



REPUBLIC OF GHANA

**MINISTRY OF ENVIRONMENT, SCIENCE, TECHNOLOGY
AND INNOVATION (MESTI)**

**GHANA JOBS AND SKILLS PROJECT
Credit # 6716-GH
PROJECT ID: P166996**

DEVELOPMENT OF FRAMEWORK FOR TECHNOLOGY TRANSFER

MODEL TECHNOLOGY TRANSFER AGREEMENTS

Data Use Agreement

APRIL, 2023

THIS DATA USE AGREEMENT (“Agreement”) is made this.....day of.....20--
BETWEEN (Name of holder) of (address) and duly represented by
..... (name and position of authorized representative), (hereinafter referred to as
“the Holder” which expression shall where the context so requires or admits, include its lawful
representatives and assigns of the one part AND (name of recipient) of
..... (address) and duly represented by (name and
position of authorized representative), (hereinafter referred to as “the Recipient” which expression
shall where the context so requires or admits, include its lawful representatives and assigns) of the
other part. The Owner and the Recipient each shall be referred to herein as a “Party” and together
as the “Parties”.

WHEREAS

- A. The Holder is a (nature of business)
that owns (or has (state type of Data) rights to the Data), more particularly described
in the First Schedule and is willing to provide same to Recipient for commercial purposes.
- B. The Recipient is a (nature of business)
engaged in (state objects of institution / business) and has asked
the Holder to provide (state the kind or nature of Data set) as well as
Confidential information to the Recipient.
- C. The Data and the Confidential Information have a unique value to the Holder, and the
Holder will suffer irreparable harm by any unauthorised use or disclosure of the Data set
or Confidential Information.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth herein,
the Parties agree as follows:

- 1. **DEFINITIONS:** To avoid ambiguity in terminologies, for the purposes of this Agreement,
the following words wherever used in this document shall mean:
 - 1.1. **Affiliate** means any corporation or non-corporate business entity which controls, is
controlled by, or is under common control with a party, and for that purpose control
means the ownership or direct or indirect control of at least 50% of the voting shares
of another corporation, or having directly or indirectly the power to direct or cause
the direction of the management and policies of another corporation or non-
corporate business entity.
 - 1.2. **Confidential Information** means all information that is labelled or identified at the
time of disclosure under this Agreement as confidential or proprietary to the Holder,
including inventions; discoveries; facts; data; ideas; manner, method or process
of manufacture; method or principle of construction; chemical composition or
formulation; techniques; products; prototypes; processes; names; know-how;
routines; specifications; drawings; trade secrets; technology methods; computer
programs; works in respect to which copyright subsists; circuit board layouts;

business plans; marketing plans; strategies; market analysis; feasibility plans; concept documents; expert's reports; forecasts; projections; methodologies; financial accounts; financials statements; cash flow statements; valuations; and other knowledge. The Confidential Information may also specifically include, but is not limited to, ... * ¹.

1.3. Derivative means any data that is derived from or based upon the data, whether or not progeny, and whether modified, or unmodified.

1.4. Investigator means the named the Investigator that will have supervision of the use of the data

1.5. Data means the full description of the Data as provided in the First Schedule, as well as the quantity of the Data to be provided.

1.6. New IP means such of the following as arise from Recipient's possession or use of the Data or Confidential Information under this Agreement:

(a) Derivative

(b) inventions (whether patentable or not); discoveries; facts; data; ideas; manner, method or process of manufacture; method or principle of construction; chemical composition or formulation; techniques; products; prototypes; processes; know-how; routines; specifications; drawings; trade secrets; technology methods; works in respect to which copyright subsists; and other knowledge.

1.7. Purpose means using the Data in accordance with the Work Plan.

1.8. Work Plan means the work plan set out in the Second Schedule.²

2. PERMITTED USES AND DISCLOSURES

Except as otherwise specified herein, Recipient may make all uses and disclosures of the Data Set necessary to conduct the research described in the schedule

2.1 In addition to the Recipient, the individuals, or classes of individuals, who are permitted to use or receive the Data Set for purposes of the Research Project include: [insert names or classes of persons who may use or receive the data set, e.g., the researcher's staff, any collaborators, other clinical sites involved in the research, sponsors if applicable, outside laboratories].

¹ Consider referring to types or categories of Confidential Information proposed to be disclosed. The more accurately Confidential Information is identified, the greater the protection afforded to the Confidential Information. If you do not intend to specify particular Confidential Information, delete this sentence.

² The Schedule should describe the scope of approved use of the Material by the Recipient.

- 2.2 To the extent that the classes of persons listed in 2.1 above, are not part of the Recipient's workforce who are directly involved in the Research Project, the Recipient shall enter into a data agreement with the other classes of persons before such release of the Data Sets.

3.0 RECIPIENT RESPONSIBILITIES

- 3.1 Recipient will not use or disclose the Data Set for any purpose other than permitted by this Agreement pertaining to the Research Project or as required by law;
- 3.2 Recipient will use appropriate administrative, physical and technical safeguards to prevent use or disclosure of the Data Set other than as provided for by this Agreement;
- 3.3 Recipient will report to the Holder any use or disclosure of the Data Set not provided for by this Agreement of which the Recipient becomes aware within 15 days of becoming aware of such use or disclosure;
- 3.4 Recipient will ensure that any agent, including a subcontractor, to whom it provides the Data Set, agrees to the same restrictions and conditions that apply through this Agreement to the Recipient with respect to the Limited Data Set;

4.0 PROVISION OF MATERIAL

- 4.1 The Holder shall provide the Data set to the Recipient within the agreed period of time as agreed by the Parties.
- 4.2 If the Holder requires reimbursement of the out-of-pocket expenses of cost incurred upon providing the Data set to the Recipient, the Holder shall provide an invoice for those out-of-pocket expenses, and the Recipient shall pay that invoice within 30 days of receipt of the Data.

