FORMAL AGREEMENT BETWEEN THE U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES FOOD AND DRUG ADMINISTRATION AND U.S. DEPARTMENT OF AGRICULTURE OFFICE OF FOOD SAFETY

1. Purpose

The purpose of this agreement is to describe the intended roles of the U.S. Department of Health and Human Services Food and Drug Administration ("HHS-FDA") and the U.S. Department of Agriculture Food Safety and Inspection Service ("USDA-FSIS") (hereinafter individually a "Party", and together the "Parties") with respect to the oversight of human food produced using animal cell culture technology, derived from cell lines of USDA-amenable species and required to bear a USDA mark of inspection.

2. Background

HHS-FDA and USDA-FSIS recognize that each Party has an important role in the oversight of human food, derived from cell lines of USDA-amenable species and required to bear a USDA mark of inspection.

This document describes the parties' intended roles and responsibilities for oversight of such food. This document further sets forth the Parties' shared commitment to (1) ongoing cooperation to refine the details regarding the Parties' respective roles to provide for comprehensive and coordinated oversight and (2) a joint process by which the Parties will identify any changes needed to statutory or regulatory authorities to effect the intended regulatory oversight.

3. Statutory Authority

HHS-FDA is responsible for implementing and enforcing the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301, *et seq.*), the Public Health Service Act (42 U.S.C. 201, *et seq.*), and the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*). In carrying out its responsibilities under these acts, HHS-FDA broadly maintains its responsibility for ensuring that food is not adulterated or misbranded, including regulating food ingredients used during the production of meat, poultry, and egg products. In furtherance of this mission, HHS-FDA conducts inspections of establishments that manufacture, process, pack, or hold foods, with the exception of certain establishments that are regulated exclusively by USDA-FSIS. HHS-FDA also inspects vehicles and other conveyances, such as boats, trains, and airplanes, in which foods are transported or held in interstate commerce.

USDA-FSIS is responsible for implementing and enforcing the Federal Meat Inspection Act (FMIA; 21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA; 21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (21 U.S.C. 1031, *et seq.*). In carrying out its responsibilities under these acts, USDA-FSIS places inspectors in meat and poultry slaughter and processing establishments and egg products processing plants. Under its authorizing statutes, USDA-FSIS also determines the equivalence of foreign inspection systems as a condition of eligibility to export meat, poultry and egg products to the United States and reinspects 100

percent of imported meat, poultry, and egg products. And, USDA-FSIS enforces the misbranding and adulteration provisions of its authorizing statutes to meat, poultry and egg products in commerce.

Nothing in this agreement shall be construed to limit the statutory authority of HHS-FDA or USDA-FSIS.

4. Substance of the Agreement

A. HHS-FDA will:

1. Conduct premarket consultation processes to evaluate production materials/processes and manufacturing controls, to include oversight of tissue collection, cell lines and banks, and all components and inputs. Consult with USDA-FSIS, and share results of premarket consultation processes with USDA-FSIS, as authorized by law.

2. Oversee initial cell collection and the development and maintenance of qualified cell banks, including by issuing regulations or guidance and conducting inspections, as appropriate.

3. Oversee proliferation and differentiation of cells through the time of harvest, including by issuing regulations or guidance and conducting inspections, as appropriate.

4. At harvest, help coordinate the transfer of regulatory oversight to USDA-FSIS, including, but not limited to, providing information necessary for USDA to determine whether harvested cells are eligible to be processed into meat or poultry products that bear the USDA mark of inspection.

5. Ensure that covered entities comply with applicable HHS-FDA requirements, including facility registration, the Current Good Manufacturing Practices and preventive controls regulation, and requirements applicable to substances that become a component of food or otherwise affect the characteristics of food.

6. As needed, develop additional requirements for cell bank and cell culturing facility conditions and processes to ensure that biological material exiting the culture process is safe and not adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act.

7. Conduct appropriate inspections and follow-up activities, including taking enforcement action if necessary, to ensure that cell bank and cell culturing facilities are in compliance with HHS-FDA's applicable laws and regulations. HHS-FDA shall not inspect activities solely regulated by USDA-FSIS and shall rely on the USDA-FSIS regulatory process for information regarding such activities.

8. Share information with USDA-FSIS as authorized by law and appropriate for carrying out the respective responsibilities of the Parties, and, specifically, notify USDA-FSIS if objectionable conditions are identified, including conditions which may result in the production of adulterated or misbranded product, work collaboratively with USDA-FSIS to

address such conditions with respect to harvesting, and rely on USDA-FSIS to address such conditions with respect to post-harvesting activities.

B. USDA-FSIS will:

1. At harvest, help coordinate the transfer of regulatory oversight from HHS-FDA, including, but not limited to, reviewing information necessary for USDA to determine whether harvested cells are eligible to be processed into meat or poultry products that bear the USDA mark of inspection.

