

## NORTH AMERICAN SPINE SOCIETY REGISTRY

### REGISTRY PARTICIPATION AGREEMENT

THIS REGISTRY PARTICIPATION AGREEMENT (“Agreement”) is entered into and made effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between NORTH AMERICAN SPINE SOCIETY (“NASS”), and [Name of Participant] \_\_\_\_\_, a [form of organization, e.g. a Michigan nonprofit public benefit corporation] \_\_\_\_\_ (the “Participant”) (NASS and the Participant are sometimes referred to individually as a “Party” and together as the “Parties”), with reference to the following facts:

A. NASS operates an online platform and database for storage of, and access to, certain de-identified medical and treatment outcome information, known as the NASS Spine Registry (“Registry”).

B. NASS has engaged a third-party vendor, Ortech, Inc. (“Vendor”) to develop the Registry and software (the “Technology”) and manage subscriptions to store and access the Registry data.

C. Participant desires to participate in the Registry (along with other participants in the Registry, collectively the “Participants”).

D. NASS and the Participant wish to arrange for the Participant’s participation in the Registry on the terms and conditions set forth in this Agreement.

IN CONSIDERATION of the recitals, covenants, conditions and promises herein contained, and for other valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

#### 1. Registry Overview.

NASS grants to Participant access to its Registry. Users authorized by NASS and the Vendor can upload qualified de-identified medical data in the Registry (the “Participant Data”), and access certain reports and aggregate data made available through the Technology. NASS and Vendor shall provide to the Participant certain implementation, training and support services as applicable. Participant shall comply with NASS policies and procedures related to use and access to the Registry, as may be developed and updated from time to time by NASS (the “Policies and Procedures”), along with any other such policies or rules developed by NASS or the Vendor. All of the Participant Data shall remain the Participant’s property, and NASS will only use it in accordance with the provisions of this Agreement. Should Participant wish to subscribe to a Vendor extended service offering they may do so at an additional cost, with the prior written approval of NASS. Such extended service offerings will require a separate agreement between a Participant and Vendor, which must be approved by NASS if such extended service offerings build on or are dependent upon participation in the Registry. In these cases, Vendor will handle data transfer into the NASS Registry at no additional cost to the Participant.

#### 2. Participation.

2.1 Collaborative Work. NASS and the Participant each shall work collaboratively with each other and the other Participants to accomplish the objectives of the Registry. NASS and the Participant shall coordinate their efforts to promptly

resolve any operational problems and conflicts that may arise during the term of this Agreement. Participant will use its best efforts to address any data, or related, deficiencies identified by NASS, and agrees to cooperate with and assist NASS and its designees with the performance of any independent audit as described more fully in Section 2.2.

- 2.2 Accuracy and Completeness of Participant Data. Participant represents and warrants that Participant Data submitted for inclusion in the Registry by Participant or Participant's designated agent is accurate, free from serious error, complete, does not infringe upon any third Party rights, and provided in a timely manner, and acknowledges that the Participant Data may be subject to independent audit in accordance with terms and conditions mutually agreed upon by the Parties. Participant further warrants that it will take reasonable steps to avoid the submission of duplicative data in its Participant Data. Participant represents and warrants that it has obtained any applicable permissions or waivers necessary for submission of the Participant Data in the Registry.
- 2.3 De-Identification of Data. The Participant acknowledges and agrees that the Participant Data stored in the Registry will only include de-identified data, in accordance with the de-identification standards included in the Health Information Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d ("HIPAA") and its corresponding regulations. Certain patient identifiers provided by Participants are combined in a one-way hash by Vendor in an automated process resulting in an encrypted Registry database entry key which cannot be used to reproduce the original patient identifiers (the "Patient Identification Number"). Participant is solely responsible for maintaining and ensuring the confidentiality of the Patient Identification Number, and any direct patient identifiers utilized in the production of such number by the Vendor, in accordance with all applicable laws, including, but not limited to, HIPAA.
- 2.4 License. The Participant hereby grants to NASS a perpetual, fully-paid, worldwide, non-exclusive, royalty free right and license (i) to use all Participant Data and any subset thereof that NASS may choose to create and use as it sees fit for purposes consistent with this Agreement and the Registry (including, without limitation, publication of such data, and disclosure to NASS approved third-party researchers), and (ii) to use all Participant Data to carry out NASS's responsibilities in connection with the development and operation of the Registry, including without limitation research, quality assessment and improvement, reporting, system administration, testing, problem identification and resolution, management of the Technology, data aggregation activities as permitted by applicable state and federal laws and regulations, and otherwise as NASS determines is necessary and appropriate to comply with and carry out its obligations under all applicable federal, state, and local laws and regulations. Except as expressly provided in this Section 2.4, NASS shall have no right or title in or to the Participant Data, and shall not be entitled to impose any limitation or restriction upon the Participant's use thereof or ownership rights with respect thereto. In accordance with the licenses to the Participant Data set forth in this Section 2.4, NASS shall have no obligation to return such data to Participant, nor

destroy such data upon Participant's request, including, but not limited to, upon termination or expiration of this Agreement for any reason.

