TERMS OF USE

for Global COVID-19 Clinical Data Platform for Clinical Characterization and Management of Hospitalized Patients

The World Health Organization, a United Nations’ Specialized Agency with headquarters at 20 Avenue Appia, CH1211 Geneva, Switzerland (“WHO”), maintains a global data platform to facilitate the sharing of anonymized clinical data and information relating to patients with suspected or confirmed infections with COVID-19, which platform is known as the “Global COVID-19 Clinical Data Platform for Clinical Characterization and Management of Hospitalized Patients” (the “Platform”). Access to and use of the Platform and the Data (as defined herein) is subject to and governed by these Terms of Use. By accessing or using the Platform, whether as a provider or user of Data or otherwise, you: (i) agree to and accept, both for yourself and on behalf of the entity of which you are an employee or representative, that you and such entity (collectively, the “Entity”) will be bound by these Terms of Use effective as of the first date of your access or use the Platform; and (ii) represent and warrant that you have all power and authority necessary to agree to and accept these Terms of Use on behalf of the Entity.

1. Provision and Use of Data

1.1 Subject to the terms and conditions these Terms of Use, the Entity hereby agrees to provide, and WHO hereby agrees to accept, the Data for the Purpose of Use (as each such term is defined below). The Data will be provided, free of charge, through the Platform. As used herein:

“Data” means all anonymized (i.e., stripped of any personal identifiers) clinical data and information related to patients with suspected or confirmed infections with COVID-19 that are collected by or on behalf of the Entity and that are provided pursuant to these Terms of Use and/or the Platform; and

“Purpose of Use” means the following purposes for which the Data may be used by or on behalf of WHO pursuant to these Terms of Use: (a) to inform, develop, review and/or update (i) public health and/or clinical guidance in connection with COVID-19 which is or may be published by WHO on its website(s) and/or its printed, electronic or other publications, (ii) WHO’s research, scientific or public health prioritization purposes, and/or (iii) any activities or materials relating to any of the foregoing; and/or (b) for WHO’s activities, products and/or materials arising from or relating to the Project and/or to the Platform, its purpose and objectives including, without limitation, to inform COVID-19 Clinical Characterization and Management and public health response.

1.2 The Data are supplied by the Entity to WHO solely for the Purpose of Use. The Entity hereby grants WHO a non-exclusive, worldwide, royalty-free, sub-licensable license and right to use, reproduce, store, display, distribute, query, clean, curate, analyse, modify, adapt, visualize and/or create derivative works (including, without limitation, summaries, graphs, charts and/or statistics) from the Data for the Purpose of Use, subject to and in accordance with these Terms of Use.

1.3 The Data shall only be used for the Purpose of Use. Except for and/or within the Purpose of Use, the Data shall not be used for any other purpose without the prior written agreement of the Entity.

1.4 WHO shall not transfer or distribute the Data to any third parties without the prior written agreement of the Entity. Notwithstanding the foregoing, WHO may transfer or distribute the Data to, and the Data may be used by, any third parties who have a need to know for the Purpose of Use and who are bound by similar obligations of confidentiality and restrictions on use as contained in these Terms of Use.

1.5 WHO shall take reasonable, appropriate technical safeguards and controls to protect the security and confidentiality of the Data. In particular, WHO shall keep the Data in a secure environment, protected against theft, damage, loss, misuse or unauthorized access.

1.6 WHO shall not use the Data to attempt to identify any specific individuals from the Data received.

1.7 Nothing contained in these Terms of Use shall restrict the Entity’s right to transfer or distribute the Data to any other person or entity for any purpose.

2. Confidentiality

2.1 The Data shall be treated by WHO as confidential and shall only be used for the Purpose of Use. Accordingly, during the term of these Terms of Use and for a period of five (5) years following the expiration or early termination hereof, WHO shall take reasonable measures to protect the confidentiality of the Data.

2.2 The above obligations of confidentiality and restrictions on use shall not apply to Data which: (a) were lawfully in WHO’s possession and known to WHO prior to disclosure by the Entity under the Platform, as evidenced by documents antedating the date of disclosure; or (b) were in the public domain or the subject of public knowledge at the time of disclosure by the Entity under the Platform; or (c) become part of the public domain or the subject of public knowledge through no fault of WHO; or (d) become available to WHO from a third party not in breach of a legal obligation of confidentiality in respect thereof; or (e) were subsequently and independently developed by or on behalf of WHO, as shown by written records, by persons who had no knowledge of the Data disclosed under the Platform.

3. Rights

Except for the license and rights explicitly granted hereunder, nothing contained in these Terms of Use shall be construed as conveying to WHO any title, ownership or other rights in or to the Data, which remain the property of the Entity.

4. Publications

4.1 Subject to the protection of the Entity’s proprietary rights in the data and to the protection of the confidentiality of the Data, the findings and/or results obtained through use of the Data for and/or within the Purpose of Use (collectively, “Results”) may be published or otherwise publicly disclosed by WHO.

