

# Material Transfer Agreement

Updated on September 29, 2021, by BIONEER

This Material Transfer Agreement (the "MTA") is between \_\_\_\_\_ (hereinafter "Purchaser") and Bioneer Corporation (hereinafter, "BIONEER"). This MTA governs the purchase and use of the Material(s) under the terms and conditions set forth below.

**DEFINITIONS.** In this MTA, the following words have the following definitions:

"*Original Material(s)*": Tangible form of materials acquired from BIONEER or a third party designated by Bioneer, as listed on Appendix A attached hereto, or Purchaser's order or BIONEER's invoice incorporated herein by reference.

"*Progeny*": Unmodified descendent from the Original Material(s), such as virus from virus, cell from cell, or organism from organism.

"*Unmodified Derivative*": Substances created by Purchaser and Purchaser's Scientist which constitute an unmodified functional subunit or product expressed by the Original Material(s). Some examples include: subclones of unmodified cell lines, purified or fractionated subsets of the Original Material(s), proteins expressed by DNA/RNA supplied by BIONEER, monoclonal antibodies secreted by a hybridoma cell line.

"**MATERIAL(S)**": **Original Material(s), any Progeny, or Unmodified Derivatives. The MATERIAL(S) shall not include (i) Modifications or (ii) other substances created by Purchaser's Scientist through the use of the MATERIAL(S) which are not Modifications, Progeny, or Unmodified Derivatives.**

"*Modifications*": Substances created by Purchaser's Scientist which contain/incorporate the MATERIAL(S). The Modifications shall not include the Original Material(s), Progeny or Unmodified Derivatives.

"*Commercial Purposes*": The sale, lease, license, or other transfer of the MATERIAL(S) or Modification to a for-profit organization. Commercial Purposes shall also include uses of the MATERIAL(S) or Modifications by any organization, including Purchaser and Purchaser's Scientist, to perform contract research, to screen compound libraries, to produce or manufacture products for general use, or to conduct research activities that result in any sale, lease, license, or transfer of the MATERIAL(S) or Modifications to a for-profit organization. However, academic research sponsored by a third party shall not be considered a use of the MATERIAL(S) or Modifications for Commercial Purposes *per se*, unless any of the above conditions of this definition are met.

"*Purchaser's Scientist*": Purchaser's scientist receiving and using the Original Material(s) as shown on this MTA, as listed on Appendix A, Purchaser's order or BIONEER's invoice.

**SCOPE OF USE.** PURCHASER and PURCHASER'S SCIENTIST MAY MAKE AND USE THE MATERIAL(S) FOR RESEARCH PURPOSES IN PURCHASER'S SCIENTIST'S LABORATORY ONLY. THE MATERIAL(S) ARE NOT INTENDED FOR USE IN HUMANS. PURCHASER AND PURCHASER'S SCIENTIST ASSUMES ALL RISK AND RESPONSIBILITY IN CONNECTION WITH THE RECEIPT, HANDLING, STORAGE, DISPOSAL, TRANSFER AND USE OF THE MATERIAL(S) INCLUDING WITHOUT LIMITATION TAKING ALL APPROPRIATE SAFETY AND HANDLING PRECAUTIONS TO MINIMIZE HEALTH OR ENVIRONMENTAL RISK. PURCHASER AND PURCHASER'S SCIENTIST AGREE TO USE PRUDENCE AND REASONABLE CARE IN HANDLING AND STORAGE OF THE MATERIAL(S) AND THAT ANY ACTIVITY UNDERTAKEN WITH THE MATERIAL(S) WILL BE CONDUCTED IN COMPLIANCE WITH ALL APPLICABLE GUIDELINES, LAWS AND REGULATIONS. Purchaser and Purchaser's Scientist shall not distribute, sell, lend or otherwise transfer the MATERIAL(S) for any reason. Purchaser and Purchaser's Scientist agree that the MATERIAL(S) will be used only by Purchaser's Scientist in his/her laboratory at the Purchaser organization in accordance with the terms and conditions of this MTA and will not be transferred to anyone else within the Purchaser's organization without BIONEER's prior written consent. Any use of the MATERIAL(S) or Modifications for Commercial Purposes is prohibited without BIONEER's prior written authorization. Under a separate agreement with BIONEER that is at least as protective of BIONEER's rights as this MTA, Purchaser and Purchaser's Scientist may distribute Modifications to nonprofit organization(s) for research purposes only to the extent as required by the editorial policy of learned journals in which such Modifications are described. Without the prior written consent from BIONEER, Purchaser and Purchaser's Scientist may not provide Modifications to a third party for Commercial Purposes. It is recognized by Purchaser and Purchaser's Scientist that such Commercial Purposes may require a commercial license from BIONEER and BIONEER has no obligation to grant a commercial license to its ownership interest in the MATERIAL(S) incorporated in the Modifications. If Purchaser and Purchaser's Scientist desire to use or license the MATERIAL(S) or Modifications for Commercial Purposes, Purchaser and Purchaser's Scientist agree, in advance of such use, to negotiate in good faith with BIONEER to establish the terms of a commercial license. It is understood by Purchaser and Purchaser's Scientist that BIONEER shall have no obligation to grant such a license to Purchaser and Purchaser's Scientist, and may grant exclusive or non-exclusive commercial license to others, or sell or assign all or part of the rights in the MATERIAL(S) to any

