

**AGREEMENT BY AND BETWEEN  
AMERICAN COLLEGE OF CARDIOLOGY FOUNDATION  
AND \_\_\_\_\_**

**THIS AGREEMENT** is made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (“Effective Date”), between the American College of Cardiology Foundation, a non-profit District of Columbia corporation located at 2400 N Street NW Washington DC 20037 (“ACCF”) and \_\_\_\_\_ (“Participant”), located at \_\_\_\_\_ (city/state). ACCF and Participant shall be referred to collectively as the “Parties” and individually as a “Party.”

**RECITALS**

**WHEREAS**, ACCF is dedicated to the advocacy of quality cardiovascular care through education, research, development and application of standards and;

**WHEREAS**; ACCF has developed the PINNACLE Registry Research Alliance which links geographically diverse cardiologists with the PINNACLE Registry’s comprehensive data system to further best practices and quality improvement in real-world clinical settings.

**WHEREAS**, the PINNACLE Registry Research Alliance offers cardiovascular practices a one-of-a-kind opportunity to participate in a range of clinical trials, observational studies, and investigator development programs that are designed to advance cardiovascular care;

**WHEREAS**; Participant, has already expressed commitment to improving quality of cardiovascular care through data collection and performance measurement by participating in the PINNACLE Registry;

**WHEREAS**, Participant desires to join the PINNACLE Registry Research Alliance, on the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the mutual promises and Agreements set forth, including the Recitals, which are incorporated into this Agreement as substantive terms, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by ACCF and Participant the Parties agree as follows:

1. **The Program.** The PINNACLE Registry Research Alliance is owned and operated by the ACCF. The purpose of the program is to provide Participant the following:
  - a. Help your patients access therapies not available outside of cardiovascular trials.
  - b. Use cutting-edge research results to improve your practice and patient care.
  - c. Participate in studies that will shape tomorrow’s best practices in cardiovascular care.
  - d. Begin or advance your research career with the support of a strong research network and superior clinical informatics
  - e. Gain greater exposure within the scientific community as an author or co-author of groundbreaking publications.

2. **Participant Obligations.** Participant agrees to the following obligations:
  - a. Participant agrees that participation in any program is voluntary;
  - b. Participant shall comply with all program specific requirements which can be found at <<http://www.ncdr.com/PINNACLEAlliance>> and are incorporated by reference into this Agreement;
  - c. Participant authorizes ACCF to review existing and future data submitted by Participant to the PINNACLE Registry to determine relevant Participant opportunities in the PINNACLE Registry Research Alliance and
  - d. Participant agrees that the Business Associate Agreement executed by and between the ACCF and Participant shall apply to this Agreement.
  
3. **ACCF Obligations.** ACCF agrees to the following obligations:
  - a. ACCF shall notify Participant of program and/or project opportunities, when available and
  - b. ACCF shall review existing and future data submitted by the Participant via the PINNACLE Registry to determine relevant participant opportunities in the PINNACLE Registry Research Alliance.
  
4. **Term and Termination of Agreement.** The term of this Agreement shall be effective for the duration of the PINNACLE Registry Research Alliance. The Agreement may be terminated by the Participant or ACCF upon written notice to the other party at any time. Termination of the of the PINNACLE Registry Research Alliance participation Agreement shall not constitute a termination of the Master Agreement governing participation in the PINNACLE Registry, unless otherwise determined by ACCF.
  
5. **Intellectual Property and Data Access**
  - a) Aggregate de-identified data residing in the PINNACLE Registry Research Alliance shall be deemed the property of the ACCF.
  
  - b) Participant acknowledges that ACCF is required to comply with federal, state and local laws pertaining to confidentiality and disclosure including but not limited to the Health Insurance Portability and Accountability Act and that such laws prohibit further disclosure of protected health information without execution of a data use agreement as defined under 45 C.F.R. Part 164.514(e) (4).
  
