

RESEARCH COLLABORATION AGREEMENT ("RCA")

ATCC Innovation Challenge



THIS AGREEMENT entered into this ___th day of _____, 201_, ("the Effective Date") by and between the **American Type Culture Collection**, a not-for-profit organization with headquarters in 10801 University Boulevard, Manassas, Virginia 20110-2209 ("ATCC") and **NAME OF INSTITUTION**, located at _____ ("COMPANY"), each a "Party," and collectively, the "Parties".

Subject to availability, ATCC agrees to provide the material(s) and to perform the research plan (Research Plan) as set forth in Appendix A. Company will enter into ATCC's standard form of material transfer agreement (the "MTA") prior to ATCC providing the Materials. Such material and any related biological material or associated know-how and data that will be received by COMPANY from ATCC, any substance that is replicated or derived or produced therefrom, and any materials provided by COMPANY to ATCC are covered by this Agreement and the MTA. All such materials and information shall hereinafter be referred to as the "Material(s)." In the event of any conflict between the RCA and the MTA, the RCA shall govern. Capitalized terms not defined herein shall have the meaning set forth in the MTA.

1. COMPANY agrees that the Materials will be used only for non-commercial research purposes as set forth in the Research Plan. Any changes to the Research Plan shall be subject to the prior written approval of ATCC.
2. ATCC anticipates that under this Agreement it may be necessary for ATCC to transfer to COMPANY information of a proprietary nature, whether in writing, orally, electronically, visually or in any other form, including, but not limited to traceability data, quality control data, compounds, reagents, biological material, techniques for the handling and use of biological material, know-how, formulas, processes, product ideas, inventions (whether patentable or not), improvements, copyrightable or patentable materials, trade secrets, schematics, and other technical, business, financial, and product development plans, forecasts, strategies, and information (hereinafter "Confidential Information"). The Parties will use reasonable efforts to mark all Confidential Information disclosed in writing as "Confidential", "Proprietary" or the like, and to identify information disclosed orally or in any other transitory medium as confidential at the time of disclosure; provided, that notwithstanding any failure to mark and/or identify, all information shall nonetheless be deemed Confidential Information hereunder if it is of a nature that a reasonable person would, in the context of the disclosure, understand it to be confidential. Such Confidential Information may be used, reproduced and/or disclosed only in accordance with written authorization received from ATCC, except to the extent that COMPANY can demonstrate by competent written records that were in existence at the relevant time that such information or Materials:
 - (a) was/is at the time of disclosure in the public domain; or
 - (b) has come into or is in the public domain through no fault of COMPANY; or
 - (c) was/is known to COMPANY prior to disclosure thereof by ATCC and was not acquired directly from ATCC on a confidential basis; or
 - (d) was/is lawfully disclosed to COMPANY without obligation of confidence by a third party which was not under an obligation of confidence to ATCC with respect thereto; or
 - (e) was/is independently developed by COMPANY without reference to or use of Confidential Information provided by ATCC by personnel who had no access to or knowledge of the contents of ATCC's Confidential Information.
 - (f) is required by law to be disclosed, contingent upon COMPANY using reasonable efforts to inform ATCC prior to any said disclosure in sufficient time to enable ATCC to seek a protective order or other appropriate legal remedy to protect the disclosure.

To the extent permitted by law, such Confidential Information shall include this Agreement and such Confidential Information shall be maintained for the term of this Agreement and three (3) years thereafter. Nothing herein shall restrict ATCC from disclosing (i) Company's name, (ii) a brief description of the nature of the Research Plan, (iii) that Company was selected as part of the ATCC Innovation Challenge.

