

Athena Environmental Sciences, Inc.

COMMERCIAL EVALUTATION LICENSE AGREEMENT

This Agreement is entered into between Athena Environmental Sciences, Inc., hereinafter referred to as "AES", a corporation of Maryland, having an address at 1450 South Rolling Road, Baltimore, Maryland 21227, U.S.A. and _____ ("Licensee"), a corporation or entity of _____ (State), having an office at _____

(Address).

1. Definitions:

- (a) "**Licensed Patent Rights**" means the right to use the subject technologies of the following U.S. patent application(s) (including provisional patent application(s)) or patents and all foreign counterparts as they are associated with the licensed use of any Athena ES Complete Expression System: US S/N 11/203,168, US 6,022,952 and US 6,335,178.
- (b) "**Materials**" means ACES™ Expression plasmids including but not limited to pAES25, pAES30, 31, 32, 33, 34 and 35, and pAES40, including all progeny, subclones, or unmodified derivatives thereof.
- (c) "**Licensed Products**" means any Athena ES Complete Expression System kit or component, and **Materials** made by **Licensee** within the scope of the **Licensed Patent Rights**.
- (d) "**Licensed Field of Use**" means expression and production of recombinant proteins using the Licensed Products.

- 2. Licensee desires to obtain a license to evaluate the commercial applications of the Materials and the Licensed Products and any component of the Licensed Patent Rights.
- 3. Licensee intends to conduct laboratory experiments under this Agreement to evaluate the suitability for commercial development of inventions encompassed by the Licensed Patent Rights, Materials or Licensed Products in the Licensed Field of Use.
- 4. AES hereby grants to Licensee a nonexclusive, nontransferable license for *evaluation purposes only*, within its research facilities, to use *but not to sell* the Materials or the Licensed Products and products and processes encompassed within the scope of a claim in the Licensed Patent Rights. Licensee is prohibited from sublicensing the rights granted in this Agreement. Licensee *agrees that any commercial or industrial use or sale of any such products or processes, including any formalized in-house screening programs, other than for evaluation purposes, shall terminate this Agreement and be made only pursuant to the terms of a commercialization license to be negotiated in good faith by the parties.*
- 5. Licensee acknowledges that this Agreement does not permit Licensee to modify or alter in any way the subject Materials, or Licensed Products other than inserting genes of interest into the Materials for the sole purpose of expressing a protein of interest.
- 6. Licensee agrees to retain control over the Materials and the Licensed Products, and not to distribute or disclose them to third parties without the prior written consent of AES.
- 7. In exchange for nominal consideration and the agreed upon purchase price for the Materials, Licensed Patent Rights, and Licensed Products, AES agrees to the grant of rights set forth in Paragraph 4.

8. This Agreement shall become effective when the last party to sign has executed this Agreement. Use of the Materials, Licensed Patent Rights, or Licensed Products will effectuate this Agreement. The Agreement shall expire twelve (12) months from its effective date or upon written communication of the Licensee's intent to commercialize the use of the Materials, Licensed Products, or Licensed Patent Rights. Upon termination or expiration of this Agreement, Licensee shall immediately return all Materials and Licensed Products to AES or provide AES with written certification of their destruction, unless Licensee has executed another license for the Materials, Licensed Products, or Licensed Patent Rights.
9. Licensee acknowledges that third parties also may be evaluating the Licensed Patent Rights, the Licensed Products, or the Materials for a variety of purposes. Should Licensee apply for a license for any particular field of use, such license will be negotiated in good faith at that time.
10. The following termination rights are in addition to the termination rights that may be provided elsewhere in the Agreement:
 - (a) Immediate Right of Termination. AES shall have the right to immediately terminate this Agreement by giving written notice to Licensee in the event that Licensee files a petition in bankruptcy or is adjudicated a bankrupt or insolvent, or makes an assignment for the benefit of creditors or an arrangement pursuant to any bankruptcy law, or if the Licensee discontinues or dissolves its business or if a receiver is appointed for Licensee or for Licensee's business and such receiver is not discharged within ten (10) days;
 - (b) Right to Terminate Upon Notice. AES may terminate this Agreement upon 30 days' written notice to the Licensee in the event of a breach of any provision of this Agreement by the Licensee, provided that, during the 30-day period, the Licensee fails to cure such breach.
11. Licensee agrees to submit in confidence a final report to AES within thirty (30) days of termination or expiration of this Agreement outlining in general its results of commercial evaluation of the Licensed Patent Rights, the Licensed Products, or the Materials provided by this Agreement. Licensee shall submit the report to AES at the Mailing Address for Agreement notices indicated on the Signature Page.
12. During the course of this Agreement, Licensee may have access to and acquire information regarding the Materials, Licensed Products, or Licensed Patent Rights that is not generally known by the public. Licensee agrees that any such information is confidential and shall not be disclosed or exploited by Licensee.
13. AES agrees, to the extent permitted by law, to treat in confidence for a period of three (3) years from the date of disclosure, any of Licensee's written information about the Licensed Patent Rights, the Licensed Products, or the Materials that is stamped "CONFIDENTIAL" except for information that was previously known to AES, that is or becomes publicly available, or that is disclosed to AES by a third party without an obligation of confidentiality.
14. Licensee acknowledges that AES reserves the right to audit Licensee's use of the Licensed Patent Rights, the Licensed Products, and Materials.

15. No warranties, express or implied, are offered as to the fitness for any purpose of the materials or the licensed products provided to licensee under this agreement, or that the licensed patent rights may be exploited without infringing other patent rights. Licensee accepts license rights to the Licensed Patent Rights, the Licensed Products, and the Materials "as is", and AES does not offer any guarantee of any kind.
16. Licensee agrees to indemnify and hold harmless AES from any claims, costs, damages, or losses that may arise from the practice of the Licensed Patent Rights or through the use of the Licensed Products or the Materials. This paragraph is not applicable if Licensee is a government agency within the United States.
17. Licensee agrees in its use of any Materials or the Licensed Products to comply with all applicable statutes, regulations, and guidelines.
18. This Agreement shall be construed in accordance with the laws of the State of Maryland, as interpreted and applied by the State of Maryland. Licensee agrees to be subject to the jurisdiction of the State of Maryland.
19. This Agreement constitutes the entire understanding of AES and Licensee and supersedes all prior agreements and understandings with respect to the Licensed Patent Rights, the Materials and the Licensed Products.
20. This Agreement shall be assignable only with the express written consent of AES, which will not be withheld in bad faith.
21. The provisions of this Agreement are severable, and in the event that any provision of this Agreement shall be determined to be invalid or unenforceable under any controlling body of law, the invalidity or unenforceability of any provision of this Agreement, shall not in any way affect the validity or enforceability of the remaining provisions of this Agreement.
22. Paragraphs 5, 11, 12, 15, and 17 of this Agreement shall survive termination of this Agreement.

In Witness Whereof, the parties have executed this Agreement on the dates set forth below. Any communication or notice to be given shall be forwarded to the respective addresses listed below.

For AES:

 Sheldon E. Broedel, Jr., Ph.D.
 Chief Executive Officer

 Date

Mailing Address for Agreement notices:

Athena Environmental Sciences, Inc.
 1450 South Rolling Road
 Baltimore, Maryland 21227

For Licensee (Upon, information and belief, the undersigned expressly certifies or affirms that the contents of any statements of Licensee made or referred to in this document are truthful and accurate.)
 by:

Signature of Authorized Official

Date

Printed Name

Title

Official and Mailing Address for Agreement notices:

