

**AMERICAN UROGYNECOLOGIC SOCIETY  
REGISTRY PARTICIPATION AGREEMENT  
(AQUIRE)**

**THIS PARTICIPATION AGREEMENT** (the “Agreement”) is made and entered into effective this \_\_\_ day of \_\_\_\_\_, 2016 (the “Effective Date”) by and between the American Urogynecologic Society (“AUGS”), and **[INSERT CORRECT LEGAL NAME OF PARTICIPANT]** (“Participant”).

**WHEREAS**, AUGS is a non-profit organization dedicated to research and education in urogynecology, and the detection, prevention and treatment of female lower urinary tract disorders and pelvic floor disorders;

**WHEREAS**, AUGS has established the AUGS Quality Registry (“AQUIRE”) for quality improvement activities of participants; and

**WHEREAS**, Participant is a healthcare provider or entity that desires to contribute data to AQUIRE.

In consideration of the mutual covenants and premises herein contained, the parties agree as follows:

**I. DATA CONTRIBUTION**

1.1. Participant’s Contribution of Data. Participant agrees to contribute certain data, as established by AUGS from time to time (“the Data”) and communicated to Participant through updates to the AQUIRE website or direct communication to Participant. Participant must submit the Data in accordance with the standards established by AUGS, including but not limited to by direct integration with Participant’s electronic medical record system, template upload or direct entry via web platform in the manner as required by AUGS to AQUIRE’s Registry Vendor, FIGmd (“FIGmd”) and in the format required by FIGmd. Participant shall enter into a Data Warehousing Agreement which includes a business associate agreement with FIGmd. Participant shall make a reasonable effort to submit the Data to AQUIRE for all eligible patients. AUGS will receive Participant’s data from FIGmd as de-identified data.

1.2. License to Use Data. Participant represents and warrants that Participant has the right to the Data and is legally authorized and permitted by all applicable state and federal laws to submit the Data to AQUIRE pursuant to the terms of this Agreement. Participant understands and agrees that the de-identified Data received by AUGS will be used for the following quality improvement purposes: (i) for AUGS to provide confidential benchmarking report to participants; (ii) for AUGS to allow participants to track surgeon volume, patient outcomes and quality measures to fulfill Centers for Medicare and Medicaid Services (CMS), Physician Quality and Reporting Systems (“PQRS”) and maintenance of certification requirements; and (iii) for AUGS to prepare and publish AQUIRE reports. Participant agrees that Participant’s Data will be aggregated with data contributed by other participants. Accordingly, Participant

grants to AUGS a non-exclusive, irrevocable, perpetual license to use Participant's Data for the purposes stated in this Section 1.2, including aggregating it with other participants' data ("Aggregated AQUIRE") and sharing it with other participants for purposes participants' quality improvement activities. AUGS will share Participant's Data with other participants in a way that will not separately identify Participant's Data except to Participant as described in Section 2 of this Agreement or if Participant grants permission to AUGS in writing. The AQUIRE report described in this Section 1.2 will not identify Participant or any patient.

1.3. AQUIRE Registry and Aggregated Data. Notwithstanding the ownership rights of Participant in Participant's own Data, AUGS owns all right, title, and interest in AQUIRE and the Aggregated AQUIRE Data contained therein, including all intellectual property rights therein. AUGS hereby grants to Participant a limited, non-exclusive revocable license to utilize Benchmarking Reports (as defined below) for internal quality improvement purposes only and in accordance with Section 5.2 of this Agreement.

1.4. Principal User. Participant agrees to designate a Principal User or to be the designated Principal User who will be responsible for accurately collecting and reporting the Data and complying with the requirements as described in Exhibit A attached hereto and incorporated herein by reference and subject to change from time to time. Participant agrees to identify or to be the Principal User to act as the contact person for communications with AUGS regarding AQUIRE. The Principal User will promptly respond to reasonable communications and requests from AUGS related to AQUIRE. The Principal User will be responsible for training Participant's staff and verifying that the Data has been accurately collected and entered into AQUIRE. AUGS will provide training to Principal User.

1.5. Limitations. Except for the license rights expressly granted herein, no express or implied license, right or interest in or to any intellectual property of AUGS or AQUIRE is conferred by this Agreement. Participant shall not remove any proprietary rights notice from AQUIRE or any deliverable or product provided to Participant by AUGS or AQUIRE. Any portion of AQUIRE or its content merged into or used in conjunction with other material will continue to be the property of AUGS and subject to the terms and conditions of this Agreement. Any use of AQUIRE not expressly permitted by this Agreement is prohibited. Without limiting the foregoing, Participant shall not, except as otherwise provided herein, (a) install or configure AQUIRE other than in accordance with AUGS specifications; (b) reverse assemble, reverse compile, reverse engineer or otherwise attempt to write the source code of AQUIRE; (c) modify, enhance or create derivatives of AQUIRE; or (d) lease, sublease, sublicense, sell, distribute, transfer possession, rent, or grant other rights in AQUIRE.

1.6. Audits. In order to monitor the quality and quantity of the Data entered into AQUIRE, Participant agrees that AUGS or its agents may from time to time conduct virtual audits of Participant's data and collection procedures. AUGS will provide at least ten (10) business days' notice of any such virtual audit.

## **II. REPORTS PROVIDED BY AUGS**

2.1. Benchmarking Reports. Participant shall generate quality assurance and improvement oriented outcome reports periodically based on Participant's submitted data compared to the Aggregated AQUIRE Data ("Benchmarking Reports"). The Benchmarking Reports will be in a format developed by AUGS and subject to change from time to time. Participant shall have access to AQUIRE and Benchmarking Reports only so long as Participant has contributed and is contributing Data to AQUIRE in accordance with data collection protocols and this Agreement is in effect.

## **III. FEES**

There are no annual fees for Participant's general participation in AQUIRE. Fees will only be charged if Participant wants AUGS to submit Data to a third party on behalf of Participant.

## **IV. TERM AND TERMINATION**

4.1. Term. This Agreement will begin on the Effective Date and will continue until December 31 (the "Initial Term"); this Agreement shall automatically renew for additional periods of one (1) year (each, a "Renewal Term") and will continue until terminated under Section 4.2 of this Agreement.

4.2. Termination. Either party may terminate this Agreement upon thirty (30) days prior written notice the other party for any reason.

4.3. Effect of Termination. The rights and responsibilities under Sections 1.2, 1.3, 4.2, 5, 6, 7, 8.6 and 8.7 shall survive termination or expiration of this Agreement for any reason whatsoever.

## **V. PUBLICATIONS**

5.1. Publications. Participant agrees that AUGS may publicize Participant's name along with a list of other participants in AQUIRE on AUGS website and other materials listing the participants in AQUIRE. Any press release, advertising, promotional sales literature or other promotional written statements or promotional oral statements to the public in connection with or alluding to AQUIRE or the relationship between the parties created by this Agreement that has or contains any reference to AUGS is prohibited without the prior written approval of AUGS.

5.2. Use of Reports. Participant shall only use Benchmarking Reports and Aggregated AQUIRE Data for internal quality improvement purposes only. Participant shall not disclose Benchmarking Reports or Aggregated AQUIRE Data without written permission of AUGS. Participant shall comply with all publishing guidelines established by AUGS from time to time regarding permitted uses and disclosures of Benchmarking Reports and Aggregated Data.

## **VI. PROTECTION OF CONFIDENTIAL INFORMATION**

6.1. Confidential Information Defined. “Confidential Information,” as used herein, means any or all information or proprietary materials (in every form and media) not generally known in the relevant trade or industry and which has been or is hereafter disclosed or made available by either party (the “Disclosing Party”) to the other (the “Receiving Party”) in connection with this Agreement and Participant’s participation in AQUIRE, including but not limited to: (i) all trade secrets; (ii) existing or contemplated products, services, designs, technology, processes, technical data, engineering, techniques, methodologies and concepts and any information related thereto; and/or (iii) information relating to business plans, sales or marketing methods and customer lists or requirements. “Confidential Information” shall not include (a) any information which is or becomes publicly known through no breach of this Agreement; (b) any information lawfully received by a third party who has lawful right to disclose; (c) any information which is independently developed by the Receiving Party and such independent development is documented; or (d) any information which is required to be disclosed pursuant to law, rule, regulation or court order, provided, however, that the Receiving Party gives the Disclosing Party prompt notice upon learning of such disclosure obligation and the Receiving Party only discloses the minimum amount of information necessary to be in compliance with such law, rule, regulation or court order.

