

REGISTRY PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into and made effective the ___ day of _____, 20____ (“Effective Date”), by and between (a) American Urological Association Education and Research, Inc. (“AUAER”); and b) _____, solely on behalf of the hospital known as _____ (“Practice Participant” or “Participant”).

WHEREAS, AUAER has developed and owns certain computerized databases containing information relating to patient treatment, the practice of medicine, and third parties submitting data to these databases pursuant to AUAER rules (said databases collectively referred to herein as the “the AQUA Registry”); and

WHEREAS, Participant has expressed an interest in participating in the AQUA Registry in accordance with AUAER requirements;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. Participation in AQUA Registry.

1.1 Participant agrees to participate in the AQUA Registry by transmitting data through a web-based portal or other means designated by AUAER, either directly or via a third-party vendor designated by Participant (“the Vendor”) for the collection and submission of data pertaining to the practice of urology.

1.2 Participant will participate in the data harvests conducted by the AQUA Registry by submitting Participant’s data to the AUAER through the web-based portal, and otherwise complying with the rules and harvest schedules reasonably established by AUAER in connection therewith.

1.2.1 Participant hereby warrants, to the best of its knowledge, that all data submitted for inclusion in the AQUA Registry will be accurate and complete, and acknowledges that such data may be subject to independent audit in accordance with terms and conditions mutually agreed upon by the parties. Participant will use its best efforts to address any data or related deficiencies identified by AUAER, and agrees to cooperate with and assist AUAER and its designees in connection with the performance of any independent audit.

1.2.2 Participant warrants that it will take all reasonable steps to avoid the submission of duplicative data for inclusion in the AQUA Registry.

1.2.3 Participant agrees to assist and cooperate with AUAER in its efforts to conduct the AQUA Registry.

1.2.4 Should the Participant elect to use its own third-party Vendor to transmit its data, then Participant takes full responsibility for the acts and omissions of the Vendor in Participant's participation in the AQUA Registry. For purposes of this Agreement, any submission of data by Participant through the Vendor shall be treated as if such data were submitted directly by Participant. Participant will immediately notify AUAER of any changes to the agreement with Participant and the Vendor. The Vendor must also complete an Authorized Vendor Agreement with AUAER in order to act on the Participant's behalf and Participant acknowledges that Vendor will not be authorized to Participate in the AQUA Registry on Participant's behalf until such agreement is completed.

1.3 Participant agrees and acknowledges that its (or Vendor's) failure to submit data to the AQUA Registry, or its (or Vendor's) submission of data to the AQUA Registry that does not comply with AUAER requirements, may result in Participant's failure to receive one or more reports generated by the AQUA Registry (see Section 2) and/or an assessment of additional Participant fees to reflect additional expenses incurred by AUAER in order to render Participant's data appropriate for inclusion in the AQUA Registry (see Section 4.2).

1.4 Participant agrees and acknowledges that the data captured by the AQUA Registry will include certain practice and physician-identifying information (which shall be encrypted during transfer and at rest in the AUAER software system). Participant agrees that it is Participant's responsibility to obtain any permissions required in order to submit such data for inclusion in the AQUA Registry, and specifically agrees to indemnify, save and hold harmless AUAER and its independent data warehouse service provider, if applicable, from and against all claims and liabilities associated therewith to the extent permitted by applicable law.

2. AUAER Reports. Provided that Participant participates in the AQUA Registry in accordance with AUAER requirements (including but not limited to Participant's payment of all applicable fees), Participant will be entitled to receive quarterly and annual AUAER AQUA Registry reports, each of which will include both aggregated data from the AQUA Registry and Participant-specific information, and such other reports as AUAER or its independent service providers may prepare for Participants. All such reports shall be structured to reflect data of the Participant, as directed by Participant in a written request. Additional reports may be created for Participant in consideration for the fees required by AUAER in order to provide them. The aggregated data included in any and all reports provided hereunder constitute "AUAER Intellectual Property" (as defined herein) and, as such, may not be reproduced, further disseminated or otherwise used except as provided in Section 6.4 of this Agreement or as otherwise permitted by AUAER policies and procedures (which shall be made available to Participant).

3. Participant Ad Hoc Queries. Participant may submit to AUAER for analysis such requests for ad hoc queries (requiring access to and analysis of aggregate data from the AQUA Registry) as Participant may desire. All such requests for ad hoc queries shall be subject to prior approval by AUAER, in accordance with such procedures and other requirements as it may reasonably establish, before efforts are undertaken to respond thereto. In its response to each of Participant's ad hoc queries, AUAER shall give due consideration to scientific merit, the funds and other resources available to address ad hoc queries and other pertinent factors; provided, however, that if adequate funding is not otherwise available, AUAER may condition its approval of a request for an ad hoc query upon Participant's agreement to pay the fees required by the AUAER and any other service providers required in order to appropriately address Participant's ad hoc query. As a part of its efforts to promote the use of the AQUA Registry as a tool for the development of beneficial scientific information, AUAER will provide reasonable assistance to Participant in refining Participant's requests for ad hoc queries so as to enhance their potential for approval in light of the pertinent factors noted above.