third party(ies). Use of the MATERIAL(S) may be subject to the intellectual property rights of a third party not listed in the BIONEER catalog or website, and BIONEER makes no representation or warranty that such rights do not exist. Purchaser shall have the sole responsibility for obtaining any intellectual property licenses necessitated by its possession and use of MATERIAL(S). Purchaser and Purchaser's Scientist shall have the right, without restriction, to distribute substances created by Purchaser and Purchaser's Scientist through the use of the Original Material(s) only if those substances are not Progeny, Unmodified Derivatives or Modifications. If the MATERIAL(S) are requested from anyone other than Purchaser and Purchaser's Scientist, Purchaser or Purchaser's Scientist shall direct the inquiring party to obtain such Material(s) from BIONEER.

**WARRANTY AND WARRANTY DISCLAIMER.** BIONEER warrants that Original Material(s) shall be viable upon shipment from BIONEER for a period of one (1) month ("Warranty Period"), on the condition that the Original Material(s) are stored under the circumstances as described in the product information sheet. The exclusive remedy for breach of this warranty is the replacement of the Original Material(s). The exclusive remedy applies under the condition that Purchaser and Purchaser's Scientist handle and store the Original Material(s) as described in the product information sheet. To obtain the exclusive remedy, Purchaser or Purchaser's Scientist must report the lack of viability to BIONEER's Technical Service Department within the Warranty Period. Purchaser and Purchaser's Scientist acknowledge that the Original Materials are experimental products of research that may not have been fully characterized, and will accept the Original Materials "as is" entirely at its own risk. EXCEPT AS EXPRESSLY PROVIDED ABOVE, THE ORIGINAL MATERIAL(S) AND ANY TECHNICAL INFORMATION AND ASSISTANCE PROVIDED BY BIONEER ARE PROVIDED 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 NON-INFRINGEMENT.

**COMPLIANCE WITH LAWS.** PURCHASER AND PURCHASER'S SCIENTIST ARE SOLELY RESPONSIBLE FOR COMPLIANCE WITH ALL APPLICABLE FOREIGN AND DOMESTIC, FEDERAL, STATE AND LOCAL STATUTES, ORDINANCES, AND GOVERNMENTAL REGULATIONS AND GUIDELINES pertaining to research that are applicable in connection with the use of the MATERIAL(S) or Modifications. Without limiting the generality of the foregoing, any shipment of the Original Material(s) to countries outside the Republic of Korea must comply with all applicable laws.

**INDEMNIFICATION.** Purchaser and Purchaser's Scientist hereby agree to indemnify, defend and hold harmless BIONEER and its contributors against all third party claims, losses, expenses and damages (including reasonable attorneys' fees) arising out of or relating to the use, receipt, handling, storage, transfer, disposal and other activities relating to the MATERIAL(S) or Modifications except that, to the extent permitted by law, BIONEER shall be liable to Purchaser and Purchaser's Scientist when the damage is caused by the gross negligence or willful misconduct of BIONEER. All non-monetary settlements will be subject to BIONEER's consent, such consent not to be unreasonably withheld.

**LIMITATION OF LIABILITY.** IN NO EVENT WILL BIONEER 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, MATERIAL(S) OR MODIFICATIONS (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHERWISE) EVEN IF BIONEER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL BIONEER'S CUMULATIVE LIABILITY EXCEED THE FEES PAID BY PURCHASER AND PURCHASER'S SCIENTIST UNDER THIS MTA FOR THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO THE CLAIM. Purchaser and Purchaser's Scientist agree 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 AND IDENTIFICATION.** BIONEER and/or its contributors shall retain ownership of all right, title and interest in the MATERIAL(S), including any MATERIAL(S) contained or incorporated in Modifications. Purchaser and Purchaser's Scientist retain ownership of Modifications (except that, BIONEER retains ownership rights to the MATERIAL(S) included therein); provided, however, that if the creation of any Modification results from the collaborative efforts of BIONEER and Purchaser and Purchaser's Scientist, joint ownership is to be negotiated. The MATERIAL(S) and the Modifications are subject to the restrictions noted in the Scope of Use section above. Purchaser agrees to acknowledge or to ensure that Purchaser's Scientist acknowledges BIONEER as the source and provider of the MATERIAL(S) in any publications, presentations or patent applications concerning or referencing the MATERIAL(S). If required by the contributor of the Original Material(s), BIONEER may inform the contributor of Purchaser and Purchaser's Scientist's identity. To the extent not contrary to the terms of this MTA, the inventorship of any Modification will be determined in accordance with patents laws of the Republic of Korea. BIONEER retains all right, title and interest in the trademarks registered or owned by the BIONEER and any and all BIONEER catalog numbers or BIONEER specific designations of Original Material(s) sold by the BIONEER.