6.2. Confidential Information. Each party acknowledges that any Confidential Information shall be held in confidence. Each party agrees that it will use at least the same effort to prevent disclosure of the other party’s Confidential Information as it uses to protect its own Confidential Information but in no event with less than a reasonable degree of care. Each party will limit its disclosure and use of the other party’s Confidential Information to those of its employees, consultants and agents as having a need to know such information and who have agreed to maintain the confidentiality of such information in the manner consistent with this Agreement. Each party agrees that it may only use the Confidential Information for the purposes for which it was originally disclosed and only in accordance with the terms and conditions of this Agreement.

6.3. Injunctive Relief. Each party acknowledges that any disclosure of Confidential Information in violation of this Agreement is likely to cause serious and irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Each party therefore agrees that if the other party breaches this Agreement with respect to the disclosure of Confidential Information or if such party has cause to believe that the other party intends to or is about to commit such a breach of this Agreement, then such party shall have the right to obtain an injunction to halt or prevent such breach.

6.4. Confidentiality of Participant’s Identity. AUGS will not release Participant’s Data in any format or circumstance that identifies Participant or its medical or professional staff or employees as the contributor of its specific Data, except to the Participant, as required by legal process, or as specifically authorized by Participant. If any legal demand for Participant’s Data is made upon AUGS, AUGS will promptly notify Participant so that Participant may, at their

option, challenge the validity of the legal process. The provisions of this Section shall survive any termination or expiration of this Agreement.

## **VII. NO WARRANTIES; LIMITATION OF LIABILITY**

7.1. Disclaimer of Warranty. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AQUIRE AND ANY AND ALL MATERIALS DEVELOPED BY AUGS UNDER THIS AGREEMENT ARE PROVIDED “AS IS” WITH ALL FAULTS, AND AUGS DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE AQUIRE REGISTRY AND AUGS MATERIALS DEVELOPED HEREUNDER, INCLUDING ANY EXPRESS OR IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, NON-INFRINGEMENT, OR THAT AQUIRE AND AUGS MATERIALS DEVELOPED HEREUNDER WILL OPERATE ERROR FREE, UNINTERRUPTED OR BE FREE OF VIRUSES. THE ENTIRE RISK AS TO THE SELECTION, SATISFACTION, QUALITY AND PERFORMANCE AND USE OF AQUIRE SHALL BE WITH PARTICIPANT.

7.2. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL AUGS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES (INCLUDING DAMAGES RELATED TO DELAYS, LOSS OF DATA, INTERRUPTION OF SERVICE OR LOSS OF USE, BUSINESS, REVENUE OR PROFITS) IN CONNECTION WITH THIS AGREEMENT, USE OR INABILITY TO USE AQUIRE, UNDER ANY LEGAL THEORY, EVEN IF AUGS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE THAT AUGS’S LIABILITY RELATED TO THIS AGREEMENT SHALL BE LIMITED TO ONE YEAR’S FEES PAID TO AUGS UNDER THIS AGREEMENT. LIABILITY FOR DAMAGES SHALL BE LIMITED AND/OR EXCLUDED AS PROVIDED IN THIS AGREEMENT, EVEN IF ANY EXCLUSIVE REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

## **VIII. ADDITIONAL TERMS**

8.1. Force Majeure. Neither party shall be liable for failure to meet any requirements of this Agreement, and this Agreement may not be terminated for such cause, if such failure is due to electrical outage, strike, natural disaster, or any other event beyond the control of the party, which makes performance impossible or impractical.

