



GEMS CONSORTIUM CONFIDENTIAL DISCLOSURE AGREEMENT

This Confidential Disclosure Agreement is made as of _____ (MM/DD/YR; the “**Effective Date**”) between The University of Maryland, Baltimore (“**Provider**”) and _____ (“**Recipient**”).

BACKGROUND

WHEREAS, Provider is a member of the Global Enteric Multi-Center Study Consortium (the “**GEMS Consortium**”), which is a network of research institutes, centers and academic units created to collaborate in the implementation of the scientific research plan of the GEMS, namely the creation of knowledge on the etiology and burden of pediatric diarrheal disease among infants and young children in developing countries, in order to provide a basis for the sound implementation of existing interventions and investment in the highest priority needed new interventions (the “**GEMS Project**”).

WHEREAS, the GEMS Project is funded by a grant from the Bill & Melinda Gates Foundation (the “**Foundation**”) to the University of Maryland pursuant to a grant entitled “Diarrheal Disease in Infants and Young Children in Developing Countries.”

WHEREAS, Provider possesses certain data used or generated in the performance of the GEMS Project (“**GEMS Data**”).

WHEREAS, Recipient has submitted a request to use the Materials for conducting the research described in the “**Dataset Access Registration Form**” via the secure GEMS Project website (the “**Research**”).

Now, therefore, the parties agree to the following terms:

DEFINITIONS:

“**Affiliate**” means any business entity controlled by, controlling or under common control of a person. Such control shall include beneficial ownership of more than fifty percent (50%) of the voting interest in an entity, or such other relationship as, in fact, constitutes actual control.

“**Commercial Purposes**” means the use of GEMS Data by or on behalf of or for research sponsored by (or transfer of GEMS Data to) a for-profit company.

“**Confidential Information**” means, subject to Section 4, all GEMS Data and other information with respect to any aspect of a GEMS Project, regardless of whether or not such information is identified or marked as confidential and regardless of whether or not a written record is subsequently provided if the information was provided.

TERMS AND CONDITIONS OF THIS AGREEMENT

1. Each Recipient agrees that it will:

(a) Use the Confidential Information received from a Provider solely for the Research,

(b) Treat the Confidential Information with reasonable care to avoid disclosure of the Confidential Information to any third party, person, firm or corporation other than as expressly stated herein, and

(c) Except to the extent prohibited or, where applicable, to the extent authorized by law, be liable for use of the Provider's Confidential Information outside the scope of the Research as well as for any unauthorized disclosure directly resulting from their failure to exercise such reasonable care

2. Notwithstanding anything to the contrary in this CDA, the Recipient shall have no obligation with respect to the Confidential Information received from a Provider to the extent such information is:

(a) Already known by the Recipient at the time of disclosure as can be demonstrated by competent proof;

(b) Publicly known, or subsequently becomes publicly known, without the wrongful act or breach of this CDA by the Recipient;

(c) Rightfully received by the Recipient from a third party having the lawful right to make such a disclosure, where said disclosure is rightfully made without an express obligation of confidence;

(d) Approved for release or disclosure by written authorization of the Provider;

(e) Independently developed by the employees or agents of the Recipient without the use or knowledge of the Confidential Information provided by the Provider as can be demonstrated by competent proof; or

(f) Required to be disclosed pursuant to any competent judicial or government request, requirement or order, provided that the Recipient so disclosing takes reasonable steps to provide the Provider with sufficient prior notice in order to allow the Provider to contest such request, requirement or order and provided that such Confidential Information is disclosed only subject to reasonably available restrictions on further disclosure and use, and otherwise remains subject to the obligations of confidentiality and restricted use set forth in this CDA.

3. Each Recipient shall be entitled to disclose the Provider's Confidential Information to its employees and the employees of its Affiliates as well as its agents and consultants who are bound by confidentiality and restricted use obligations no less strict than those set out herein. However, each Recipient shall only disclose the Provider's Confidential Information to those of its employees, agents, consultants and Affiliates who shall reasonably need to know such Confidential Information in order to evaluate such Confidential Information for the Research and/or to make decisions or render advice in connection with the Research and who shall be informed of the existence of this CDA and shall agree in writing or via employment policy to be bound by the terms hereof or be otherwise bound by law not to disclose such Confidential Information. Each Recipient shall be responsible for ensuring that its employees, agents and consultants of its Affiliates, and its consultants who receive Confidential Information comply with the terms of this CDA.

4. Subject to exemptions and limitations elsewhere in this CDA, the obligations of this Agreement shall remain in effect for each subject disclosure of Confidential Information during the Term of this Agreement and for a period of three (3) years from date of the termination of the GEMS Project.

5. Unless specifically set forth in this Agreement, no rights in the Confidential Information are provided under any patent applications, patents, or other proprietary rights of the Provider. Unless specifically set forth in this Agreement, Recipient shall not be entitled to use the Confidential Information provided by the Provider for Commercial Purposes without separate written agreement to that effect.

6. The Recipient agrees to discontinue its use of the Confidential Information and destroy or return to the Provider all written Confidential Information received hereunder or Confidential Information that has been reduced to a written form upon completion of its use in accordance with this CDA or upon request by the Provider (which ever shall occur first); *provided, however*, one (1) copy of such Confidential Information may be retained by the Recipient to preserve an archival record of the same.

7. Any dispute or controversy arising in connection with this CDA shall first be referred to the respective officers of the Provider and Recipient, or their successors, for attempted resolution in good faith negotiations within thirty (30) days of notice of such dispute. If such officers are not able to resolve the dispute within the thirty (30)-day period, or any agreed upon extensions, the Provider and Recipient shall be free to resolve the dispute through any dispute resolution mechanism they may individually or collectively choose.

8. Expiration or termination of this Agreement does not relieve either party of any obligation which arises before expiration or termination, including without limitation obligations for payment and reporting. Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.

9. If any provision of this CDA is found to be unenforceable, such provision will be limited or deleted to the minimum extent necessary so that the remaining terms remain in full force and effect.

10. No waiver of any term, provision or condition of this CDA, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of the same term, provision or condition, or of any other term, provision or condition of this Agreement.

11. No Party shall be liable for any failure to perform as required by this CDA to the extent such failure to perform is due to circumstances reasonably beyond such Party's control, including, without limitation, labor disturbances or labor disputes of any kind, accident, civil disorders or commotions, acts of aggression or terrorism, acts of God, energy or other conservation measures imposed by law or regulation, explosions, failure of utilities, mechanical breakdowns, material shortages, disease, or other such occurrences.

Provider

Recipient

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____