

**Pandemic Response Commons
DATA CONTRIBUTOR AGREEMENT
for Statistical Summary Reports**

This Pandemic Response Commons Data Contributor Agreement (DCA) for Statistical Summary Reports (this “**Agreement**”) is made as of _____, 2020 (the “**Effective Date**”), by and between the Center for Computational Science Research, Inc. (“**CCSR**”), the manager of the Pandemic Response Commons (“**PRC**”), and [] (“**Partner**”, and, together with CCSR, the “**Parties**”).

RECITALS

WHEREAS, various parties have developed an open source technology platform license under the Apache License, Version 2.0, (the “**Platform**”), including software, and other technologies, for managing, analyzing and sharing biomedical data;

WHEREAS as the genomic and biomedical data managed by the Platform is organized into one or more projects (“**Projects**”), and that project data (“**Project Data**”) may consist of both open access and controlled access data;

WHEREAS, Partner desires to: (i) contribute certain aggregate-level data (the “**Contributed Data**”) to the Pandemic Response Commons Project, as further described on Exhibit A, and (ii) permit CCSR to provide researchers and others with access to the Contributed Data as a part of the Project, subject to the restrictions set forth in this Agreement;

WHEREAS, the CCSR operates data services, subject to the Data Use Agreement, using the Gen3 Platform that provides authorized researchers and other users with data access services, computing services, and analysis services using Project Data provided by various data contributors;

WHEREAS, PRC is willing to accept such Contributed Data;

WHEREAS, the Gen3 Platform allows Authorized Users to access and analyze data from the Platform and to transfer the data to other systems, including cloud computing based systems, and to other geographic locations, in compliance with applicable laws and regulations.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Capitalized terms used in this Agreement have the meaning set forth on Exhibit A.

2. Partner Responsibilities.

2.1. **Contribution of Data.** Subject to the terms and conditions of this Agreement, Partner will provide PRC with the Contributed Data for the sole purpose of providing Authorized Users with access thereto subject to the terms and conditions hereof.

2.2. **Licenses.** Partner hereby grants to CCSR a non-exclusive world-wide license during the

Term solely to: (i) store the Contributed Data on the Platform; (ii) provide Authorized Users with access through the Platform to the Contributed Data, in each case subject to the terms and conditions hereof.

2.3. Contributed Data.

2.3.1. Partner shall be solely responsible for obtaining all necessary consents and otherwise complying with all applicable laws and other restrictions: (i) to transmit any Contributed Data to PRC; (ii) to permit PRC to store such Contributed Data as part of the

Platform; (iii) to permit PRC to provide Authorized Users access to such Contributed Data; and (iv) to permit CCSR to perform its obligations pursuant to this Agreement.

3. PRC Responsibilities.

3.1. Authorized User Terms. CCSR will enter into an agreement with each Authorized User that requires such Authorized User (the “**Authorized User Terms**”). If at any time CCSR becomes aware that any Authorized User has violated any of the Authorized User Terms, PRC will: (i) promptly notify Partner of such violation; and (ii) promptly suspend such Authorized Users access to all Contributed Data.

4. Warranties and Remedies

4.1. Warranties.

4.1.1. Authority. Each Party represents and warrants to the other that such party has the right and necessary corporate authority to enter into this Agreement.

4.1.2. Contributed Data. Partner represents and warrants to CCSR that Partner has obtained all necessary consents and waivers necessary to transmit to PRC, or for PRC to receive, store, use and provide Authorized Users with access to, any Contributed Data.

4.2. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, (A) EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES WITH RESPECT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND (B) THE BIONIMBUS PLATFORM AND THE CONTRIBUTED DATA ARE PROVIDED “AS IS” AND CONSTITUTE RESEARCH ONLY INFORMATION.

