

MEMORANDUM OF UNDERSTANDING
FOR THE
PEDIATRIC EPILEPSY RESEARCH CONSORTIUM

This Memorandum of Understanding (“MOU”) is entered into by and between the Pediatric Epilepsy Research Consortium (“PERC”) and each party who signs an acknowledgement (in the form attached hereto as Exhibit A) of its intent to collaborate with PERC subject to the terms of this MOU (each, an “Institutional Participant”) (PERC and the Institutional Participant(s) may sometimes be referred to herein as a “Party” or collectively as the “Parties”).

Recitals

Whereas, PERC is a Delaware non-stock corporation recognized as exempt from federal income taxation as described in Section 501(c)(3) of the Internal Revenue Code;

Whereas, the purpose of PERC is to provide a network and infrastructure to facilitate collegial, collaborative, practice-changing research that will provide answers needed to improve the care of children with epilepsy (the “Purpose”);

Whereas, many severe childhood epilepsies are relatively rare, and it is only through a large collaborative effort involving multiple centers that we make progress in their treatment and outcomes;

Whereas, PERC consists of organizations and people involved or interested in resolving the above problems through dialogue and cooperation;

Whereas, the Parties recognize benefits of collaborating through PERC such as:

- The ability to work with colleagues across the country on topics of interest through the Special Interest Groups;
- The ability to identify and recruit patients from multiple institutions for research purposes;
- The ability to use multi-center data to answer pressing questions in pediatric epilepsy and contribute to practice-changing research;
- An enhanced reputation of the epilepsy center;
- Mentoring from established leaders in the field;
- An increased ability to secure research funding; and
- The ability for clinicians to participate in research and advance their own scholarly activities.

Whereas, the purpose of this MOU is to more fully describe the benefits to and expectations of individuals and organizations wishing to participate in the activities of PERC (*e.g.*, the Institutional Participants), to document that interest and the commitment to the mission of PERC, and to memorialize the nature of the relationship.

Now therefore, in consideration of the mutual covenants, promises and conditions herein contained, the Parties agree as follows.

1. **Role of PERC.** PERC will seek to:
 - a. Convene and facilitate meetings to enable Institutional Participants and their Individual Representatives (as defined below) to better collaborate in advancing the Purpose. PERC anticipates convening two annual meetings: PERC's Annual Meeting the first Thursday and Friday of each May and a dedicated meeting during the American Epilepsy Society National Conference in December. Notwithstanding the foregoing, meeting schedules shall be at such times and places as determined by PERC and communicated to the Institutional Participants.
 - b. Convene and support the work of the Special Interest Groups (as described below). This support may include scheduling monthly virtual meetings and communications related to these groups.
 - c. Assist with identifying funding for activities that result from PERC collaboration.
 - d. Assist in building multi-center networks to address research projects.
 - e. Provide mentoring opportunities for both mentors and mentees.
 - f. Support networking opportunities within and across the Special Interest Groups.

The list above is intended to provide an outline of potential activities of PERC, but the list is not intended to be either comprehensive or binding.

2. **Role of Institutional Participant.** Each Institutional Participant will:
 - a. Designate an individual to serve as its representative and actively participate in PERC meetings (each, an "Individual Representative"). The Individual Representative can be different from the individual executing this Agreement on behalf of the Institutional Participant. There is no limit on the number of Individual Representatives an Institutional Participant may designate hereunder.
 - b. Consider sending at least one Individual Representative to PERC's Annual Retreat held the first Thursday and Friday of May each year and PERC's annual meeting at the American Epilepsy Society. Financial support for attending these meetings is the responsibility of the Institutional Participant. If an Institutional Participant has less than three (3) Individual Representatives, then the Institutional Participant will consider sending an Individual Representative to attend the PERC retreat at least every other year.
 - c. Ensure that each Individual Representative participating in PERC on behalf of the Institutional Participant joins at least one Special Interest Group ("SIG") (<https://pediatricerc.com/sig-projects/>) and actively participates in same by:
 - i. Making good faith efforts to attend seventy-five percent (75%) or more of virtual or in-person SIG meetings each calendar year;
 - ii. Contributing to the research that the Individual Representative's SIG is pursuing;
 - iii. Following PERC's authorship guidelines for publications;