**PAYMENT, TAXES AND SHIPPING.** Payments may be made by check, credit card or wire transfer to BIONEER's bank account designated on our website before shipping the Original Material(s). Purchaser is responsible for all applicable taxes, duties, tariffs and permit fees incurred in connection with this MTA and the Original Material(s). Purchaser shall, upon demand by BIONEER, pay to BIONEER an amount equal to any such applicable tax(es), duties and tariffs. BIONEER shall have no obligation hereunder to accept an order from Purchaser unless Purchaser has satisfied the requirements of BIONEER's applicable credit approval process and has satisfied any additional credit requirements imposed by BIONEER, which may include providing BIONEER with a deposit, letter of credit, or payment in advance, at the option of BIONEER. BIONEER will package the Original Material(s) for shipping in accordance with applicable laws and regulations. Purchaser is responsible for ensuring that all permits required for Purchaser and Purchaser's Scientist to receive its order are obtained and that sufficient proof of such permits is provided to BIONEER. BIONEER will notify Purchaser or Purchaser's Scientist when orders are submitted without the necessary permits, and the notified Purchaser or Purchaser's Scientist will have a two (2) week period upon receiving such notification to supply proof of the necessary permit(s) before an order is cancelled. A processing fee will be charged if special processing or packaging is necessary. All Original Materials are shipped Free on Board (FOB) point of shipment, and freight will be prepaid via carrier of BIONEER's choice and the fee added to Purchaser's invoice.

**TERM.** Purchaser shall have the non-exclusive and non-transferable right to use the MATERIAL(S) under this MTA, for research purpose only. This MTA shall take effect on the date of the latest signature of the parties to this MTA and shall terminate five (5) years thereafter unless lawfully terminated earlier in accordance with the terms of this MTA.

**TERMINATION.** Purchaser or Purchaser's Scientist may terminate this MTA for no cause at any time upon thirty (30) days written notice. BIONEER may terminate this MTA with immediate effect for material breach including, but not limited to, the use of the MATERIAL(S) for commercial purpose. UPON EXPIRATION OR TERMINATION OF THIS MTA, PURCHASER AND PURCHASER'S SCIENTIST SHALL PROMPTLY CEASE TO USE **AND DESTROY ALL MATERIAL(S)**. WITHIN THIRTY (30) DAYS OF EXPIRATION OR TERMINATION OF THIS MTA, PURCHASER AND PURCHASER'S SCIENTIST SHALL PROVIDE BIONEER WITH A WRITTEN NOTICE CERTIFYING THAT SUCH MATERIAL(S) HAS BEEN DESTROYED.

**MISCELLANEOUS.** This MTA shall be governed by the laws of Republic of Korea, without reference to its choice of law rules. Purchaser and Purchaser's Scientist may not assign or otherwise transfer this MTA or any rights or obligations under this MTA, whether by operation of law or otherwise. Any attempted assignment or transfer will be void and of no force or effect. This MTA and all documents incorporated herein by reference constitute the entire agreement between BIONEER and Purchaser and Purchaser's Scientist with respect to the MATERIAL(S) and Modifications and supersede all previous agreements or representations. For future purchases, BIONEER may revise their template MTA at any time. The revisions will be effective immediately upon posting the revised MTA on BIONEER's Website available at the following links, or otherwise making available the revised MTA to Purchaser or Purchaser's Scientist:

[English] <https://eng.bioneer.com/c-life-science/gene-function/s-pombe-knock-out-library.html>

[Korean] <https://www.bioneer.co.kr/c-life-science/gene-function/s-pombe-knock-out-library.html>

The version of the MTA applicable to any Original Material(s) ordered by Purchaser shall be the version hereunder, that is mutually agreed to by signature below.

**[Signature Page Follows]**

By signing below, each of the duly undersigned hereby acknowledges that they have read and understood and agree to the terms and conditions set forth in this Material Transfer Agreement, as evidenced by their signatures below.

**PURCHASER**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**BIONEER**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**PURCHASER'S SCIENTIST**

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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Appendix A

Material(s) ordered by Purchaser under this MTA are as follows.

[Purchaser and Purchaser's Scientist's Information]		
<b>Purchaser</b>		
<b>Purchaser's Scientist</b>		
<b>Tel</b>		
<b>Fax</b>		
<b>Shipping Address</b>		
<b>Billing Address</b>		
[ORDERING LIST]		
No.	Description	Q'ty
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