  - c) All Intellectual Property Rights and title to all proprietary information in and rights to any software, materials, data elements, aggregate data, and the compilation of the same with any other data received in connection with the PINNACLE Registry Research Alliance and any related reports, calculations and models based thereon, including without limitation all copyrights, patent rights, trademarks, trade secret rights, and any other rights and interest in any of the foregoing, shall be and remain at all times the sole and exclusive property of ACCF. For purposes of this Agreement, "Intellectual Property Rights" means all intangible, proprietary and industrial property rights and all intangible and derivative works thereof, (i) domain names or uniform resource locators; (ii) copyrights and other rights in works of authorship, including, but not limited to, compilations of data, (iii) patents and patent applications, patentable ideas, inventions and

innovations; (iv) know-how and trade-secrets; and (v) registrations, applications, renewals, extensions, continuations, divisions or reissues of the foregoing.

d) All trade and service marks and logos developed and used exclusively by or for PINNACLE Registry Research Alliance, and any related criteria, standards, guidelines, procedures, and other materials developed and used exclusively by or for PINNACLE Registry Research Alliance shall be owned by ACCF.

## **6. Indemnification and Insurance.**

- a. **ACCF Indemnity.** ACCF will indemnify, defend and hold Participant harmless from any damages or lawsuits arising directly from ACCF's conduct, negligent acts or omissions or willful malfeasance related to this Agreement except to the extent any such damage or lawsuit arises from or relates to the negligent acts or omissions or willful malfeasance of Participant. Indemnification under this provision shall survive termination of this Agreement. ACCF shall not be responsible for the negligence or willful misconduct of Participant.
- b. **Participant Indemnity.** Participant will indemnify, defend and hold harmless ACCF for damages or liability arising directly from the negligent acts or omissions or willful malfeasance of Participant related to this Agreement except to the extent arising from or related to ACCF's conduct, negligent acts or omissions or willful malfeasance. Indemnification under this provision shall survive termination of this Agreement. Participant shall not be responsible for the negligence or willful misconduct of ACCF.
- c. **Notice and Cooperation.** Any party seeking indemnification hereunder will give notice to the indemnifying party promptly upon receipt of written notice of the potential claim. The party seeking indemnification will permit the indemnifying party to assume the defense and/or disposition of any such claim or related litigation, provided that counsel is reasonably acceptable to the party seeking indemnification. The Party seeking indemnification will cooperate with the indemnifying party in all reasonable requests with respect to the defense of any such claim, with the out-of-pocket costs of the party seeking indemnification to be reimbursed by the indemnifying party.
- d. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY HEREUNDER, BASED ON ANY THEORY OF LIABILITY OR CAUSE OF ACTION EXCEED THE TOTAL AMOUNT OF FEES PAID TO PARTICIPANT BY ACCF UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH CAUSE OF ACTION NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, SAVINGS

OR REVENUE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- e. Insurance. During the term of this Agreement, each party shall, at its sole cost and expense, maintain on commercially reasonable terms policies of general liability insurance with coverage amounts equal to at least one million dollars (\$1,000,000) per occurrence combined single limit, and three million dollars (\$3,000,000) annual aggregate. The parties each agree to furnish the other party upon written request a certificate of insurance indicating the required coverage.
7. **Confidentiality.** For the purposes of this Agreement, “Confidential Information” means any software, material, data or business, financial, operational, participant, vendor and other information disclosed by one Party to the other and not generally known by or disclosed to the public or known to the receiving Party solely by reason of the negotiation or performance of this Agreement, and shall include, without limitation, the terms of this Agreement. Each Party shall maintain all of the other Party’s Confidential Information in strict confidence and will protect such information with the same degree of care that such Party exercises with its own Confidential Information, but in no event with less than a reasonable degree of care. Except as provided in this Agreement, a Party shall not use or disclose any Confidential Information of the other Party in any manner without the express prior written consent of such other Party. Access to and use of any Confidential Information shall be restricted to those employees and persons within a Party’s organization with known discretion and with a need to use the information to perform such Party’s obligations under this Agreement. A Party’s consultants and subcontractors may be included within the meaning of “persons within a Party’s organization,” provided that such consultants and subcontractors have executed a non-disclosure or confidentiality agreement with provisions no less stringent than those applicable to such Party under this Agreement, and such Party shall make such signed agreements available to the other Party upon request. Notwithstanding anything herein to the contrary, Confidential Information shall not include information that is: (a) already known to or otherwise in the possession of a Party at the time of receipt from the other Party and that was not known or received as the result of violation of any obligation of confidentiality; (b) publicly available or otherwise in the public domain prior to disclosure by a Party; (c) rightfully obtained by a Party from any third Party having a right to disclose such information without restriction and without breach of any confidentiality obligation by such third Party; (d) developed by a Party independent of any disclosure hereunder, as evidenced by written records; or (e) disclosed pursuant to the order of a court or administrative body of competent jurisdiction or a government agency, provided that the Party receiving such order shall notify the other prior to such disclosure and shall cooperate with the other Party in the event such Party elects to legally contest, request confidential treatment, or otherwise avoid such disclosure. Except as otherwise provided herein, all of a Party’s Confidential Information disclosed to the other Party, and all copies thereof, shall be and remain the property of the disclosing Party. All such Confidential Information and any and all copies and reproductions thereof shall, upon the expiration or termination of this Agreement for any reason, or within fifteen (15) days of written request by the disclosing Party, be promptly returned to it, or destroyed, at the disclosing Party’s direction. In the event of such requested