4. Participant Fees.

4.1.1 Fees payable by Participant to AUAER pursuant to this Agreement are as follows:

4.1.1 The initial participation fee shall be \$0. This fee shall entitle Participant to receive only one set of reports, capturing the aggregate data submitted by Participant pursuant to Section 1.

4.1.2 Such participation fees as AUAER may establish for future calendar years, provided that said fees will be established by AUAER prior to December 1 in 2016 and in each succeeding year (payable by January 1, 2017, and each succeeding year).

4.2 Any additional fees payable to address data submitted to the AQUA Registry that fails to conform with AUAER requirements.

4.3 Any additional report-related fees required pursuant to Section 2.

4.4 Any additional ad hoc query fees required pursuant to Section 3.

5. Confidentiality. AUAER acknowledges that the data submitted to the AQUA Registry by Participant are deemed confidential. Accordingly, AUAER agrees and acknowledges that it will require any data warehouse service providers to treat such information as confidential pursuant to an appropriate and material term within its written data warehouse service contract for the AQUA Registry. The parties hereby agree to comply with all applicable statutes and regulations, under federal and state laws, including but not limited to the privacy and security regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other applicable statutes or regulations concerning patient privacy and data security. To that end, it is agreed and acknowledged that they are executing the Business Associate Contract

and Data Use Agreement (“BAC/DUA”) attached hereto as Appendix I in conjunction with their execution of this Agreement, which is incorporated herein by reference and made part of this Agreement.

6. Intellectual Property.

6.1 It is agreed and acknowledged that all data submitted for inclusion in the AQUA Registry by or on behalf of Participant are and shall remain Participant’s proprietary information, and may be used by AUAER and its designees only in accordance with the terms of this Agreement and any subsequent instruction from Participant with respect thereto (*e.g.*, in connection with data collection efforts of geographically based groups of physicians).

6.2 Participant hereby agrees that all data submitted by or on behalf of Participant to AUAER or AUAER’s designee for purposes of inclusion in the AQUA Registry may be used by AUAER as a part of the AQUA Registry and any subset thereof that AUAER may choose to create and use as it sees fit for the purposes of promoting Participant’s health care operations and medical research (as defined by HIPAA regulations), and the other interests of the AQUA Registry (including, without limitation, publication of such data); provided, however, that no such data shall be used and disclosed in such a way as to identify Participant or any individual physician or physician group, unless and until Participant advises AUAER in writing that it has authorized and/or secured appropriate consent therefor. AUAER will not share PHI with third-parties except as otherwise authorized under this Agreement, the BAC/DUA in Appendix I, and HIPAA.

6.3 Participant acknowledges that AUAER is and shall be deemed the owner of all rights to the AQUA 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, AUAER and all variations thereon and graphic representations thereof), trade secrets and all other intellectual property arising from or reflected in the AQUA Registry (collectively, “AUAER Intellectual Property”) with the exception of Participant’s data.

6.4 Participant may not use AUAER Intellectual Property without first obtaining the express written consent of AUAER, provided that Participant may use aggregated data from the AQUA Registry that have been included in AUAER Reports to Participant or previously released to the public by AUAER (*e.g.*, in published reports and slide sets) without first obtaining such written consent so long as Participant does not make any statements about such data that are false and misleading.

6.5 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.

7. Limitation of Liability; Indemnification. AUAER 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 AUAER's breach of 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.

Participant agrees to indemnify, save and hold harmless AUAER and its independent data warehouse service provider (if any) 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 submission of data to the AQUA Registry or use of data obtained through the AQUA Registry, absent the gross negligence or willful misconduct of AUAER or any independent data warehouse service provider, respectively. All of the foregoing rights of indemnification shall apply to any expenses incurred by AUAER and any independent data warehouse service provider 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.

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.

[IF PARTICIPANT IS A GOVERNMENT INSTITUTION THAT IS NOT ABLE TO PROVIDE INDEMNIFICATION, THE FOLLOWING ALTERNATIVE PROVISION MAY BE SUBSTITUTED FOR THE ABOVE SECTION 7:

7. Responsibilities of the Parties.

Each party to this Agreement agrees that it will be responsible for its own acts and omissions and the results thereof; and, shall not be responsible for the acts and omissions of the other party and the results thereof. Each party agrees that it will assume all risk and liability to itself, its agents, or its employees for any injury to persons or property resulting in any manner from conduct of its own operations and the operations of its agents or employees under this Agreement. 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.]

