

## END USER AGREEMENT

PLEASE READ THIS AGREEMENT.

THIS END USER AGREEMENT (“AGREEMENT”) IS BETWEEN MICROBIOLOGICS, INC. (THE “COMPANY” OR “MBL”), AND AN INDIVIDUAL, CORPORATION OR OTHER ENTITY (THE “END USER” OR “YOU”). THIS AGREEMENT GOVERNS THE TERMS UNDER WHICH THE END USER MAY PURCHASE MBL’S PRODUCTS (“PRODUCTS”) FROM THE COMPANY, ITS DISTRIBUTORS OR RESELLERS PURSUANT TO A SUBLICENSE AGREEMENT. THE PRODUCTS INCLUDE MATERIALS AND TRADEMARKS OWNED BY THE AMERICAN TYPE CULTURE COLLECTION (“ATCC”) WHICH HAS GRANTED A LICENSE TO THE COMPANY FOR THIS PURPOSE. THE COMPANY IS WILLING TO GRANT END USERS THE RIGHT TO PURCHASE AND USE THE COMPANY’S PRODUCTS ONLY IF THE END USER ACCEPTS ALL OF THE TERMS OF THIS AGREEMENT.

IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. BY SIGNING AND RETURNING THIS CONTRACT TO MBL (OR ITS SUBLICENSEES) OR BY CLICKING THE “I AGREE” BUTTON ON MBL’S WEB SITE AND BY ORDERING, ACCEPTING, ACCESSING AND USING THE PRODUCTS, THE END USER ACKNOWLEDGES THAT THE END USER HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY IT. IF THE END USER DOES NOT AGREE TO ANY OF THE TERMS IN THIS AGREEMENT, THE END USER SHOULD NOT UTILIZE THE PRODUCTS.

1. **SCOPE OF USE.** *You may only use the Products provided to you for quality control in your laboratory.* The Products are not intended for use in humans. End User agrees that Products designated as Biosafety Level 2 or 3 constitute known pathogens and that other Products not so designated and Replicates or Derivatives may be pathogenic under certain conditions. End User assumes all risk and responsibility in connection with the receipt, handling, storage, disposal, transfer and use of the Products including without limitation taking all appropriate safety and handling precautions to minimize health or environmental risk. End User agrees that any activity undertaken with the Products and Replicates or Derivatives will be conducted in compliance with all applicable guidelines, laws and regulations.

"Replicate" means any biological or chemical material that represents a substantially unmodified copy of the Products such as, but not limited to, material produced by growth of microorganisms. "Derivative" means any material created from the Products that constitutes an unmodified functional sub-unit from the Products or is substantially modified to have new properties.

2. **RESTRICTIONS.** End User may not use, copy, modify or transfer the Products, Replicates or Derivatives to others in whole or in part except as expressly provided in this Agreement. The Products contain trade secrets and intellectual property of ATCC and MBL, and the End User may not reverse engineer, replicate, alter, or tamper with the Products, their Replicates or Derivatives, or authorize any third party to do any of the foregoing. The rights granted hereunder to the End User are personal to the End User, and any attempt by the End User to transfer any of the rights, duties, or obligations hereunder is void and shall terminate this

Agreement. An End User may not rent, lease, loan, resell for profit, or distribute the Products, Replicates or Derivatives or any part thereof in any way.

3. **OWNERSHIP.** The Products are the property of MBL and ATCC, and may be protected by patent, copyright, trade secret, trademark and other laws. The Products are provided to the End User for use only under the terms of this Agreement, and the Company and ATCC reserve all rights not expressly granted to the End User.

4. **TERMINATION.** This Agreement will terminate immediately without notice to the End User if the End User breaches a term of this Agreement, or if the End User does not pay the Company, its distributor or sublicensee, the full purchase price in accordance with the purchase contract. Further, in the event of a termination or expiration of any agreement between the Company and ATCC on all or a part of the Products, the End User's right to access and use the Products may also terminate or expire.

5. **WARRANTY DISCLAIMER.** MBL warrants that any Products shall meet the specifications on the Product information sheet, Certificate of Analysis, and/or catalog description until the expiration date on the Product label. The exclusive remedy for breach of this warranty is, at MBL's option, (a) refund of the fee paid by End User for such Product (exclusive of shipping and handling charges), or (b) replacement of the Product. The exclusive remedy applies under the condition that End User handles and stores Products as described in the Product insert. To obtain the exclusive remedy, End User must report the lack of viability to MBL's Technical Service Department within the warranty period. EXCEPT AS EXPRESSLY PROVIDED ABOVE, THE PRODUCTS AND ANY TECHNICAL INFORMATION AND ASSISTANCE PROVIDED BY MBL ARE PROVIDED AS IS, WITHOUT WARRANTIES BY MBL OR ATCC 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.

6. **COMPLIANCE WITH LAW.** END USER IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE FOREIGN AND DOMESTIC, FEDERAL, STATE, AND LOCAL STATUTES, ORDINANCES, AND REGULATIONS.