destruction, the Party receiving such request shall provide to the other Party written certification of compliance therewith within fifteen (15) days of such written request.

8. **Notice.** Whenever any notice is to be given hereunder, it shall be in writing and mailed postage prepaid by certified or registered mail, return receipt requested, or personally delivered to the appropriate party at the address indicated below, or at such other place or places as either party may designate in a written notice to the other:

To ACCF:                    American College of Cardiology Foundation  
2400 N. Street, NW  
Washington, DC 20037  
Attn: General Counsel

To Participant :            \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

Notice shall be deemed to have been received at the earlier of receipt or five (5) days from the date of mailing (in the case of a letter).

9. **Assignment.** Neither this Agreement nor either party's rights and obligations hereunder may be assigned to a third party without prior written consent of the other party; provided, however, that ACCF may assign this Agreement and its rights and obligations to a parent or an entity controlled by or under common control with ACCF, or a venture or entity in which ACCF has a majority ownership interest, or upon a change of control of ACCF, without the consent of the Participant.
10. **Use of Name.** No party shall, without the prior written approval of the other party: (a) use in advertising, publicity, news release or otherwise the name of any employee or agent, any trade name, trademark, trade device, service mark, symbol, or any abbreviation, contraction or simulation thereof owned by the other party, or (b) represent, either directly or indirectly, that any product or service of the other party is a product or service of the representing party or that it is made in accordance with or utilizes the information or documents of another party, or (c) make any commitments, disbursements, or incur any obligations except as expressly permitted hereunder.
11. **Headings.** The headings of the various paragraphs 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.
12. **Relationship of Parties.** 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.

13. **Agreement Modifications.** This Agreement may not be altered, amended or modified except by written document signed by both parties.
14. **Force Majeure.** Neither Party shall be liable for any failure to perform any obligation under this Agreement, or for any delay in performance, due to events or circumstances beyond the affected Party's reasonable control, including acts of God, acts or threats of terrorism, government acts, technical failures, fire, or other similar events or circumstances.
15. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the District of Columbia, United States of America, without regard to any conflicts of law principles applied. The parties agree that United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act, as enacted in any state, do not apply to this Agreement. Any suit or proceeding relating to this Agreement shall be brought only in the District of Columbia, United States of America. EACH PARTY CONSENTS TO THE EXCLUSIVE PERSONAL JURISDICTION AND VENUE OF THE COURTS LOCATED IN THE DISTRICT OF COLUMBIA, UNITED STATES OF AMERICA.
16. **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.
17. **Waiver.** A waiver by either Party to this Agreement of any of its items 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.
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 the Agreement shall remain in full effect, provided that its general purposes remain reasonably capable of being effected.
19. **Survival.** The following sections of this Agreement survive its termination as to any hospital product offering or in its entirety, for any reason: Sections <Insert Sections>.
20. **Third Party Beneficiary.** The parties agree to look solely to each other with respect to this Agreement. This Agreement and each and every provision thereof are for the exclusive benefit of ACCF and Participant and not for the benefit of any third party. No third party shall be entitled to rely upon or enforce this Agreement or any portion thereof or to be a third party beneficiary thereof.

**IN WITNESS WHEREOF**, The Parties have executed this Agreement, as of the date set forth in the first paragraph above.

<b>AMERICAN COLLEGE OF CARDIOLOGY FOUNDATION</b>	<b>PARTICIPANT</b>
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____