disclosed.

5.3 Publicity. Except as required to comply with applicable laws, neither party shall mention or otherwise use the name, insignia, symbol, trademark, trade name or logotype of the other party (or any abbreviation or adaptation thereof) in any publication, press release, promotional material or other form of publicity regarding the provision of Services without the prior written approval of the other party in each instance.

6. Indemnification

Purchaser agrees to indemnify, defend, and hold harmless ATCC, its affiliates, and their respective directors, officers, employees, and personnel from and against any third party claims, actions or proceedings ("Claims") arising out of, attributable to or resulting from any Purchaser (a) use, handling, or storage of the Deliverables and any materials, products or services based upon or relating to the Deliverables, including but not limited to any claim that any such use, handling or storage infringes upon any third party intellectual property rights; (b) provision of any materials or information to be used in providing the Services; (c) grossly negligent acts or omissions, or willful misconduct; (d) breach of any covenant, representation or warranty of Purchaser under this Agreement; or (e) failure to comply with applicable laws. ATCC shall provide the Purchaser prompt notice of any such Claim, including a copy thereof, served upon it, and shall cooperate fully with the Purchaser and its legal representatives in the investigation of any such Claim, at the Purchaser's expense. The Purchaser shall have the right to exercise sole control over the defense and settlement of any such Claim, including the sole right to select defense counsel and to direct the defense or settlement of any such Claim; provided that the Purchaser shall not enter into any settlement that admit fault or liability on ATCC's behalf without the prior written consent of ATCC. ATCC shall have the right to select and to obtain representation by separate legal counsel. If ATCC exercises such right, all costs and expenses incurred by ATCC for such separate legal counsel shall be borne by

ATCC. The Purchaser shall be relieved of any indemnification obligation hereunder if ATCC either (a) fails to follow the procedures set forth herein; (b) compromises or settles any Claim without the Purchaser's prior written approval; or (c) makes any admission or takes any other action with respect to any such Claim that is prejudicial to the defense of such Claim, without the Purchaser's prior written approval.

7. Limitation of Liability

EXCEPT FOR LIABILITY ARISING UNDER SECTION 5 (CONFIDENTIALITY) AND THE PURCHASER'S INDEMNITY OBLIGATIONS FOR CLAIMS ASSERTED BY THIRD PARTIES, AND TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL EITHER PARTY HEREUNDER BE LIABLE TO THE OTHER PARTY HEREUNDER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING FROM OR IN RELATION TO THIS AGREEMENT, THE PURCHASER MATERIAL, OR SERVICES (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BY STATUTE OR OTHERWISE). THIS LIMITATION SHALL APPLY EVEN IF SUCH PARTY HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES. ATCC'S MAXIMUM AGGREGATE LIABILITY TO PURCHASER HEREUNDER FOR ANY CLAIM RELATED TO, OR IN CONNECTION WITH, THIS AGREEMENT OR SERVICES (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, BY STATUTE OR OTHERWISE) SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL PAYMENTS BY PURCHASER TO ATCC UNDER THIS AGREEMENT. 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. Miscellaneous

8.1 Independent Contractors. The parties are independent contractors, and neither party's employees nor agents shall be considered to be an employee, partner, joint venturer, or agent of the other party, nor entitled to any of the benefits that each party provides to its own employees. Neither party shall represent, suggest, or otherwise imply to any person that such person or entity is an employee or agent of the other party or has the authority to contractually bind the other party.

8.2 Force Majeure. In the event ATCC is delayed or hindered in or prevented from the performance of any act required hereunder by reasons of strike, lockouts, labor troubles, inability to procure materials, failure of power or restrictive governmental or judicial orders or decrees, riots, insurrection, war, acts of God, acts of terrorism, inclement weather or other similar reasons or cause beyond such party's control ("**Force Majeure Event**"), then performance of such act shall be excused for the period of such delay, provided that the party affected by the alleged Force Majeure Event provides prompt written notice of such event, and uses reasonable efforts to avoid or remove the cause of such Force Majeure Event and shall resume performance of its obligations as soon as practicable thereafter.