8.2. Amendment. Any amendment to this Agreement must be in writing and signed by each of the parties. The parties agree to amend this Agreement from time to time as necessary for the parties to comply with the requirements of federal and applicable state law. Provided, however, that AUGS may make changes to AQUIRE and data collected from time to time by giving notice to all Participants as soon as is practicable prior to their implementation and any such changes will not be considered an amendment to this Agreement.

8.3. Assignment. Neither party may, without the written consent of the other, assign, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement.

8.4. Severability. If any part of this Agreement is determined to be invalid, illegal or unenforceable by any Act of Congress, state legislature or by any regulation issued by the United States or a State, or declared null and void by any court with valid jurisdiction, then the parties will modify such part, if possible, to conform to the law, and the remaining parts will be fully effective and operative insofar as reasonably possible.

8.5. Entire Agreement. This Agreement, including its attachments and exhibits, if any, constitutes the entire understanding and agreement between the parties concerning the subject matter of this Agreement, and supersedes all prior negotiations, agreements, and understandings between the parties, whether oral or in writing, concerning its subject matter.

8.6. Jurisdiction. This Agreement is governed by the laws of the State of Illinois and venue for resolution of any disputes shall reside in the federal or state courts in Cook County, Illinois. Each party consents to the personal jurisdiction of the federal and state courts located in Cook County, Illinois.

8.7. Third Party Beneficiaries. The parties do not intend to create any third party beneficiaries to this Agreement. Without the limiting the foregoing, the parties state that the individuals whose PHI is Used or Disclosed to its Subcontractors under this Agreement are not third party beneficiaries to this Agreement.

8.8. Waiver. No provision of this Agreement may be waived except by an agreement in writing signed by the waiving party. A waiver of any item or provision shall not be construed as a waiver of any other term or provision.

8.9. Relationship of The Parties. The parties are independent contractors of each other. Nothing in this Agreement shall be construed to create a fiduciary relationship, partnership, employer/employee joint venture, agency or other similar relationship between the parties. Neither party shall have the right to exercise control or direction over the business of the other party.

8.10. Authority. The undersigned represents and warrants that they are authorized to enter into this Agreement on behalf of the party he or she represents, and that this Agreement will be binding on such party, and its officers, directors, agents, and employees.

8.11. Interpretation. Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Participant and AUGS to comply with HIPAA and applicable state and federal laws and regulations.

8.12. Notices. Any notices required pursuant to this Agreement shall be in writing and sent by US Mail, personal delivery, next-day express mail, or by facsimile addressed as identified below:

If to AUGS:

Michelle Zinnert

Executive Director

American Urogynecologic Society

1100 Wayne Avenue, Suite 670

Silver Spring, MD 20910

If to Participant:

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[Signatures on Following Page]

**IN WITNESS WHEREOF**, the parties have each executed this Agreement by their duly authorized representative on the dates shown below.

<p>AMERICAN UROGYNECOLOGIC SOCIETY</p>   <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>PARTICIPANT:</p> <p>_____</p> <p><b>Print Name</b></p>  <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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## **Exhibit A**

### **Principal User**

The “Principal User” for AQUIRE will be an individual selected by the Participant or will be the Participant. The main function of the Principal User is to ensure that patient and program data complies with AQUIRE definitions and security requirements and to act as the main contact between AUGS and the Participant. Specifically, the Principal User will:

1. Participate in at least one AQUIRE training webcast/webinar and/or complete the online training module and any significant updates as determined by AUGS.
2. Ensure that all Participant Data conform to the specific definitions and collection periods as defined by AUGS.
3. Ensure that the Participant utilizes all necessary security precautions to ensure data integrity and security.
4. Ensure that all staff who will or may be entering data into AQUIRE are sufficiently trained to ensure compliance with data validity and security.
5. Act as a contact source between AUGS and the Participant regarding any general AQUIRE communications, updates, troubleshooting, or data inquiries.
6. Notify AUGS staff as soon as possible regarding data entry errors, software problems, bugs, or other problems that would compromise the validity and/or security of the member’s data or of AQUIRE as a whole.
7. Notify AUGS of a change in the Principal User.