

THE SOCIETY OF GYNECOLOGIC ONCOLOGY

CLINICAL OUTCOMES REGISTRY

PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into effective the ____ day of _____, 20__, by and between (a) THE SOCIETY OF GYNECOLOGIC ONCOLOGY, an Illinois nonprofit corporation, with its principal place of business at 230 W. Monroe Street, Suite 710, Chicago, IL 60606 (“SGO”); and (b) _____, a group of gynecologic oncologists or healthcare facility whose principal place of business is at _____ (“Participant”).

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

WHEREAS, the successful operation of the SGO Registry is dependent in large measure on Participants’ adherence to SGO specifications for data file content and upload to the SGO data warehouse, or the submission of data through a web-based portal designated by SGO; and

WHEREAS, Participant has expressed an interest in participating in the SGO Registry in accordance with SGO 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 SGO Registry.

1.1 Participant agrees to participate in the SGO Registry by transmitting data pertaining to the practice of gynecologic oncology.

1.2 Participant will participate in the data harvests conducted by the SGO Registry by submitting Participant’s data to the SGO data warehouse according to SGO data specifications or through a web-based portal utilizing SGO Registry Software in use by Participant, and otherwise complying with the rules and harvest schedules reasonably established by SGO in connection therewith.

1.2.1 Participant hereby warrants that all data submitted for inclusion in the SGO Registry will be accurate and complete, and acknowledges that such data may be subject to independent review. Participant will use its best efforts to address any data or related deficiencies identified by the SGO, and agrees to cooperate with and assist SGO and its designees in connection with the performance of any independent review.

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

1.2.3 Participant agrees to assist and cooperate with SGO in their efforts to conduct the SGO Registry.

1.2.4 For Participant gynecologic oncology groups, the undersigned representative of such group represents and warrants that s/he is authorized to enter into this Agreement on behalf of the Participant gynecologic oncology group and that all professional members of the group and/or the duly elected or appointed decision makers for the group have consented to the submission of data to the SGO.

1.2.5 SGO acknowledges that use of the SGO web-based portal may require that SGO or its independent service provider hold a valid Current Procedural Terminology (“CPT”) Code internal use license issued by the American Medical Association (“AMA”) and warrants that SGO holds or SGO will ensure that its independent service provider holds such license during the entire term of participation in the SGO Registry.

1.3 Participant agrees and acknowledges that its failure to submit data to the SGO Registry, or its submission of data to the SGO Registry that does not comply with SGO requirements, may result in Participant’s failure to receive one or more reports generated by the SGO Registry (see Section 2 below).

1.4 Participant agrees and acknowledges that the data captured by the SGO Registry will include certain healthcare facility identifying information, as well as certain provider identifying information (both in an encrypted form during transfer and at rest in the SGO data warehouse). Participant agrees that it is Participant’s responsibility to obtain any permissions, authorizations, and/or consents required in order to submit such data for inclusion in the SGO Registry.

2. SGO Registry Reports. Provided that Participant participates in the SGO Registry in accordance with SGO requirements, Participant will be entitled to receive a minimum of one annual SGO Registry report containing aggregate data (content determined by SGO) from the SGO data warehouse. The SGO Registry will provide additional Participant-specific information based on the Participant’s own data and reports as SGO or its independent service providers may prepare. Additional ad hoc reports may be created for Participant in consideration for the fees required by SGO in order to provide them (see Section 3). Any aggregated data included in any and all reports provided hereunder constitute “SGO Intellectual Property” (as defined herein) and, as such, may not be reproduced, further disseminated or otherwise used except as provided in paragraph 6.4 of this Agreement.

3. Participant Ad Hoc Queries. Participant may submit to SGO for analysis such requests for ad hoc queries as Participant may desire. All such requests for ad hoc queries shall be subject to prior approval by SGO, 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, SGO 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, SGO may condition its approval of a request for an ad hoc query upon Participant’s agreement to pay the fees required by the SGO 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 Registry as a tool for the development of beneficial scientific information, SGO 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 Fees payable by Participant to SGO pursuant to this Agreement are as follows:

4.1.1 The Participant does not pay a fee to receive SGO annual aggregated data reports or Participant data reports as specified in Section 2.