8. Insurance. At all times during the term of this Agreement and the accompanying Business Associate Contract and Data Use Agreement, Participant and AUAER shall maintain

insurance with coverage and limits reasonably sufficient to cover their respective obligations hereunder and shall provide proof of such insurance upon the other party's request. Participant may satisfy the foregoing requirement through an appropriate self-insurance program, but must provide proof of such insurance upon AUAER's request.

9. Term and Termination.

9.1 Subject to the terms of Section 9.2, this Agreement shall be effective through December 31, _____, and shall be automatically renewed on an annual basis thereafter unless any party provides the other(s) with a written notice of termination on or before December 1, _____, or December 1 of any subsequent renewal year.

9.2 Either party may terminate this Agreement upon sixty (60) days written notice to the other party. This Agreement may be terminated prior to December 31, _____ (or December 31 of any subsequent renewal year) upon any party's material breach of this Agreement and any other party's provision of written notice thereof; provided, however, that if said breach is 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, said termination notice shall of no further force or effect and this Agreement shall be fully reinstated.

10. Equitable Relief. The parties understand and agree that money damages may not be a sufficient remedy for the breach of the provisions of this Agreement, and that each party shall be entitled to emergency injunctive relief as a remedy for any such breach by any other party. Such remedy shall not be deemed to be the exclusive remedy for the breach of this Agreement, but shall be in addition to all other remedies at law or in equity to the non-breaching party (ies).

11. Independent Contractors. The relationship of the parties to this Agreement is that of independent contractors, and not that of master and servant, principal and agent, employer and employee, or partners or joint venturers.

12. Notices. All notices and demands of any kind or nature which any party to this Agreement may be required or may desire to serve upon the other in connection with this Agreement shall be in writing, and may be served personally, by registered or certified United States mail, by facsimile transmission or by overnight courier (e.g., Federal Express or DHL) to the following addressees:

If to Practice Participant:

Tel: _____
(fax #) _____
Attn: _____

If to AUAER:

AUAER
100 Corporate Blvd.
Linthicum, MD 21090
Tel: _____
(fax #) _____

Service of such notice or demand so made shall be deemed complete on the day of actual delivery. Without limiting the generality of the foregoing, if notice is given by facsimile transmission, such notice shall be deemed to be provided upon confirmation of the receipt of the transmission. Any party hereto may, from time to time, by notice in writing served upon the other party(ies) as aforesaid, designate a different mailing address or a different person to which all further notices or demands shall thereafter be addressed.

13. Headings. The headings of the various sections hereof are intended solely for the convenience of reference and are not intended for any purpose whatsoever to explain, modify or place any construction upon any of the provisions of this Agreement.

14. Assignment. This Agreement may not be assigned by any party without the prior express written approval of the other party(ies), except that either party may assign this Agreement to an affiliate, successor entity, or subsidiary without the written approval of the other party.

15. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

16. Waiver. A waiver by any party to this Agreement of any of its terms or conditions in any one instance shall not be deemed or construed to be a general waiver of such term or condition or a waiver of any subsequent breach.

17. Choice of Law and Forum. All disputes regarding the meaning, effect, force or validity of this Agreement shall be determined according to federal law and the law of the State of Maryland. The parties expressly agree that the federal and state courts located in the State of Maryland are the most reasonable and convenient forums for resolutions of any such disputes, and designate said courts as the exclusive forums in which all such disputes shall be litigated. Accordingly, the parties consent to the jurisdiction and venue of, and service of process by, said courts. Each party agrees that the provisions of this Section 17 are specifically enforceable, and that it shall pay all expenses, damages, and costs (including attorneys' fees and expense) of any other party if said other party commences, prosecutes, or permits to continue any actions in any other forum.

18. Severability. All provisions of this Agreement are severable. If any provision or portion hereof is determined to be unenforceable by a court of competent jurisdiction, then the rest of this Agreement shall remain in full effect, provided that its general purposes remain reasonably capable of being effected.

19. Survival. The provisions of Sections 1.4, 5, 6, 7, 10, 11, 17 and all other terms within this Agreement that are necessary or appropriate to give meaning thereto shall survive any termination of this Agreement.

20. Entire Agreement. This Agreement (a) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; (b) supersedes and replaces all prior agreements, oral or written, between the parties relating to the subject matter hereof; and (c) except as otherwise indicated herein, may not be modified, amended or otherwise changed in any manner except by a written instrument executed by the party against whom enforcement is sought.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date and year first written above.

AUAER

PRACTICE PARTICIPANT

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____