



MATERIAL TRANSFER AGREEMENT

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

This Material Transfer Agreement ("MTA") is between you ("Purchaser") and the Applied StemCell, Inc. a California company, having its principal place of business at 1165 O'Brien Drive, Suite A, Menlo Park, CA 94025 ("ASC"). Purchaser must have an approved, current ASC 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 ASC Materials under the terms and conditions set forth below.

TERMS AND CONDITIONS

Definitions

"ASC Material(s)" means materials acquired from ASC as documented on an ASC Sales Order.

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

"Biological Material(s)" means ASC 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.

"Contributor(s)" means an organization(s) and/or individual(s) providing original material to ASC for deposit.

"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.

"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 ASC Material.

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

"Purchaser(s)" means the organization purchasing and receiving ASC 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 ASC Material provided by ASC. Unmodified Derivatives include, but are not limited to, subclones of unmodified cell lines, purified or fractionated subsets of materials provided by ASC, proteins expressed by DNA/RNA supplied by ASC, 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 ASC 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 ASC's prior written agreement.

Any Commercial Use of the Biological Material is strictly prohibited without ASC'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"). To the extent of ASC's knowledge of the existence of any such applicable rights or restrictions, ASC will take reasonable steps to identify the same, either in ASC's catalog of ASC Materials and/or through ASC's customer service representatives, and to the extent they are in the possession of ASC, ASC shall make information regarding 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 person or

entity not party to this MTA, the existence of which rights may or may not be identified in the ASC catalog or website, and ASC 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.

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 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 ASC and/or its Contributors and that ASC and/or its Contributors are under no obligation hereunder to license any Biological Materials to any such industry sponsor.

Warranty; Warranty Disclaimer

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

Indemnification

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

Purchaser hereby agrees to indemnify, defend and hold harmless ASC 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 ASC's gross negligence or willful misconduct. All non-monetary settlements of any such Claims are subject to ASC'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 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 ASC'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 ASC 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 ASC has been advised of the possibility of such damages. In no event shall ASC'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, ASC and/or its Contributors shall retain ownership of all right, title and interest in the ASC Materials, Progeny, Unmodified Derivatives and ASC Materials contained or incorporated in Modifications. Purchaser retains ownership of: (a) Modifications (except that, as between the parties, ASC retains ownership rights to ASC Material included therein) and (b) those substances created through the use of ASC Material, but which do not contain ASC 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 ASC and any Contributor indicated by ASC 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 ASC Material, ASC may inform the Contributor of Purchaser's identity. Purchaser explicitly

acknowledges that ASC retains all right, title and interest in the ASC's trademarks, trade-names, logos, ASC catalog numbers and ASC specific designations of ASC Materials sold by ASC. Purchaser expressly agrees not to use the ASC trademarks, trade-names, logos, ASC catalog numbers or ASC specific designations of ASC Materials sold by ASC in any way without ASC'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 ASC or its exclusive distributors, payments due to ASC 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 ASC Material. Purchaser shall, upon demand, pay to ASC 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 ASC or its exclusive distributors. ASC and/or its exclusive distributors shall have no obligation hereunder to accept an order from Purchaser unless Purchaser has satisfied the requirements of ASC's applicable credit approval process and has satisfied any additional credit requirements imposed by ASC, which may include providing ASC with a deposit, letter of credit, or payment in advance, as requested.

ASC will package the ASC 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 ASC. ASC 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 ASC Materials are shipped Freight on Board (FOB) point of shipment, freight prepaid via carrier of ASC's choice and added to Purchaser's invoice. If the ASC Material is lost or damaged during shipment, ASC will replace such ASC Material at no additional charge, provided that Purchase has reported lost or damaged shipments to the applicable carrier and notified ASC's Customer Service Department or exclusive distributor within fourteen (14) days from invoice date. Each invoice will be mailed the following day after ASC 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 District of California or if subject matter jurisdiction does not exist in that court, then in the state courts of California, 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; then any disputes arising under this Agreement shall be tried exclusively in a court of competent jurisdiction.

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 ASC to immediately cease without notice to Purchaser further shipments of Biological Materials and shall create such irreparable injury as to entitle ASC 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 ASC and Purchaser with respect to the Biological Material and supersedes all previous agreements or representations (whether written or oral) between ASC 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 ASC or Purchaser other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this MTA.

Organization: _____

Purchaser Name: _____

Signature: _____

Date (mm/dd/yyyy): _____