4.2 In addition to, and without limiting, the foregoing, WHO shall also have the right to publish (including, without limitation, in the form of Public Health Reports on WHO’s website) the Data provided by the Entity to WHO under the Platform; provided, however, that the Data shall be published in an anonymized fashion, and shall not be identified as
pertaining to the Entity, thus preserving the possibility for the Entity to publish its Data elsewhere. Where possible and appropriate, Data will be reported in an aggregated fashion with other data provided to WHO by third parties (including, but not limited to, other Entities) across the world for public health purposes.

4.3 For publications to Section 4.1: To avoid prejudice to the confidentiality of the Data, WHO shall transmit any material relating to the Results that is intended to be published by WHO pursuant to Section 4.1 above, to the Entity for its information at least 10 days prior to its submission for publication or public disclosure by WHO. In absence of any objection by the Entity within that 10 day period concerning prejudice to the confidentiality of Data, the publication may proceed; provided, that the Entity shall be duly acknowledged in such publication.

4.4 For publications pursuant to Section 4.2: To avoid prejudice to confidentiality of Data, WHO shall transmit any material relating to the Data that is intended to be published by WHO pursuant to Section 4.2 above, to the Entity for its information at least 2 days prior to its publication or public disclosure by WHO. In absence of any objection by the Entity within that 2 day period concerning prejudice to the confidentiality of Data, the publication may proceed; the Entity will, as and where appropriate be, duly acknowledged in such publication.

5. Warranties and Liabilities

5.1 The Entity represents and warrants: (a) that the Entity has the full, unrestricted and unencumbered right, power and authority to provide the Data to WHO for the Purposes of Use and otherwise in accordance with these Terms of Use; (b) that any and all Data provided by the Entity hereunder has been obtained and collected in compliance with all applicable laws, statutes, rules, regulations, and legal, ethical and/or medical standards and requirements; (c) that the Entity has obtained all approvals, informed consents, licenses and permits which are necessary or required for the Data to be provided to and used by or on behalf of WHO in accordance with these Terms of Use; and (d) that the provision to and/or the use of the Data by or on behalf WHO in accordance with these Terms of Use shall not infringe, violate or misappropriate the rights of any third party. The Entity shall indemnify, defend (subject and without prejudice to any of WHO's privileges and immunities) and hold harmless WHO from and against any actions, claims, proceedings, damages, liabilities and/or costs (including, but not limited to, attorneys' fees) which may be brought against or suffered by WHO arising from or in connection with any breach of any of the Entity’s representations and/or warranties under this section.

5.2 Except as provided under Section 5.1 above, the Entity makes no and hereby disclaims any warranty concerning the accuracy, completeness or the fitness of any particular purpose of the Data, or any other warranty whether express or implied.

5.3 Except as may otherwise be explicitly provided in these Terms of Use, the Entity has no control over the use of the Data by WHO pursuant to this Agreement. Consequently, the parties agree that the Entity shall not be liable for any use of the Data by WHO pursuant to this Agreement; provided, however, that nothing contained in this section shall limit or otherwise modify the Entity’s liability pursuant to Section 5.1 above.

6. Term; Survival

6.1 These Terms of Use will become effective vis-à-vis the Entity as of the first date on which you/the Entity access or uses the Platform, and will continue in full force and effect until the completion in full of the Purpose of Use.

6.2 Upon completion of the Purpose of Use, WHO shall promptly cease all further use of the Data and, as per the Entity’s written instructions, shall either return to the Entity or destroy the Data which is then in WHO’s possession, except that WHO shall be entitled to keep a copy of the Data for the purpose of determining its continuing obligations hereunder.

6.3 Notwithstanding the expiration of these Terms of Use, the rights and obligations of the parties contained in these Terms of Use that are, by their nature, intended to survive such expiration or termination shall so survive indefinitely. The foregoing includes, without limitation, the provisions relating to license to use, confidentiality, rights, publications, warranties and liabilities, settlement of disputes, and privileges and immunities of WHO.

7. Miscellaneous

7.1 The parties are independent contractors in respect of each other. Without WHO’s prior written approval, he Entity shall not use, reproduce or display the name, acronym or emblem of the World Health Organization and/or shall not, in any statement or material of any advertising, publicity, promotional or commercial nature, refer to the Entity’s relationship with WHO in connection herewith.

7.3 Any dispute arising from or relating to these Terms of Use and/or the Platform shall, unless amicably settled, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in the English language and in accordance with the modalities to be agreed upon by the parties or, in the absence of agreement, with the rules of arbitration of the International Chamber of Commerce. The parties shall accept the arbitral award as final.

7.4 Nothing contained in or relating to these Terms of Use and/or the Platform shall be construed as a waiver of any of the privileges and immunities enjoyed by WHO under national or international law, treaty or convention, or as submitting WHO to any national court or jurisdiction.

7.5 These Terms of Use are the entire understanding between WHO and the Entity with respect to the subject matter hereof. These Terms of Use may be modified, but only by written amendment signed by duly authorized officers of WHO and the Entity. The Entity will not reproduce, disclose or otherwise transmit these Terms of Use to any third party without WHO’s prior written consent.