2.5 Independent Analysis; Publication. Without limiting the rights of NASS set forth in Section 2.4 the Participant may perform its own independent analysis of any of the Participant's Data, and may publish or otherwise present the results of that analysis, so long as such analysis is based upon Participant Data alone and does not include aggregate or de-identified data of other Participants.

2.6 Participant's Use of Agents. Participant shall be held responsible for the acts and omissions of all individuals who access the Registry on Participant's behalf, including, but not limited to, Participant's providers, employees, agents, and contractors (collectively, its "Agents"), and shall ensure that its Agents comply with all applicable terms of this Agreement. For purposes of this Agreement, any submission of data by Participant through an Agent shall be treated as if such data were submitted directly by Participant.

### 3. Intellectual Property.

3.1 Intellectual Property Rights. Participant acknowledges that NASS is and shall be deemed the owner of all rights to the Registry (including the aggregate data contained therein and subsets thereof), any and all reports based thereon, all information derived therefrom (including, without limitation, all risk algorithms and associated Beta coefficients and Y intercepts) and all trademarks (including, without limitation, NASS, NORTH AMERICAN SPINE SOCIETY REGISTRY and all variations thereon and graphic representations thereof), trade secrets and all other intellectual property arising from or reflected in the Registry (collectively, "NASS Intellectual Property") with the exception of Participant's Data. Participant may not use NASS Intellectual Property without first obtaining the express written consent of NASS, provided that Participant may use aggregated data from the Registry that have been previously released to the public by NASS (e.g., in published reports and slide sets) without first obtaining such written consent.

3.2 Use of Other Party Name. Neither Party shall use the name, trademark, or logo of the other Party or its employees for promotional purposes without prior written consent of the other Party. Notwithstanding the foregoing, NASS may use Participant's, and any Participant provider's, name in a directory of Registry participants, which may be made available by NASS to other participants and the public.

4. Registry Fees. The fees for participation in the Registry shall be Three Thousand Two Hundred Fifty and 00/100 Dollars (\$3250.00) per calendar year for access for one (1) provider at Participant. If the Participant joins the Registry during a calendar year, the fee for participation in the Registry during the first partial calendar year of participation shall be a pro-rated portion of the standard fee of Three Thousand Two Hundred Fifty and 00/100 Dollars (\$3250.00) dependent upon the number of months remaining in the calendar year after the Effective Date. Participant may add additional providers to the Registry at a cost of Three Hundred and 00/100 Dollars (\$300.00) per year per additional provider. Fees must be paid in full prior to participation in the Registry. NASS may revise the Registry fees from time to time, effective upon provision of written notice to the Participants. In subsequent term years, NASS will issue an invoice for the following calendar year's Registry fees, to be paid by Participant prior to December 31 of the year during which the invoice was issued.

5. NASS Reports. NASS may create certain Registry reports, each of which will include both aggregated data from the Registry and Participant-specific information, and such other reports as

NASS or the Vendor may prepare for Participants. Additional reports, and ad hoc queries of the Registry, may be created for Participant upon request, for fees established by NASS for such services. The aggregated data included in any and all reports provided hereunder constitute “NASS Intellectual Property” (as defined herein) and, as such, may not be reproduced, further disseminated or otherwise used except as provided in paragraph 3.1 of this Agreement or as otherwise permitted by NASS Policies and Procedures.

6. Compliance With Laws. In performing their respective responsibilities pursuant to this Agreement, NASS and the Participant shall comply in all respects with all applicable laws and regulations, including but not limited to applicable state and federal laws and regulations relating to human subjects research. Without limiting the generality of the foregoing, Participant acknowledges that because Participant Data stored in the Registry includes only de-identified data that operation of the Registry is not subject to HIPAA.

