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”.

The MTA and these terms and conditions shall govern all terms and conditions of purchase and sale of ATCC Materials and shall constitute a legally-binding contract between the parties. Any additional terms or conditions stated in any purchase order (including but not limited to the “reverse side” or boilerplate terms of any purchase order), invoices or other directions or instructions shall not be binding upon the parties unless separately agreed to by the receiving Party in writing. In the event of any inconsistency or conflict between the terms and conditions of the MTA and any other document or agreement (including these Terms and Conditions), the MTA shall control.

1. Definitions

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

1.1 “Deliverable(s)” means any material, data, analysis and documentation required to be delivered to Purchaser as described in this Agreement.

1.2 “Material” means ATCC product specified in Order

1.3 “Order” means an order submitted by Purchaser for the purchase of Material.

2. Orders

2.1 Orders. Orders for Materials are subject to ATCC’s written acceptance and shall not be binding on ATCC until the earlier of such acceptance or shipment. ATCC shall use reasonable business efforts to notify Purchaser in writing within a reasonable time after ATCC’s receipt of a purchase order of the acceptance or rejection of the purchase order, and of an assigned delivery date for accepted purchase orders.

Prior to ATCC’s notification to Purchaser of acceptance of a purchase order, Purchaser may cancel the outstanding order by providing ATCC with written notice of cancellation. Once ATCC has accepted a purchase order, such purchase order shall become non-cancellable without ATCC’s prior written consent.

2.2 Delivery. ATCC will use reasonable business efforts to fulfill each Order within a reasonable period of time. All ship dates specified by ATCC are ATCC’s best approximation of the anticipated ship date and shall not be deemed to represent a fixed or guaranteed ship date. ATCC reserves the right to ship all of the Materials covered by any Order at one time or in separate parts or lots from time to time.

All Materials shall be shipped to Purchaser FOB (ATCC facility) for domestic shipments or EXW (ATCC Facility) INCOTERMS 2010 for international shipments, unless otherwise agreed in writing at the time of the purchase order. All risk of loss, damage or destruction of the Products shall pass to Purchaser on delivery of Products by ATCC to the carrier. ATCC will select the mode of shipment and the carrier. In accordance with FCA ATCC will be responsible for pre-carriage costs and arrangements up to the point that the goods are delivered to the carrier, and Purchaser will be responsible for and pay all packing, shipping, freight, and insurance charges and export costs thereafter.

2.3 Taxes. Purchaser shall be responsible for and shall promptly pay all sales, use, value added, withholding and other taxes and duties, if any, levied or imposed on either party as a result of the transactions contemplated by this Agreement and ATCC will be promptly reimbursed for any and all taxes or duties (excluding income taxes) that ATCC may be required to pay in connection with this Agreement.

2.4 Changes. Any changes to the scope of the Order shall be set forth in a written amendment executed by an authorized representative of the Purchaser and ATCC.

2.5 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.

3. Compensation

3.1 General. Purchaser will compensate ATCC as set forth in the Order. All payments shall be made in U.S. Dollars, free of currency controls or other restrictions, and are exclusive of all sales, use, value added, withholding and other taxes and duties. Purchaser shall be responsible for and shall promptly pay all sales, use, value added, withholding and other taxes and duties, if any, levied or imposed on either Party as a result of the transactions contemplated by this Agreement, and ATCC will be promptly reimbursed for any and all taxes or duties (excluding income taxes) that ATCC may be required to pay in connection with this Agreement.

3.2 Payment Terms. Company shall pay all invoices within thirty (30) days of Order date. Should Purchaser fail to make any undisputed payments to ATCC within such thirty (30) days, interest will accrue on such overdue amount at the lesser of (a) eighteen percent (18%) per annum, or (b) the maximum rate permitted by law.

4. Warranties

4.1 ATCC represents and warrants that (a) ATCC will provide the Material as specified on its website. Purchaser’s exclusive remedy, and ATCC’s sole liability, for breach of the warranties set forth in this Section 4.1 is, at ATCC’s sole option, to either (i) refund the fee paid to ATCC for the non-conforming Material, or (ii) provide replacement Material. The exclusive warranties set forth in this Section 4.1 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.

4.2 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.

5. Publicity

5.1 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) grossly negligent acts or omissions, or willful misconduct; (c) breach of any covenant, representation or warranty of Purchaser under this Agreement; or (d) 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 part 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) compromises or settles any Claim without the Purchaser’s prior written approval; or (b) 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 MATERIALS (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 or God, acts of terrorism, inclement weather or other similar reasons or cause beyond its control ("Force Majeure Event"), then performance of such act shall be excused for the period of such delay, provided that ATCC 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 a Purchaser 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, 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 the Section 6, 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 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 8.6 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 Notices. Any notices provided for or required under this Agreement shall be in writing and delivered to the parties at the postal addresses set forth in the ATCC Sales Order, by (a) first class certified mail, return receipt requested, or (b) a nationally-recognized overnight courier service.

8.7 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.