**Intent to Participate Letter of Undertaking**

To:

Christophine MARTY-MOREAU, Senior Procurement Manager, DNDi

Email: cmarty@dndi.org

From:

Company Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone Number: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Status**

□ We plan to submit a proposal in response to DNDi’s request for proposal in relation to **Clinical Trial Supplies Services for Phase 3 Trial in Uncomplicated Gonorrhea**(“RFP”) which proposal is made for the benefit of the Global Antibiotic Research and Development Partnership (which is currently incubated in DNDi) (“GARDP”), and therefore < insert your company name > (the “company”) hereby confirms and agrees and commits to be bound by the following undertakings:

1. **Confirmation**
	1. The company confirms that the company and all of its Affiliates[[1]](#footnote-1):
		1. are neither currently under investigation for providing, nor have been otherwise declared ineligible to provide, services to DNDi or any DNDi’s employee, consultant or officer as a result of findings of fraudulent, corrupt, collusive or coercive practices;
		2. do not exploit child labour, use forced labour or otherwise violate human rights in the conduct of their business;
		3. do not engage in any discrimination based on race, color, religion, sex, marital status, national origin, age, disability or sexual orientation;
		4. pay at least the minimum wage or a fair representation of the prevailing industry wage;
		5. provide a safe and healthy workplace;
		6. comply with all applicable laws, regulations and guidelines for the care, welfare and ethical treatment of animals, in particular explore and evaluate alternatives using the 3Rs (Replacement, Reduction and Refining); and
		7. use their best effort to be environmentally friendly, promote and apply fair trades principles.
2. **Confidentiality**
	1. “Confidential Information” means any data or information of any kind regarding the project(s) covered in the RFP (whether or not marked ‘confidential’) in any form or medium which is disclosed, divulged, communicated or made available (whether before or after the date of this Intent to Participate Letter) by DNDi[[2]](#footnote-2) to the company, irrespective of whether it is in oral or a written form, or recorded or stored by electronic, magnetic, electromagnetic or other form, process or otherwise in a machine readable form or translated from the original language.
	2. The company shall, and shall cause its officers, directors, employees, agents and Affiliates, to keep confidential and not disclose to a third party and not use, directly or indirectly, for any purpose other than for the RFP, any Confidential Information provided or otherwise made known to it, directly or indirectly, by DNDi , except to the extent such disclosure or use is expressly permitted by DNDi .
	3. Notwithstanding the foregoing, the confidentiality and non-use obligations under this Section shall not apply to any information that is:
		1. in the possession of the company prior to disclosure by DNDi , as documented by the company’s written records or other competent proof;
		2. in the public domain prior to disclosure or becomes part of the public domain through no wrongful act, fault, negligence or breach of this Intent to Participate Letter by the company;
		3. subsequently disclosed to the company by a third party free of any obligation of confidence to DNDi, as documented by the company’s written records or other competent proof; or
		4. independently developed by or for the company without reference to DNDi’s Confidential Information, as documented by the company’s written records or other competent proof.
	4. The company may disclose Confidential Information to the extent that such disclosure is:
		1. deemed necessary by the company to be disclosed to subcontractors on the condition that such subcontractors agree to be bound by confidentiality and non-use obligations at least as stringent as the confidentiality and non-use obligations contained in this section 2;
		2. required to be disclosed to comply with applicable law or regulations or to comply with a valid and enforceable order of a court of valid jurisdiction or by a binding decision of any governmental body having jurisdiction, provided that the company shall:
			1. to the extent it is permitted to do so by law, by the court or by the authority requiring disclosure, provide DNDi with written notice of such disclosure requirement as soon as practicable upon becoming aware thereof;
			2. assist DNDi, in obtaining a protective order precluding or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purpose of which it is required; and
			3. limit the disclosure of Confidential Information to that information which is legally required to be disclosed in response to such court or governmental order.
	5. The confidentiality and non-use obligations herein shall survive the termination or expiration of the RFP for a period until such information falls within any of the exemptions listed in section 2(c) above and shall no longer be considered as confidential. The company shall be liable to DNDi for any unauthorized use and/or disclosure of DNDi’s Confidential Information by its own Affiliates as if the company had itself committed a breach of its obligations herein.
3. **Dispute Resolution**
	1. Any dispute, controversy or claim arising out of or in connection with this Intent to Participate Letter, unless settled amicably, shall be finally and exclusively settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce (ICC) in force on the date when the Notice of Arbitration is submitted.
	2. The appointing authority shall be the President of the Swiss Arbitration Association (ASA). The number of arbitrators shall be one, unless otherwise agreed by the Parties. The seat of arbitration shall be Geneva. The language of the arbitration proceedings shall be English. The company agrees to be bound by any award made by the arbitrator(s). Each of DNDi and the company shall bear its own attorneys’ fees, costs and disbursements arising out of the arbitration, and shall pay an equal share of the fees and costs of the arbitrators; provided, however, that provided the arbitrators shall be authorized to determine whether DNDi or the company is the prevailing party, and if so, to award to that prevailing party reimbursement for its reasonable attorneys' fees, costs and disbursements.

c) Notwithstanding the foregoing, DNDi shall be entitled to seek interim relief under law or equity, including injunctive relief, in any court of competent jurisdiction to preserve its rights with respect to Confidential Information, and consents to the jurisdiction of such courts, and waives any objection to such venue, for such purpose.

d) The company waives and releases any right to enjoin or otherwise interfere with the decision made by DNDi to appoint the winning bidder to perform the services described in the RFP.

The company agrees that this LOI is provided for the benefit of any legal entity which may be set up for the business of GARDP (“GARDP Entity”) which GARDP Entity shall have the right to enforce any of the company’s obligations set out in this LOI. DNDi shall further have the right to assign or transfer its rights under this LOI to such GARDP Entity on written notice to the company (which for such purpose may include email)

**Acknowledged and agreed:**

Company Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contact Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. “Affiliate” means, for the purpose of this Intent to Participate Letter, any legal entity that directly or indirectly owns or controls, or is owned or controlled by, or is under common control with a Party, the term “control” meaning (a) direct or indirect ownership of fifty percent (50%) or more of the share capital or the voting equity interests; or (b) the power to appoint a majority of the managing directors or managers, of such Party. [↑](#footnote-ref-1)
2. [↑](#footnote-ref-2)