7. Confidential Information.

7.1 Confidentiality. Except to the extent expressly authorized by this Agreement or otherwise in writing by the Parties, each Party agrees that it shall keep confidential and shall not publish or otherwise disclose, and shall not use for any purpose other than as provided for in this Agreement any Confidential Information disclosed to it by the other Party pursuant to this Agreement. “Confidential Information” means any non-public, proprietary or sensitive information (or materials) belonging to or in the possession or control of a Party that is disclosed or made available to the other Party in connection with this Agreement and that is either marked or identified in writing as confidential, proprietary, secret or with another designation sufficient to give notice of its sensitive nature, or is of a type that a reasonable person would recognize it to be commercially sensitive. Confidential Information includes, but is not limited to, all questions and prompts utilized in the Registry to collect Participant Data. Confidential Information does not, however, include any information that a Party demonstrates: (a) is in the public domain; (b) is already known or obtained by that Party other than in the course of its participation in the Registry; (c) is independently developed by that Party; and/or (d) becomes known to that Party from an independent source having the right to disclose such information and without similar restrictions as to disclosure and use and without breach of this Agreement by that Party. Confidential Information also shall not include any Protected Health Information (as that term is defined in 45 CFR Part 160.103). Notwithstanding any other provision hereof, nothing in this Agreement shall prohibit or be deemed to prohibit a Party from disclosing any Confidential Information (or any other information the disclosure of which is otherwise prohibited hereunder) to the extent that such Party becomes legally compelled to make such disclosure by reason of a subpoena or order of a court, administrative agency or other governmental body of competent jurisdiction, and such disclosures are expressly permitted hereunder, provided, however, that a Party that has been requested or becomes legally compelled provides reasonable notice to the other Party of such request.

7.2 Equitable Remedies. All Confidential Information represents a unique intellectual product of its owner. The unauthorized disclosure of said Confidential Information would have a detrimental impact upon its owner, and the damages resulting from said detrimental impact would be difficult to ascertain but would result in irreparable loss, and it would require a multiplicity of actions at law and in equity in order to seek redress against the receiving Party in the event of an unauthorized disclosure. The owner of Confidential Information shall be entitled to equitable relief in preventing a breach of this Agreement

and that such equitable relief is in addition to any other rights or remedies available to such owner.

8. Limitation of Liability; Indemnification.

8.1 NASS Indemnification.

NASS agrees to indemnify, save and hold harmless Participant from and against any and all third Party claims, costs and expenses (including attorneys' fees and expenses), demands, actions and liabilities of every kind and character whatsoever arising or resulting in any way from NASS's gross negligence or willful misconduct related to its obligations under this Agreement, absent the gross negligence or willful misconduct of Participant. All of the foregoing rights of indemnification shall apply to any expenses incurred by Participant in defending itself against claims of gross negligence or willful misconduct unless a court of competent jurisdiction concludes in a final judgment that such Party seeking indemnification has committed gross negligence or willful misconduct.

8.2 Participant Indemnification.

Participant agrees to indemnify, save and hold harmless NASS and its Vendor from and against any and all third-Party claims, costs and expenses (including attorneys' fees and expenses), demands, actions and liabilities of every kind and character whatsoever arising or resulting in any way from Participant's or its designees submission of data to the Registry, use of data obtained through the Registry, breach of its obligations under this Agreement, or violation of applicable law, absent the gross negligence or willful misconduct of NASS or its Vendor, respectively. All of the foregoing rights of indemnification shall apply to any expenses incurred by NASS and its Vendor in defending themselves, respectively, against claims of gross negligence or willful misconduct unless a court of competent jurisdiction concludes in a final judgment that such Party seeking indemnification has committed gross negligence or willful misconduct.

8.3 Limitation of Liability.

To the extent allowable by law, under no circumstances will either Party be liable to the other for any indirect or consequential damages of any kind, including lost profits (whether or not the Parties have been advised of such loss or damage) arising in any way in connection with this Agreement. NASS shall not be responsible for any loss or damage Participant suffers through participation in the Registry. Use of information obtained via the Registry is at Participant's own risk and such information shall be provided on an "as is" basis without warranties of any kind, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose. Participant further acknowledges that NASS is not liable for any errors or interruption of the Registry. NASS does not warrant that the Registry will be error-free nor does NASS make any warranty as to the results to be obtained from the use of the Registry. Under no circumstance shall Participant hold NASS responsible for any form of damages or loss suffered from, but not limited to, errors, delays, loss of information, or interruption of the Registry or Technology caused by Participant, or a third Party's negligence, fault, misconduct or failure to perform. Participant understands that the Registry and Technology may be temporarily unavailable for scheduled or unscheduled maintenance.

8.4 Insurance.

The Participant shall maintain at its own expense professional and general liability insurance, and other insurance, as described in the Policies and Procedures.

9. Representations and Warranties.

9.1 Generally. Each Party hereby represents and warrants to the other that it is duly authorized to enter into this Agreement and legally able to perform its obligations hereunder, and that it has all rights necessary for the performance of its obligations under this Agreement, without violating any rights of any third Party.

9.2 Disclaimer of Warranties. Except as expressly provided in this Agreement, neither Party makes nor shall be deemed to make or have made any representations or warranties of any kind or nature, either directly or indirectly or express or implied, either in fact or by operation of law, and each Party expressly disclaims all warranties of merchantability, title, design, non-infringement, operation or fitness for a particular purpose and all warranties arising from conduct, course of dealing or usage in trade.