4.3. Indemnification.

4.3.1. To the maximum extent permitted by law, Partner shall pay, defend, indemnify and hold harmless CCSR and its affiliates and representatives from and against any and all claims, liabilities, losses, causes of action, or other damages (collectively, “**Claims**”) based on any allegations made by any third party (including any governmental

authority): (i) based on the disclosure of any Contributed Data to PRC by Partner or PRC’s possession of such Contributed Data; (ii) alleging that any Authorized User’s access to any Contributed Data was unauthorized or violated any Applicable Law or other obligation; or (iii) that the Contributed Data or CCSR’s possession thereof or provision of access to Authorized Users violates any Applicable Law or any right of any other person.

4.3.2. Notwithstanding the foregoing, Partner’s obligations pursuant to Section 4.3.1 will not apply to the extent the applicable Claims arise from: (i) the CCSR’s or PRC’s gross negligence or willful misconduct; or (ii) CCSR’s breach of this Agreement.

4.3.3. To the maximum extent permitted by law, each Party shall pay, defend, indemnify and hold harmless the other Party and its affiliates and representatives from and against any and all Claims based on any allegations made by any third party (including any governmental authority) from: (i) the indemnifying Party’s gross negligence or willful misconduct; or (ii) the indemnifying Party’s breach of this Agreement, in each case ((i) and (ii)) except to the extent arising from the indemnified Party’s gross negligence, willful misconduct or breach of this Agreement..

4.3.4. Each Party’s obligations under this Section 6.3 will be limited to the amount of insurance coverage available to pay any applicable Claim.

4.4. Limitation of Liability. Except with respect to each Party’s indemnification obligations pursuant to this Agreement, to the maximum extent permitted by law, (A) neither Party shall be liable hereunder for consequential, exemplary, or punitive damages (including lost profits or savings), even if it has been advised of their possible existence, and (B) neither Party’s total and cumulative aggregate liability for any claim or claims hereunder will exceed ten thousand dollars (US\$10,000.00). Each party will maintain the types and amounts of insurance coverage that is commercially reasonable for the industry.

5. Term and Termination

5.1. Term. The initial term of this Agreement shall commence on the Effective Date and continue until the date that is three (3) years from the Effective Date, unless terminated earlier pursuant to the terms hereof (the “**Term**”). The Parties may extend the term of this Agreement upon mutual written agreement.

5.2. Termination by Either Party. Either Party may terminate this Agreement by written notice to the other Party, upon the occurrence of any of the following events:

5.2.1. For any reason upon not less than thirty (30) days prior written notice to the other party;

5.2.2. The other Party becomes insolvent or subject to any proceeding under the federal bankruptcy laws or other similar laws for the protection of creditors; or

5.2.3. The other Party materially breaches any term, provision, representation or warranty of this Agreement and such breach or default is not cured within ten (10) business days of the breaching Party’s receipt of written notice thereof.

5.3. Effect of Termination. The terms and conditions of the following Sections will survive any termination or expiration of this Agreement: Sections 5.1, 4.2, 6.3, 4.4, 5.3 and 6. The license to Contributed Data shall terminate upon termination of this Agreement, provided that Authorized Users will be permitted to continue to use results from studies and work done with Contributed Data.

6. Miscellaneous

6.1. Amendments. Except as otherwise expressly provided herein, this Agreement may not be modified, amended or altered in any way except by a written agreement signed by the Parties.

6.2. Assignment. Neither Party may assign this Agreement or delegate any of its duties, in whole or in part, without the prior written consent of the other party; provided, however, that: (i) either Party may assign this Agreement and delegate its duties to an affiliate; and (ii) either Party may assign this Agreement to an entity that acquires all or substantially all of the assets or business of such Party. If any assignee refuses to be bound by all of the terms and obligations of this Agreement or if any assignment is made in breach of the

terms of this Agreement, then such assignment shall be null and void and of no force or effect.

6.3. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed the same agreement.

6.4. Entire Agreement; Order of Precedence. This Agreement constitutes the complete and exclusive statement of the agreement of the Parties with respect to the subject matter hereof and supersedes all prior proposals, understandings, and agreements, whether oral or written, between the Parties with respect to the subject matter hereof.

