

QUALITY IMPROVEMENT PROGRAM AGREEMENT

This Quality Improvement Program Agreement (this "Agreement") is entered into the ____ day of _____, 2014 (the "Effective Date") by and between Nestlé HealthCare Nutrition, Inc. (hereinafter referred to as "Nestlé"), a Delaware corporation having a principal place of business at 12 Vreeland Road, Florham Park, NJ 07932, and _____ (hereinafter referred to as "Institution"), a corporation having its principal place of business at _____.

1. The Demonstration Project

Institution will conduct a quality improvement program to implement the PEP uP volume-based feeding protocol utilizing the tools, resources and products provided by Nestlé and its collaborator on the Project, Critical Care Connections, LLC., as further described in Exhibit A hereto (the "Project"). The Project will be performed at the Institution under direction of _____ ("Project Coordinator"), who is an employee of Institution. In order for Institution to implement and complete the Project, Nestlé will provide the tools, resources and Nestlé products (the "Products") set forth in Exhibit A. Institution agrees to undertake the activities set forth in Exhibit A in order to successfully implement the Project and will at all times comply with all applicable local, state and federal laws, regulations, and guidelines with respect to its activities in conducting the Project, as well as with all applicable policies and procedures of Institution, including obtaining all necessary approvals.

2. Term and Termination

The term of this Agreement shall commence on the Effective Date and, unless earlier terminated by either party, shall continue in effect until the completion of the Project. Either party may terminate this Agreement for any reason at any time upon thirty (30) days' prior written notice thereof to the other party.

3. Publications

This Project is part of a series of Nestlé-sponsored multi-site quality improvement programs that is being led by Dr. Daren Heyland of Critical Care Connections, LLC as the project lead. Nestlé anticipates that Dr. Heyland will submit for publication a manuscript summarizing the data submitted by Institution and the other sites participating in these programs through participation in the International Nutrition Survey in 2014 upon successful completion of the program. Nestlé may also publish with respect to the Project and may make reference to, or quote from, the Project in its advertising and promotional materials. Nestlé does not object if Institution publishes with respect to the Project conducted at Institution provided that (i) such publication occurs after Dr. Heyland's publication and (ii) Nestlé has the opportunity to review and comment on any proposed publication at least sixty (60) days prior to submission of the document for publication in order to ensure that no confidential information or unprotected patentable subject matter is disclosed. Institution will delay publication upon request from Nestlé until Nestlé has filed patent application(s) directed to the patentable subject matter, or otherwise ensured protection for the subject matter contained in the proposed presentation or publication; and will remove any Confidential Information of Nestlé from the proposed presentation or publication.

4. Intellectual Property; Use of Results and Data by Nestlé

All patentable inventions and discoveries that are enhancements, modifications, or improvements of new uses for any Nestlé Products under study made or conceived in the course of or as a result of the Project shall be solely owned by Nestlé. Whenever requested to do so by Nestlé, Institution shall, at Nestlé's

expense, execute any and all documents or other instruments or will give testimony as Nestlé may deem necessary to apply for and obtain patent(s) in any country or to otherwise protect Nestlé's interest therein. These obligations shall continue beyond the termination of this Agreement and shall be binding upon Institution's successors and legal representatives including any and all employees, agents, and institutions affiliated with Institution in conducting the Project. In addition, Nestlé shall have the right to use the results and data of the Project in any manner Nestlé deems appropriate to its business interests, including in marketing materials, and as required by legal and business obligations, such as to support patent applications related to the Products or to satisfy the requirements of any government agency.

5. Right to Visit

Nestlé and Critical Care Nutrition shall have reasonable access to Institution's facilities during the term of this Agreement for purposes of participating with the Project Coordinator in carrying out this Project.

6. Confidentiality

Institution acknowledges and agrees that Nestlé's trade secrets, private processes, and information of a technical, proprietary, or confidential nature, as they may exist from time to time, are valuable, special, and unique assets of Nestlé's business, access to and knowledge of which Institution and Investigator may acquire in the performance of the Project. Institution will not disclose such secrets, processes, or information, in whole or in part, directly or indirectly, to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever, nor shall Institution make use of any such property for its own purposes or for the benefit of any person, firm, corporation, or other entity under any circumstances during or after the term of the Agreement. If such information is obtained by a third party through no fault of Institution, or otherwise comes into the public domain, it shall no longer be treated as confidential. Nothing in this paragraph shall prevent Institution from providing Nestlé's confidential information where required to do so by applicable laws or to respond to a bona fide government audit or investigation, provided prompt notice has been given in advance to Nestlé.