8.3 Integration. This Agreement constitutes the entire agreement among the parties with respect to the subject matter herein and supersedes all prior and contemporaneous agreements, whether written or oral, of the parties hereto, relating to the subject matter herein. For the avoidance of doubt, any terms and conditions or other notations provided by Purchaser on an ATCC Sales Order form or any other form or order, whether inconsistent with or supplemental to this Agreement, are hereby rejected and shall be void and of no force or effect.

8.4 Assignment. Neither party may assign or otherwise transfer this Agreement, or any rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, and any attempted sale, pledge, assignment, sublicense or other transfer in violation thereof shall be void and of no force or effect, provided, however, either party may, without such consent, assign this Agreement and its rights and obligations hereunder in connection with the transfer or sale of all or substantially of its business, or in the event of its merger, consolidation, change in control or similar action. This Agreement shall be binding upon the parties, their legal representatives, and permitted successors and assigns.

8.5 Disputes. All disputes, controversies or claims arising under or related in any manner to this Agreement ("**Disputes**") shall be resolved in accordance with this Section 8.5, and any issue concerning the extent to which any Dispute is subject to arbitration, or any dispute concerning the applicability, interpretation, or enforceability of these procedures, including any contention that all or part of these procedures are invalid or unenforceable, shall be governed by the Federal Arbitration Act (as the same may be amended or supplemented from time to time) and resolved by the arbitral tribunal constituted hereunder. Excluding any actual or threatened breaches of confidentiality or intellectual property rights for which the parties may obtain injunctive or other equitable relief in a court of law as provided in this Section 8.5, these arbitration procedures shall be the sole and exclusive process for the resolution of any such Dispute; provided however, if a claim seeks both equitable relief and other relief, the portion of the claim that seeks relief other than equitable relief shall be stayed until after the claim for equitable relief is finally determined, with the remaining portion of the claim to be resolved by binding arbitration as provided below.

Disputes shall be governed by and construed in accordance with the substantive laws of the Commonwealth of Virginia, without regard to its conflicts of law rules, and shall be resolved and decided pursuant to the rules of arbitration by American Arbitration Association ("**AAA**") and conducted in Manassas, Virginia before a panel of three arbitrators (one arbitrator chosen by each of the parties and the third arbitrator chosen by the first two, unless the parties agree otherwise in writing), at least two (2) of whom shall have a minimum of five (5) years of experience in providing services in the biotechnology or pharmaceutical fields; provided however no potential arbitrator shall be appointed unless he or she has agreed in writing to abide and be bound by these terms and procedure. In the event of any conflict between the AAA rules and any provisions of this Agreement, the terms of this Agreement shall govern.

The parties acknowledge that time is of the essence in the initiation and completion of the arbitration, and that unless the arbitral tribunal expressly orders otherwise, the Dispute should be submitted to the tribunal for decision within nine (9) months after the commencement of the arbitration, and its final award shall be rendered within ninety (90) days thereafter.

The parties agree that notifications of any proceedings, reports, communications or any other document in connection with a Dispute shall be in English and sent as set forth in Section 8.7 of this Agreement. The arbitration panel may only award damages as provided for under the terms of the Agreement. The arbitrators shall have the authority to allocate between the parties, the costs of arbitration, including but not limited to reasonable

attorneys' fees, in such equitable manner as they determine. The parties irrevocably agree that the judgment of the arbitration panel shall be final and binding on the parties and their permitted successors and assigns, and shall be enforceable in any court of competent jurisdiction.

The parties agree that all legal actions or proceedings seeking injunctive or equitable relief, as well as any proceeding to enforce an arbitral award hereunder, shall be brought exclusively in the State and Federal Courts of the Commonwealth of Virginia, and the parties hereby irrevocably consent and submit to such jurisdiction and venue.

8.6 Severability; Waiver; Amendments; Counterparts. If any provision of this Agreement is for any reason found to be unenforceable or invalid, the remainder of this Agreement shall continue in full force and effect as if such invalid or unenforceable provision had not been included herein. Failure to enforce any rights under this Agreement, regardless of the length of time such failure continues, shall not constitute a waiver of those or any other rights or any future breaches, unless in a writing signed by authorized representatives of the non-breaching party and then only to the extent expressly set forth in such writing. This Agreement may be amended only by a writing signed by any authorized representative of Purchaser and ATCC. This Agreement may be executed in counterparts, and transmitted by electronic means, including through portable document format or via facsimile, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement.



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