5 TERM AND TERMINATION

- 5.1 The terms of this Agreement shall be effective as of [insert effective date], and shall remain in effect until all Data Set provided to the Recipient is destroyed or returned to the Holder.
- 5.2 Upon the Holder's knowledge of a material breach of this Agreement by the Recipient, the Holder shall provide an opportunity for Recipient to cure the breach or end the violation. If efforts to cure the breach or end the violation are not successful within the reasonable time period specified by the Holder, the Holder shall discontinue disclosure to the Recipient.
- 5.3 The Holder shall immediately discontinue disclosure of the Data Set to the Recipient if the Holder determines cure of the breach is not possible.

6.0 ENDING OF CONFIDENTIALITY

The Recipient shall be relieved from its obligations of confidentiality under this Agreement in respect to any part of the Holder's Confidential Information which the Recipient can show:

- (a) was in the possession of the Recipient as at the date of the disclosure; or
- (b) is or becomes part of the public domain otherwise than by a breach of this Agreement; or
- (c) was received in good faith from a person entitled to provide it to the Recipient without an obligation of confidentiality; or
- (d) was independently developed by employees of the Recipient who did not have access to the Confidential Information.

7. FORCE MAJEURE.

7.1. In this Agreement, force majeure means an event which could not reasonably have been foreseen or avoided by the diligence of either party in any circumstance, which is beyond the reasonable control of either party and which renders performance of the obligations of either party impossible or so impracticable as reasonably to be considered impossible. Force majeure includes but is not limited to earthquakes, fires, adverse weather conditions, a health pandemic and other acts known as acts of God, as well as war, riots, civil disorder, confiscation or other adverse action by the Government or any of its agencies.

7.2. In the event of the occurrence of force majeure, a party to this agreement shall, notwithstanding anything to the contrary in this Agreement, not be liable for any delay or failure in carrying out or performing any of its obligations contained in this Agreement.

7.3. Force majeure shall not include any of the following: i. Any event caused by the negligence or intentional action of either party, its agents, employees or subcontractors; or ii. Insufficiency of funds or the inability of a party to pay any sum of money required to be paid under this Agreement.

7.4. A party affected by force majeure shall take reasonable measures with a minimum of delay, to remedy its inability to fulfil its obligations by reason of such force majeure.

7.5. A party affected by an event of force majeure shall give notice of such event to the other party as soon as reasonably practicable and in any event not later than seven (7) days after the occurrence of such event and shall provide full particulars of the nature and cause of such an event and where normal conditions are restored, give prompt notice thereof to the other party.

7.6. The period during which an event of force majeure persists shall be taken into account in computing the time within which a party may do anything or perform any act under this Agreement and such time shall be extended by the period by which the event of force majeure continues. Provided that if the event of force majeure persists for more than [days] [weeks] [months], either party may terminate this Agreement by giving [days] [weeks] [months] notice to the other of its intention to do so.

8. MISCELLANEOUS PROVISIONS.

8.1. Communication.

Any notice, consent or agreement required to be given under this agreement shall be in writing and sent by registered mail, electronic mail or facsimile numbers as either party hereto may from time to time notify to the other party or by hand to the said addresses.

8.2. Ratification.

Each of the parties herein undertakes to ensure that as soon as practicable after the signing of this agreement, all necessary steps will be taken on acts done to obtain ratification thereof in accordance with the party's regulations or articles and where such ratification requires the amendment of the said regulations or articles, to procure such amendment.

8.3 General provisions

- a. This Agreement shall not be assigned by Recipient without the prior written consent of the Holder.
- b. Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by law and shall not be responsible for the acts of the other party or the results thereof.
- c. Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- d. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8.4 GOVERNING LAW

This Agreement is made and entered into in the Republic of Ghana and this Agreement shall be construed and applied under the law thereof. The parties agree to submit themselves to the exclusive jurisdiction of the laws in force for the time being in Ghana.

8.5 NO LICENSE

Nothing in this Agreement grants Recipient any right or license to use or practice any intellectual property owned by Owner, provided, however, that Owner shall not enforce its intellectual property against Recipient's use of Material as permitted by this Agreement.

IN WITNESS WHEREOF, the Parties hereto have hereunto set their respective hands and seals the day and year first above written.

SIGNED for and on behalf of the Holder

By the above-named Representative

.....

Signature

In the presence of:

.....

Name & Signature

Name:

Address:

Occupation:

SIGNED for and on behalf of the Recipient

By the above-named Representative

.....

Name & Signature

In the presence of

.....

Signature

Name:

Address:

Occupation:

FIRST SCHEDULE (Data description)

SECOND SCHEDULE (Work Plan)

The Schedule should describe the scope of approved use of the Material by the Recipient

Signature: _____

Date: _____

FIRST SCHEDULE (Description of Research Program)