- iv. Considering opportunities to support research in pediatric epilepsy that aspires to be practice-changing, publishable, and fundable or lead to future funding opportunities;
 - v. Treating all information that consists of proprietary and/or confidential information as such in accordance with Section 5 below; and
 - vi. Acting in a collegial, respectful, and supportive manner in working together to advance PERC's mission.
- d. Seek to be aware of and honor PERC's bylaws.
 - e. Abide by decisions made by the Board of Directors with respect to the activities of PERC.
 - f. Collaborate to ensure that the first publication of any Activity (research, study, etc.) that occurs as a result of PERC collaboration will be made in conjunction with a joint multi-center publication of the research results and that it will be published as soon as possible, consistent with academic standards, and with due consideration to the protection of intellectual property rights and applicable guidelines. Subject to the foregoing, an Institutional Participant (or an Individual Representative) shall be free to publish its own study results consistent with academic standards.
3. **No Liability.** Each Party shall be solely responsible for its own negligent acts, misconduct, errors, or omissions as well as the negligent acts, misconduct, errors, or omissions of its officers, agents or employees. No Party shall be obligated to indemnify any other Party or to hold any other Party harmless from costs or expenses incurred as a result of such claims. Nothing in the MOU shall be construed as an indemnification by any Party for liabilities of a Party or third persons for property or any other loss, damage, death, or personal injury arising out of the performance of this MOU. The provisions in this paragraph are solely for the benefit of the Parties and are not intended to create or grant any rights contractually, or otherwise, to any third party.
4. **Term.** Subject to earlier termination of this MOU, as provided herein, this MOU shall commence on the date an Institutional Participant first signs and shall remain in full force and effect so long as one or more Institutional Participants remain as Parties.
5. **Duty to Keep Confidential Information Confidential.**
- a. "Confidential Information" means all information/data that is disclosed to a Party (the "Receiving Party") by another Party (the "Disclosing Party") which is marked as "Confidential" or which is communicated orally or in other intangible form by the Disclosing Party to the Receiving Party; provided, however, that the Disclosing Party informs the Receiving Party upon disclosure that the information being orally transmitted constitutes Confidential Information and provides the Receiving Party with a written memorandum marked "Confidential" summarizing such oral disclosure within thirty (30) days following such oral disclosure. Notwithstanding the foregoing, failure to so mark, inform, or summarize will not alter the confidential status of such information if a reasonable person would recognize by its content and/or the context of such disclosure that the

information was intended as confidential. The term “Confidential Information” shall include, without limitation, information disclosed to the Disclosing Party or its employees by third parties which the Disclosing Party or its employees are obligated to treat as confidential that is disclosed by or obtained directly or indirectly (whether by the receipt of documents, orally or through observation) from the Disclosing Party.

Confidential information does not include information that is generally available to the public at the time of receipt by the Receiving Party, or subsequently becomes generally available to the public, other than as a consequence of a breach of the terms of this MOU by the Receiving Party or information that is properly and lawfully in the possession of Receiving Party, and which was not obtained directly or indirectly from the Disclosing Party nor from another source known to the Receiving Party to be bound by a duty of confidentiality to the Disclosing Party. All references to Confidential Information in this MOU shall be to the whole or any part or parts thereof as the context permits.

- b. The Receiving Party hereby agrees and undertakes that with respect to the Disclosing Party’s Confidential Information the Receiving Party will:
 - (1) treat and keep the Confidential Information as secret and confidential;
 - (2) not divulge, reveal, publish, communicate or disclose any Confidential Information (directly or indirectly) to any other person, except:
 - a) with the prior written consent of the Disclosing Party; or
 - b) as may be required by law, in which case the Receiving Party agrees to provide the Disclosing Party prior written notice and cooperate with the Disclosing Party in seeking such legal remedies as may be available to prevent such disclosure;
 - (3) not use any Confidential Information in any way or for any purpose other than to further the Purpose of this MOU; and
 - (4) maintain the secrecy and confidentiality of the Confidential Information and ensure that the Confidential Information is not disclosed by any person (in whole or in part) contrary to any of the terms of this MOU.

- b. Each Party agrees that upon written request from the Disclosing Party, the Receiving Party will return to the Disclosing Party or destroy, all documents (including, without limitation, diagrams, tapes, computer programs or other machine-readable materials) which contain any Confidential Information of the Disclosing Party that has been supplied or made available under the provisions of this Agreement. Notwithstanding the return, destruction or retention of such documents, the obligations of confidentiality set out in this MOU shall remain in

full force and effect.