3. The Materials are supplied solely for scientific research purposes, for use in animals and/or *in vitro*. They are not intended for animal, therapeutic or diagnostic use. THE MATERIALS SHALL NOT BE USED IN HUMANS.
4. No right or license is granted in this Agreement to COMPANY either expressly, by estoppel or by implication. It is understood that any and all proprietary rights, including but not limited to patent rights, in and to the Materials shall be and remain with ATCC.
5. The Parties agree to provide each other with a copy at least thirty (30) days in advance of any written submission (abstract or paper), oral presentation or other planned disclosure that makes reference to the Materials. If in the opinion of a Party any such submission or presentation discloses its proprietary information which the other Party is obligated to maintain as

confidential under Section 3 hereof, such Party shall notify the other Party within ten (10) working days of receipt thereof and the other Party shall delete such proprietary information from such submission or presentation and if requested by such Party will withhold such submission or presentation an additional sixty (60) days to allow the opportunity to assess the patentability of developed technology disclosed in the submission or presentation and to file for patent(s) should the Parties elect to do so. If a publication results from work using the Materials, each Party agrees to acknowledge the other and/or give credit as scientifically appropriate, based on any direct contribution such Party may have made to the work. In all publications Materials provided by ATCC will be identified by the ATCC trademarked catalog number and marked with "™". For sake of clarity, an example is "ATCC® 1234™".

6. The receiving Party agrees not to sequence or clone any Material provided without the express written permission of the providing Party.
7. COMPANY shall provide ATCC with all data generated in the course of the Research Plan or otherwise using the ATCC Materials and ATCC shall have a full and unrestricted right to use such data.
8. COMPANY will bear its respective costs of the Research Plan.
9. COMPANY acknowledges that the Materials are provided WITHOUT WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. ATCC MAKES NO REPRESENTATION THAT THE USE OF THE MATERIALS WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT.
10. In no event shall either Party be liable for any use of the Materials by the other Party. COMPANY hereby agrees to defend, indemnify, and hold harmless ATCC, its directors, officers, employees, shareholders and agents from any loss, claim, damage, expense or liability of whatsoever kind or nature (including attorney's fees), which may arise from or in connection with the COMPANY's use, handling or storage of the Materials.
11. Upon the request of ATCC, the COMPANY shall promptly return to ATCC the Materials furnished to COMPANY under this Agreement or provide evidence that the Materials have been destroyed.
12. COMPANY agrees to comply with all U.S. regulations and guidelines that are applicable to the COMPANY's use of the Materials and Developed Technology.
13. Each Party certifies and represents to the other that it has the full right and authority to enter into this Agreement, and that it is not aware of any impediment which would inhibit its ability to perform the terms and conditions imposed upon it by this Agreement.
14. This Agreement is not assignable, whether by operation of law or otherwise, without the prior written consent of ATCC. This Agreement will be governed and any disputes shall be resolved as set forth in the MTA.
15. This Agreement shall terminate on the earliest of the following dates (i) on the one-year anniversary of the Effective Date, (ii) on thirty (30) days written notice by either Party to the other, (iii) immediately upon written notice by either Party in the event of material breach of the Agreement by the other Party. If this Agreement terminates for any reason, COMPANY shall discontinue use of the Materials and will return or destroy any remaining Materials. If the Agreement terminates under subsection (ii) of the first sentence of this Section 9, other than where there is an imminent health risk or risk of patent infringement, the Parties will defer the effective date of termination for a period of up to three (3) months, upon request of either Party, to permit completion of research in progress. Except as otherwise provided above, Sections 1 through 6 and 9 will survive termination or expiration of this Agreement.

IN WITNESS WHEREOF, the Parties, intending to be legally bound, have caused this Agreement to be executed by their respective duly authorized representatives.

AMERICAN TYPE CULTURE COLLECTION

By: _____ Date: _____
Printed Name: _____
Title: _____

COMPANY

By: _____ Date: _____
Printed Name: _____
Title: _____

READ AND UNDERSTOOD BY COMPANY'S PRINCIPAL INVESTIGATOR:

By: _____ Date: _____
Printed Name: _____
Title: _____

APPENDIX A

1. Research Plan

2. Materials

to perform the research outlined under Research Plan above.