6.5. Force Majeure. Neither Party shall be liable for any failure or delay in performing its obligations under this Agreement, or for any loss or damage resulting therefrom, due to acts of God, the public enemy, terrorist activities, riots, fires, and similar causes beyond such Party’s control.

6.6. Governing Law; Currency; Language. This Agreement shall be governed by and interpreted in accordance with the internal substantive laws of the State of Illinois. Application of the U.N. Convention on Contracts for the International Sale of Goods is hereby excluded. The parties agree that, subject to Section 8.7, all actions and proceedings arising out of or related to this Agreement shall be brought only in a state or federal court located in Cook County, Illinois, and the parties hereby consent to such venue and to the jurisdiction of such courts over the subject matter of such proceeding and themselves. **EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTE OR LEGAL PROCEEDING ARISING OUT OF THIS AGREEMENT OR THE SUBJECT MATTER HEREOF.** All amounts stated herein and all Fees determined hereunder are in United States Dollars.

6.7. Arbitration. All disputes arising under or in connection with this Agreement shall be submitted to JAMS or comparable organization for binding arbitration by a single arbitrator in Chicago, Illinois. The arbitrator shall be selected by JAMS in an impartial manner determined by it. The arbitrator shall have complete authority to render any and all relief, legal and equitable, appropriate under law. The arbitrator shall award

costs of the proceeding, including reasonable attorney's fees, to the party determined to have substantially prevailed. This Section 8.7 shall not limit a party's right to seek temporary, preliminary, or permanent injunctive relief or any other form of equitable relief to protect its intellectual property or confidential information or to enforce an arbitration award, in each case in a court specified in Section 8.6.

6.8. Independent Contractor. The Parties are independent contractors; nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between the Parties. Each Party is solely responsible for payment of all compensation owed to its representatives, as well as employment related taxes.

6.9. Notice. Any notice or other document or communication required or permitted hereunder to the parties hereto will be deemed to have been duly given only if in writing and delivered by any of the following methods: (i) certified U.S. mail, return receipt requested, postage prepaid, to the address of the receiving party as set forth below or such other address as such party may dictate according to the notice provisions hereof (for notice being transmitted entirely within the United States); (ii) overnight courier service by Federal Express or other international courier of similar standing and reputation to the address of the receiving party as set forth below or such other address as such party may dictate according to the notice provisions hereof; (iii) hand delivery to the person specified below or any other person so designated according to the notice provisions hereof; or (iv) facsimile directed to the person specified below at the facsimile number listed below, or such other person or facsimile number so designated according to the notice provisions hereof; with a copy of all such notices delivered to counsel specified below or as such party may dictate in accordance with the notice provisions hereof. Notices shall be deemed delivered when received by the Party being notified.

If to PRC, all notices shall be addressed and delivered to:

Center for Computational Science
Research Inc.
Attn: Pandemic Response Commons
541 N Fairbanks Ct
Suite 2200
Chicago IL 60611

With a copy to:

Rich May, P.C.
176 Federal Street
Boston, MA 02110
Attn: Robert P. Tedesco

If to Partner, all notices shall be addressed and delivered to:

6.10. Publicity. Neither party shall use any trademark, service mark, logo or other designation of origin of the other party or any of its affiliates without the prior written consent of the other party or the applicable affiliate. Either party may disclose the other party's participation in the Project, provided such disclosure does not state or imply any endorsement by or affiliation with such other party.

6.11. Waivers. No purported waiver by any Party of any default by any other Party of any term or provision contained herein (whether by omission, delay or otherwise) shall be deemed to be a waiver of such term or provision unless the waiver is in writing and signed by the waiving Party. No such waiver in any event shall be deemed a waiver of any subsequent default under the same or any other term or provision contained herein.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this agreement to be executed and delivered by their respective, duly authorized representatives.

Center for Computational Science Research, Inc. []

By: _____

By: _____

Its: _____

Its: _____

Exhibit A
Contributed Data

a.