6. **Non-exclusivity.** Each Party shall be free to enter into agreements with other Parties related to the Purpose; however, each Party agrees to notify the other of any conflicts of interest which arise during the term of this MOU.
7. **Termination.** An Institutional Participant may terminate its participation, without cause and without penalties or liabilities, by giving PERC and the other Institutional Participants written notice of termination. Upon termination of participation, the terminating Party will have no further obligations under this MOU, except that the (i) liabilities accrued through the date of termination and (ii) the obligations which by their terms survive termination will survive termination. In the event an Individual Representative leaves his or her institution, the individual will cease to be an Individual Representative of such Institutional Participant and will be required to be designated as an Individual Representative of his or her new Institution to continue to participate in the activities of PERC.
8. **Licensure of Names and Marks.** Solely for the purpose of identifying the collaborative efforts discussed herein and for acknowledging each Party's support of the Purpose, each Institutional Participant grants to PERC, and PERC grants to each Institutional Participant, the non-exclusive, revocable, limited, and non-sublicensable right and license, during the term of this MOU, to reproduce, store, display, distribute and transmit the names and approved marks of such Party in connection with this MOU. Use of a Party's marks shall cease upon the termination of the MOU, provided that the Parties may continue to use the other Party's marks for the sole purpose of identifying the program as a program that it has been involved with in the past.
9. **Relationship Between the Parties.** This MOU shall not be deemed to create any joint venture or partnership between the Parties. It is understood that each Party shall be independent of the other and that no Party shall have the right or authority to bind another Party. Each Party is responsible for all of its own employee costs and benefits including, but not limited to, worker's compensation, unemployment, insurance, vacation, holiday pay, pension benefits, and profit sharing. Each Party shall also bear the sole responsibility for withholding and remittance of any federal, state or local taxes with respect to its employees.
10. **Amendments.** Any change to this MOU be in writing and signed by PERC and all Institutional Participants.
11. **Signatory Clause.** The individuals executing this MOU on behalf of the Parties acknowledge that they are duly authorized to execute this MOU on behalf of their respective supervisors or directors. Each Party hereby acknowledges that it has read and understood this MOU.
12. **Assignment.** No Institutional Participant may assign its interest in this MOU except upon the written consent of PERC.

13. **Partial Invalidity.** If any term, provision, covenant, or condition of this MOU is held by any court of competent jurisdiction to be invalid, void, voidable or unenforceable, all remaining portions of this MOU shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

14. **Waiver.** The waiver by a Party of a breach of any of the provisions of this MOU shall not operate or be construed as a waiver of any subsequent breach. Any waiver shall be in writing and signed by the waiving Party to be enforceable.

15. **No Third-Party Beneficiaries.** Nothing expressed or implied in this MOU is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

16. **Force Majeure.** No Party shall be responsible for delays or failures in performance resulting from acts beyond the control of such Party. Such acts shall include but not be limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental restrictions resulting from emergencies, governmental regulations superimposed after the execution of this MOU, fire, communications line failures, power failures, earthquakes or other disasters.

17. **Headings.** The headings, captions and arrangements used in this MOU are, unless specified otherwise, for convenience only and shall not be deemed to limit, amplify or modify the terms of this MOU nor affect the meaning thereof.

18. **Counterparts.** Institutional Participants shall execute counterparts of this MOU, each of which when delivered to PERC shall be deemed an original, but all of which together shall constitute one and the same instrument.

PEDIATRIC EPILEPSY RESEARCH CONSORTIUM

By: _____

Date: _____

Name: _____

Title: _____

{Participants to sign on individual pages in the form attached hereto as Exhibit A to be made a part of this MOU}

Exhibit A

**AGREEMENT TO MEMORANDUM OF UNDERSTANDING FOR THE PEDIATRIC EPILEPSY
RESEARCH CONSORTIUM**

_____ [Name of Institution] hereby agrees to accept and abide by the terms and conditions of the Memorandum of Understanding for the Pediatric Epilepsy Research Consortium (attached hereto as Exhibit 1) and to be named as an Institutional Participant thereto.

By: _____

Date: _____

Name: _____

Title: _____