7. **EXPORT LAW.** The Company's Products are subject to U.S. export control laws and may be subject to export or import regulations in other countries. Unless specifically authorized in writing by the Company prior to any access, the End User agrees not to export the Products under any circumstances whatsoever. In any case, the End User will indemnify and hold the Company, any Sublicensee in the chain of distribution, and ATCC harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney fees) arising from, or relating to, any breach by the End User of the End User's obligations under this section.

8. **LABORATORY QUALIFICATION ASSURANCE.** The microorganisms and subsequent growth on culture media deriving from the Products, Replicates or Derivatives are considered to be bio-hazardous. Government agencies do regulate the disposal of these materials. By entering into this End User Agreement, End User confirms that its laboratory procedures comply with the handling and disposal of these bio-hazardous materials, and that End User's

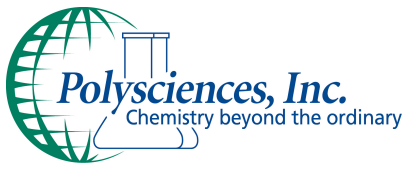
laboratory staff is qualified and properly trained to receive, process and store lyophilized microorganisms. End User acknowledges that the lyophilized microorganisms are for in-vitro use only and are to be used according to their intended use.

9. **INDEMNIFICATION.** To the extent permitted under United States Federal or State law, End User hereby agrees to indemnify, defend and hold Sublicensee, MBL and ATCC harmless against any Third Party claims, losses, expenses, and damages (including reasonable attorney's fees) arising out of or relating to the use, receipt, handling, storage, transfer, disposal and other activities related to the Products. Any resolution of a claim subject to this indemnification agreement will be subject to written consent by MBL and ATCC.

10. **LIMITATION OF LIABILITY.** IN NO EVENT WILL MBL, OR ATCC BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR PRODUCTS (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHERWISE) EVEN IF MBL OR ATCC HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL MBL'S AND ATCC'S CUMULATIVE LIABILITY EXCEED THE FEES PAID BY END USER UNDER THIS AGREEMENT FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. End User 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.

11. **INTELLECTUAL PROPERTY.** MBL and ATCC shall retain ownership of all right, title and interest in the Products. The Products are subject to the restrictions noted in the "Scope of Use" section above. End User expressly acknowledges that MBL retains all right, title and interest in any trademarks registered or owned by MBL, the MBL trade name, and the MBL catalog marks. End User also expressly acknowledges that ATCC retains all right, title and interest in the ATCC trademark, the ATCC trade name, and the ATCC catalog marks and any trademarks registered or owned by the ATCC. End User expressly agrees not to use any of MBL's trademarks, the ATCC trademark, the ATCC trade name or the ATCC catalog marks in any way in connection with the offering, marketing, promotion, or sale of any Products, Replicates or Derivatives without MBL's or ATCC's prior written agreement.

12. **GOVERNING LAW, JURISDICTION AND VENUE.** This Agreement shall for all purposes be governed by and interpreted in accordance with the laws of the State of Minnesota as those laws are applied to contracts entered into, and to be performed entirely in Minnesota by Minnesota residents. Any legal suit, action or proceeding arising out of, or relating to this Agreement, shall be commenced in a federal court in Minneapolis or St. Paul, Minnesota or the state court in Stearns County, Minnesota, and each party hereto irrevocably submits to the personal and exclusive jurisdiction and venue of any such court in any such suit, action or proceeding and waives any right which it may have to transfer or change the venue of any such suit, action or proceeding, except that in connection with any suit, action or proceeding commenced in a state court, each party retains whatever right it may have to remove such suit, action or proceeding to federal court in Minnesota. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.



13. **WAIVER.** No failure to enforce any term of this Agreement shall constitute a waiver of such term in the future.

14. **ASSIGNMENT.** Neither this Agreement nor any of the End User's rights or obligations hereunder may be assigned by the End User in whole or in part without the prior written approval of the Company and ATCC. Any other attempted assignment shall be null and void.

15. **SEVERABILITY.** If any part of this Agreement is for any reason found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected.

16. **COMPLETE AGREEMENT.** This Agreement, together with the Company's Product information sheet, Certificate of Analysis, and/or catalog description, is the complete and exclusive statement of the agreement between the Company and the End User, and supersedes any proposal or prior agreement, oral or written, and any other communications between the parties in relation to the subject matter of this Agreement. No waiver, alteration or modification of this Agreement shall be valid unless made in writing and signed by a corporate officer of the Company. Amendment of any provision concerning ATCC's rights as a third party beneficiary shall also require the written approval of ATCC.

From what Distributor do you purchase Microbiologics Products? \_\_\_\_\_

END USER

\_\_\_\_\_  
Print Name Job Title

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Signature Facility

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City Email Address

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Country Telephone Number

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Zip Code Date