

## Development Participation Agreement

BY PARTICIPATING IN THE PROJECT DESCRIBED BELOW AND/OR ACCESSING THE GITHUB REPOSITORY, YOU ACCEPT THE TERMS OF THIS DEVELOPMENT PARTICIPATION AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY THEM. IF YOU DO NOT AGREE TO THESE TERMS OF USE, DO NOT PARTICIPATE IN THE PROJECT OR ACCESS THE GITHUB REPOSITORY AND YOU WILL NOT HAVE RIGHT TO PARTICIPATE IN THE PROJECT (DEFINED BELOW) AND/OR USE THE INFORMATION/MATERIALS DEVELOPED BY PARTICIPANTS AS PROVIDED HEREUNDER. If you have questions, please consult with your technology transfer or business office. You can also contact the BIDMC Technology Ventures office with any questions or comments: TVO@bidmc.harvard.edu.

Purpose: This Development Participation Agreement is intended to define the rights and obligations of an ad hoc group of Participants from academia and industry who have undertaken a development effort to address the acute shortage in nasopharyngeal (“NP”) swabs across the United States caused by large-scale virological testing for SARS-CoV-2, causative agent of COVID-19. This effort is focused on the development of a three-dimensional printed NP swabs for rapid manufacture and deployment. A repository for sharing information among the Participants to aid in the development effort has been established as a GitHub site entitled Covidswab (<https://github.com/rarnaout/Covidswab>).

1. Definitions. For purposes of this Agreement, the following terms have the following meanings:

**“Developed Products”** means three-dimensional printed nasal swabs developed as a result of the Project work and incorporating, using, and/or based on Information, Materials,.

**“Information”** means any and all ideas, concepts, data, know-how, discoveries, improvements, methods, techniques, technologies, systems, specifications, analyses, products, practices, processes, procedures, protocols, research, tests, trials, assays, controls, prototypes, formulas, descriptions, formulations, submissions, communications, skills, experience, knowledge, plans, objectives, algorithms, models, source files reports, results, conclusions, all designs, specifications, documentation, components, source code, object code, images, icons, audiovisual components and objects, schematics, drawings, protocols, processes, and other visual depictions; and all notes, analyses, compilations, reports, forecasts, studies, samples, data, statistics, summaries, interpretations, and other materials that contain, are based on, or otherwise reflect or are derived from, any of the foregoing in whole or in part and other information and materials, irrespective of whether or not copyrightable or patentable and in any form or medium (tangible, intangible, oral, written, electronic, observational, or other) in which such Information may be communicated to, made accessible to and/or otherwise provided by a Participant to one or more other Participants in connection with the Project.

**“Materials”** means biological materials, chemical compounds, devices, equipment, samples, or other research materials owned or controlled by a Participant provided by a Participant to one or more other Participants in connection with the Project.

**“Participants”** means any Person participating in any way in the Project.

**“Person”** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

**“Project”** means the collaborative process among Participants who will be openly sharing Information and Materials for the purpose of designing a new (or repurposing an existing) NP swab for COVID19 testing, which may be rapidly manufactured and deployed using three-dimensional printing.

**“Third Party”** means any Person other than a Participant.

2. Information and Material Exchange. All Participants understand and agree that any and all Information and Material communicated to, made accessible to and/or otherwise provided by a Participant to one or more other Participants in connection with the Project is provided freely and openly in the spirit of cooperation and for the free use for all Participants to design, manufacture and deployment of the Developed Products. No Participant shall be under any obligation or restriction to maintain the confidentiality of any such Information or Material of another Participant received in connection with the Project.

3. Warranty Disclaimer.

ALL INFORMATION, MATERIALS AND/OR PRODUCTS EXCHANGED, SHARED, OR OTHERWISE OBTAINED IN CONNECTION WITH THE PROJECT ARE PROVIDED "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH PARTICIPANT EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE INFORMATION, MATERIALS, AND/OR PRODUCTS, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, PARTICIPANTS PROVIDE NO WARRANTY OR UNDERTAKING, AND MAKE NO REPRESENTATION OF ANY KIND THAT THE INFORMATION, MATERIALS, AND/OR PRODUCTS WILL MEET PARTICIPANT’S AND/OR PROJECT REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER DEVICES, PRODUCTS, SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR

DEFECTS CAN OR WILL BE CORRECTED. **MORE SPECIFICALLY, PRODUCTS ARE NOT CURRENTLY BE APPROVED FOR HUMAN USE BY REGULATORY AUTHORITIES AND IT IS THE RESPONSIBILITY OF PARTICIPANTS TO COMPLY WITH REGULATIONS BEFORE THE PARTICIPANTS' OR PARTICIPANTS' EMPLOYERS USE IN HUMANS.**

4. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:

(a) IN NO EVENT WILL ANY PARTICIPANT, BE LIABLE TO ANY OTHER PARTICIPANT OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE INFORMATION, MATERIALS, AND/OR PRODUCTS, LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT WILL ANY PARTICIPANT HAVE ANY LIABILITY TO ANOTHER PARTICIPANT UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE PROJECT, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE.

5. Miscellaneous.

(a) All matters arising out of or relating to this Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby shall be instituted in the federal courts of the United States of America or the courts of the State of Massachusetts, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(b) All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid..

(c) This Agreement constitutes the sole and entire agreement between and among the Participants with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter.

(d) This Agreement is for the sole benefit of the Participants hereto and their and nothing herein, express or implied, is intended to or shall confer on any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

(e) This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by each Participant. No waiver by any Participant of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the Participant so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(f) If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

(g) This Agreement shall remain in effect for the duration of the Project. No expiration or termination of the Agreement shall affect the Participants' rights and obligations under Sections 1-4, which shall survive any such termination or expiration and be ongoing.

(h) The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.