2. Require each establishment that harvests cells cultured from livestock or poultry subject to the FMIA or PPIA for the purpose of producing human food required to bear the USDA mark of inspection, processes those cells into such human food products, or packages and labels such products, to obtain a grant of inspection, as required by the FSIS regulations. USDA-FSIS shall not inspect activities solely regulated by HHS-FDA and shall rely on the HHS-FDA regulatory process for information regarding such activities.

3. Conduct inspection in establishments where cells cultured from livestock and poultry subject to the FMIA and PPIA are harvested, processed, packaged or labeled, in accordance with applicable FSIS regulations (including sanitation and physical product inspection, Hazard Analysis and Critical Control Point (HACCP) verification, product testing, and records review), to ensure that resulting products are safe, unadulterated, wholesome and properly labeled. USDA-FSIS shall not inspect activities solely regulated by HHS-FDA and shall rely on the HHS-FDA regulatory process for information regarding such activities.

4. Require that the labeling of human food products derived from the cultured cells of livestock and poultry be preapproved and then verified through inspection, as required by FSIS regulations.

5. As needed, develop additional requirements to ensure the safety and accurate labeling of human food products derived from the cultured cells of livestock and poultry subject to the FMIA and PPIA.

6. Conduct enforcement action, as necessary, to ensure that adulterated or misbranded human food products derived from cultured livestock and poultry cells do not enter or are removed from commerce.

7. Share information with HHS-FDA as authorized by law and appropriate for carrying out the respective responsibilities of the Parties and, specifically, notify HHS-FDA if objectionable conditions are identified, including conditions which may result in the production of adulterated or misbranded product, work collaboratively with HHS-FDA to address such conditions with respect to harvesting, and rely on HHS-FDA to address such conditions with respect to pre-harvesting activities.

C. It is mutually agreed that:

1. The Parties will develop a more detailed joint framework or standard operating procedure to facilitate coordination of shared regulatory oversight related to the harvest of biological material.

2. The Parties will undertake a joint process to identify any changes needed to statutory or regulatory authorities to effectuate the framework established pursuant to this agreement, and will work cooperatively to pursue, or to implement, any such changes.

3. The Parties will maintain collaborative working relationships with each other, both in headquarters as well as in the field. Appropriate HHS-FDA and USDA-FSIS personnel will meet periodically, as appropriate, for purposes of program planning, coordination, evaluation, and review concerning inspectional matters and other matters of mutual interest and to serve as a clearinghouse for questions and problems as may arise.

4. The Parties will develop joint principles for product labeling and claims to ensure that products are labeled consistently and transparently.

5. The Parties will cooperate, as needed, in investigating food safety issues involving products of cell-culture technology, derived from USDA-amenable species and required to bear a USDA mark of inspection.

6. A Party will immediately notify the other Party if it is unable to carry out any or all its responsibilities under this MOU.

5. <u>Limitations</u>

This agreement represents the broad outline of the Parties' present intent to collaborate in areas of mutual interest to HHS-FDA and USDA-FSIS. It does not create binding, enforceable obligations against either Agency. All activities undertaken pursuant to the agreement are subject to the availability of personnel, resources, and funds. This agreement does not affect or supersede any existing agreements or arrangements between the Parties and does not affect the ability of the Parties to enter into other agreements or arrangements related to this agreement. This agreement and all associated agreements will be subject to the applicable policies, rules, regulations, and statutes under which HHS-FDA and USDA-FSIS operate. Nothing in this agreement shall obligate HHS-FDA and USDA-FSIS to any current expenditure or future expenditure of resources in advance of the availability of appropriations from Congress.

6. Liaison Officers

To facilitate the activities carried out under this agreement, each agency will establish a single agency liaison. The initial liaisons will be:

For HHS-FDA:

Jeremiah Fasano
Office of Food Additive Safety
Center for Food Safety and Applied Nutrition
240-402-1173
jeremiah.fasano@fda.hhs.gov

For USDA-FSIS:

Matthew Michael
Director, Issuances Staff
Office of Policy and Program Development
(202) 720-0345
matthew.michael@usda.gov

Each agency may designate a new liaison at any time by notifying the other in writing. If at any time, an individual designated as a liaison under this agreement becomes unavailable to fulfill those functions, the agency will name a new liaison and notify the other agency through the designated liaison.

7. Effective Date, Terms, Termination and Modification

This agreement will become effective when signed by both parties and made publicly available on the USDA and FDA websites, and it will continue in effect unless modified by mutual written consent at any time or terminated by either party upon a 60 day advance written notice to the other. The parties agree that they will review this agreement every three years to determine whether it should be modified or terminated.

Approved and Accepted for the Food and Drug Administration

Signed by: Frank Yiannas
Deputy Commissioner
Food Policy and Response
Date: March 7, 2019

Approved and Accepted for the U.S. Department of Agriculture

Signed by: Mindy Brashears, Ph.D.
Deputy Under Secretary
Office of Food Safety
Date: March 7, 2019