4.1.2 Such participation fees as SGO may establish for future calendar years, provided that said fees will be established by SGO prior to December 1 in each year this Agreement is in effect.

4.2 Any additional ad hoc query fees required pursuant to paragraph 3.

5. Confidentiality. SGO acknowledges that the data submitted to the SGO Registry by Participant are deemed confidential. Accordingly, SGO 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 SGO Registry. The parties hereby agree to comply with all statutes and regulations, under federal and state laws, concerning patient privacy and data security, 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 security. To memorialize the parties obligations thereunder with respect to the SGO Registry, it is agreed and acknowledged that they are executing the Business Associate Contract and Data Use Agreement 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 As between the parties, it is agreed and acknowledged that all data submitted for inclusion in the SGO Registry by Participant are and shall remain Participant's proprietary information, and may be used by SGO and its designees only in accordance with the terms of this Agreement and the Appendix I hereto.

6.2 Participant hereby agrees that all data submitted by or on behalf of Participant to SGO or SGO's designee for purposes of inclusion in the SGO Registry may be used by SGO as a part of the SGO Registry and any subset thereof that SGO may choose to create and use for the purposes of promoting of Participant's health care operations and medical research (as defined by HIPAA regulations), gynecologic oncologist self-assessment and the other interests of the SGO Registry (including, without limitation, publication of such data); provided, however, that SGO's use and disclosure of such data that constitutes protected health information or a limited data set (as either term is defined in the HIPAA regulations) shall be subject to the terms and conditions of the Business Associate Contract and Data Use Agreement attached hereto as

Appendix I; provided further, that no such data shall be used in such a way as to identify Participant or institution of Participant or any individual physician or physician group, unless and until Participant advises SGO in writing that it has authorized and/or secured appropriate consent.

6.3 As between the parties, Participant acknowledges that SGO is and shall be deemed the owner of all rights to the SGO Registry (including the aggregate data contained therein and subsets thereof), any and all reports based thereon, all information derived therefrom and all trademarks (including, without limitation, SGO, SGO Registry and all variations thereon and graphic representations thereof), trade secrets and all other intellectual property arising from or reflected in the SGO Registry (collectively, “SGO Intellectual Property”) with the exception of Participant’s data.

6.4 Participant may not use SGO Intellectual Property without first obtaining the express written consent of SGO, provided that Participant may use aggregated data from the SGO Registry that have been previously released to the public by SGO (*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 or 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. SGO agrees to indemnify, save and hold harmless the 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 SGO’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 SGO and its independent data warehouse service provider 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 SGO Registry or use of data obtained from the Registry, absent the gross negligence or willful misconduct of SGO or any independent data warehouse service provider, respectively. All of the foregoing rights of indemnification shall apply to any expenses incurred by SGO 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.

8. Term and Termination.

8.1 Subject to the terms of paragraph 8.2, this Agreement shall be effective through December 31 of this year, 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 of this year, or December 1 of any subsequent renewal year.

8.2 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 of this year, (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.

8.3 Upon termination of this Agreement for any reason other than discontinuation of the SGO Registry, Participant's use of SGO Registry Software shall simultaneously cease.

9. 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).

10. 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.

11. 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 Participant:

(fax #) _____

If to SGO:

The Society of Gynecologic Oncology
230 W. Monroe St., Suite 710
Chicago, IL 60606
Tel: 312-235-4060
(fax #) 312-235-4059
Attn: Mary Eiken, Executive Director

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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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 Cook County of Illinois. The parties expressly agree that the federal and state courts located in the Cook County of Illinois, 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 paragraph 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.

17. 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.

18. Survival. The provisions of paragraphs 1.4, 5-7, 8.3, 9, 11-13, 15-19 and all other terms within this Agreement that are necessary or appropriate to give meaning thereto shall survive any termination of this Agreement.

19. 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.

THE SOCIETY OF GYNECOLOGIC
ONCOLOGY

PARTICIPANT

By: _____
Print Name: _____
Title: _____

By: _____
Print Name: _____
Title: _____