10. Term and Termination.

10.1 This Agreement shall be effective from the Effective Date until December 31 of the calendar year of the Effective Date, and shall be automatically renewed on an annual basis of term years of January 1 to December 31 thereafter unless any Party provides the other(s) with a written notice of termination on or before sixty (60) days prior to the expiration of any then-current term year.

10.2 This Agreement may be terminated upon any Party's material breach of this Agreement (including but not limited to, Participant's failure to timely pay any fees due NASS under this Agreement) and any other Party's provision of written notice thereof; if such breach is not cured to the non-breaching Party's(ies') satisfaction (as reflected in written notice thereof) within thirty (30) days after the provision of such notice.

10.3 Termination Without Cause. Either NASS or the Participant may terminate this Agreement without cause at any time upon not less than sixty (60) days prior written notice if it determines in good faith that it is appropriate to do so.

11. General Provisions.

11.1 Notice. Any and all notices required or permitted under this Agreement, and any significant communication made by either Party to the other incident to their participation in the Registry (collectively, "Notice"), shall be given in writing and sent by United States certified mail (return receipt requested), overnight delivery service or facsimile transmission to the other Party at the address as set forth below each Party's signature, or to such other address as a Party may designate in writing as its address for purposes of notice hereunder, or by electronic mail as described in this Section. Notice shall be deemed to have been given (a) upon receipt, if by electronic mail, by facsimile transmission or by personal delivery, or (b) on the date on which receipt is confirmed by an overnight delivery service or by the United States Postal Service. If a Party has provided an electronic mail address to the other Party, Notice may be given by e-mail message addressed to such address; provided, that if the Party giving Notice receives Notice that the e-mail message was not delivered, it shall give the Notice by United States mail, overnight delivery service or facsimile.

11.2 Applicable Law. The interpretation of this Agreement and the resolution of any disputes arising under this Agreement shall be governed by the laws of the State of Illinois without regard to choice of law provisions.

11.3 Assignment and Applicability. Neither Party may assign this Agreement without the written consent of the other Party.

11.4 Independent Parties. In the performance of their respective responsibilities under this Agreement, NASS and the Participant are and shall be independent contractors of the other. Nothing in this Agreement shall be deemed or construed as creating any joint venture or partnership between NASS and the Participant. Except as expressly set forth in this Agreement, neither Party shall have the power to control the activities or operations of, or contractually bind or otherwise commit, the other Party.

11.5 No Third Party Beneficiaries. Except as otherwise expressly provided herein, there shall be no third Party beneficiaries of this Agreement.

11.6 Supervening Circumstances. Neither Party shall be deemed in violation of any provision of this Agreement if it is prevented from performing any of its obligations by reason of: (a) severe weather and storms; (b) earthquakes or other natural occurrences; (c) strikes or other labor unrest; (d) power failures; (e) nuclear or other civil or military emergencies; (f) acts of legislative, judicial, executive, or administrative authorities; or (g) any other circumstances that are not within its reasonable control. This Section 11.6 shall not apply to obligations imposed under applicable laws or regulations or to obligations to pay money.

11.7 Severability. Any provision of this Agreement that shall prove to be invalid, void, or illegal shall in no way affect, impair, or invalidate any other provision of this Agreement, and such other provisions shall remain in full force and effect.

11.8 Waiver. No provision of this Agreement shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. Any consent by a Party to, or waiver of a breach by the other, whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for any other different or subsequent breach.

11.9 Complete Understanding. This Agreement and the exhibit(s) incorporated herein contain the entire understanding of the Parties with respect to the Registry, and there are no other written or oral understandings or promises between the Parties with respect to the subject matter of this Agreement other than those contained or referenced in this Agreement or the Registry. All modifications or amendments to this Agreement shall be in writing and signed by both NASS and the Participant.

11.10 Survival. The rights and obligations of the Parties as set forth in Sections 7(Confidential Information), 8 (Liability and Indemnification), and 11 (General Provisions) shall survive the termination of this Agreement.

Signature Page Follows

**NORTH AMERICAN SPINE SOCIETY REGISTRY**

**REGISTRY PARTICIPATION AGREEMENT**

Signature Page

Intending to be legally bound, each of the undersigned Parties has caused its duly authorized representative to execute this Agreement as of the Effective Date specified above.

“NASS”

“Participant”

NORTH AMERICAN SPINE SOCIETY

[Name of Participant]

\_\_\_\_\_

a [form of organization, e.g., a Michigan nonprofit public benefit corporation]

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

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

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

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

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

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

Address: \_\_\_\_\_

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

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

5.21.18