7. Indemnification

Nestlé shall defend, indemnify and hold harmless Institution, its officers, directors, employees and agents from and against all claims, liabilities, losses, damages, costs or expenses of any kind (including reasonable attorneys' fees) which may arise as a result of injuries caused solely by the negligence or wrongful act or omission of Nestlé. Institution shall defend, indemnify and hold harmless Nestlé, its officers, directors, employees, affiliates and agents to the same extent as a result of injuries caused solely by the negligence or wrongful act or omission of Institution and/or the Project Coordinator. The party to be indemnified shall notify the other in writing within ten days of receipt of each such claim and shall cooperate in the defense of the claim.

8. Independent Contractor

Institution agrees that it is an independent contractor and that neither it nor any of its employees nor the Project Coordinator is an employee of Nestlé. Neither Institution nor the Principal Investigator or any other of Institution's employees has the authority to represent or obligate Nestlé without the prior written approval of Nestlé.

9. Notice

Any notices to be given to Institution pursuant to this Agreement shall be addressed to:

Any notice or other communication given to Nestlé shall be addressed to:

Nestle Healthcare Nutrition Inc.
12 Vreeland Road
Florham Park, NJ 07932
Attn: Maureen Huhmann, Clinical Sciences Manager

with a copy to Nestlé’s General Counsel at the same address

10. Compliance; Debarment and Exclusion

Institution agrees to comply with applicable federal, state and local laws, rules, and regulations related to the Medicare and Medicaid provisions of the Federal Social Security Act, the federal Anti-Kickback Laws, and healthcare professional licensing rules. The Parties hereto expressly acknowledge that the Medicare antifraud statute, 42 U.S.C. § 1320a-7b, prohibits “illegal remuneration” as defined therein, in connection with the provision of goods or services for which payment is made in whole or in part under Medicare. It is the intention of the Parties hereto that this Agreement shall in all respects comply with the Medicare antifraud statute.

Institution certifies that Institution is not debarred, suspended or excluded by any Federal agency, department or office of government, including without limitation under the lists found at: <http://epls.arnet.gov> or http://www.fda.gov/ora/compliance_ref/debar/default.htm. The Institution agrees to notify Nestlé of any change in this status should one occur during the term of this Agreement.

11. General Provisions

All amendments to this Agreement must be in writing, signed by authorized representatives of both parties. This Agreement contains the entire agreement between the parties on the subject matter to which this Agreement pertains. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns. All rights under this Agreement shall be assignable by one party only with the written consent of the other, except that Nestlé may assign this Agreement in whole or in part to any affiliate of Nestlé. This Agreement shall be construed in accordance with the laws of the State of New Jersey without regard to its choice of law rules.

IN WITNESS WHEREOF, the parties here to have caused this Agreement to be executed as of the date written first above by their respective duly authorized representatives.

Nestlé Healthcare Nutrition, Inc.

By: _____

By: _____

Print Name:

Print Name: _____

Title:

Title: _____

EXHIBIT A

Description of the PEP uP Quality Improvement Program

Objectives: The PEP uP Quality Improvement Program is designed to foster a network of clinicians committed to the optimal delivery of enteral nutrition therapy in the ICU. The objectives of this project include the following:

- To initiate a quality improvement program at the Institution implementing the PEP uP protocol utilizing Peptamen® Bariatric tube feeding formula (the “Product”) as the “safe start” initial enteral formula
- To use resources and materials provided by Nestlé and CCN to support implementation and compliance with the protocol and the program
- To collect and submit data relating to changes in nitrogen delivery and outcomes during the program

Responsibilities of Institution:

- Develop a protocol implementation team consisting of a physician, nurse and dietitian who will share responsibility for implementing the PEP uP protocol
- Implement the PEP uP volume-based feeding protocol using the 3-month supply of Product provided by Nestlé
- Use the tools, resources and Products provided by Nestlé and CCN to support successful implementation of the Project
- Participate in the initial site visit and education component
- Participate in the online discussions
- Share the experience with the Project with the Institution’s local administration
- Collect and submit data through participation in the International Nutrition Survey (INS) in 2014 once the protocol has been successfully implemented

Responsibilities of CCN and Nestlé:

- Site visit and presentation from a member of the Critical Care Nutrition team
- Supporting tools such as visual aids and protocol templates
- A PEP uP starter pack provided by Nestlé, including a 3-month supply of Product for use exclusively in connection with the Project
- Access to a member of the Critical Care Nutrition team who will support the site during the Project
- Access to an monthly discussion group around questions unique to the PEP uP protocol
- A detailed site report, showing nutrition performance, following participation in the International Nutrition Survey 2014