

DATA SHARING AGREEMENT

THIS DATA SHARING AGREEMENT (“**Agreement**”) is entered into as of the _____ day of _____ (“**Effective Date**”) by and between Nebula Data Intel, LLC with its principal place of business located at 7500 Grand Avenue, Gurnee, IL 60031 (“**NDI**”) and - _____ (Facility name) with its principal place of business located at _____ (address) _____ (“**Participant**”).

BACKGROUND

A. NDI collects clinical and operational data from accredited outpatient surgery facilities to gather meaningful insights into patient safety, medical outcomes, product usage and patient satisfaction in aggregate and by specialty (the “**Data**”);

B. NDI is willing to share some of the Data with Participant so that Participant might benchmark its activities against peers, if Participant agrees to provide read-only access to its inventory system and provide other information, all as set forth in this Agreement.

NOW, THEREFORE, for the exchange of promises and other consideration which is acknowledged, the parties agree as follows:

1. OBLIGATIONS OF NDI.

While this Agreement remains in force, NDI shall provide Participant with:

- a. NDI proprietary bar-coded preference cards specially designed for Participant;
- b. The hardware and applications necessary to scan the Participant’s preference cards, at this time to include a tablet;
- c. Access to an informational dashboard so Participant may access some of the Data for Participant’s benchmarking purposes; and
- d. Telephone support related to NDI’s applications and systems during NDI’s regular business hours.
- e. All shared data to be treated in accordance with HIPAA compliance.

2. OBLIGATIONS OF PARTICIPANT.

While this Agreement remains in force, Participant shall provide NDI with:

- a. Access to the Participant’s usage and other information through the regular scanning of Participant’s bar-coded preference cards;
- b. Read-only access to the Participant’s inventory system; (see section 5) and
- c. Reasonable efforts to implement and utilize the NDI applications in order to provide information of the type gathered by NDI.
- d. Be an active member of an Ambulatory Surgery Center Accreditation organization.
 - i Provide proof of active status within 60 days of written request by NDI.

Current Accreditation Facility: _____

3. TERM AND TERMINATION.

a. This Agreement will last for one year after the Effective Date and will automatically renew for successive one year periods until terminated under Section 3.b.

b. Either party may end this Agreement at any time after the first year anniversary by sending the other party a written notice with a cancelation date at least 90 days into the future (the “**Termination Date**”). Participant will return any hardware provided to Participant by NDI and will stop using the portions of the Data for which access had been given not later than the Termination Date, and by the same date NDI will stop accessing Participant’s inventory system.

4. TERMS AND CONDITIONS. This Agreement is subject to the General Terms and Conditions attached and incorporated by this reference, and any references to “this Agreement” includes the General Terms and Conditions.

5. Inventory Management Access.

_____ (Facility name) grants to Nebula Data Intel, LLC (“NDI”) access to the facility’s inventory management system. NDI will use such access only to collect inventory information necessary for preference card creation and to perform match-backs and other activities related to the NDI program. The facility may cancel the read-only access at any time upon providing ninety days prior written notice to NDI.

Supplier Merchant / Inventory Management Company Name

User Name

Password

The parties have caused this Agreement to be signed by their duly authorized representatives as of the Effective Date.

NEBULA DATA INTEL, LLC

[PARTICIPANT]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

**DATA PARTICIPATION AGREEMENT
GENERAL TERMS AND CONDITIONS**

GRANT OF LICENSE.

Participant hereby grants to NDI a perpetual, non-terminable, nonexclusive, non-transferable, worldwide license, to use information collected from Participant (the “**Shared Data**”). Participant understands that NDI will combine the Shared Data with that collected from other facilities, that NDI may repackage and sell the Shared Data, and that Participant will not receive any compensation or consideration for the Shared Data except as noted in paragraph 1 of the Agreement. The licensed granted under this Agreement shall survive the termination of this Agreement, and, after the Termination Date, NDI shall continue to be entitled to use any Shared Data that was provided through the Termination Date.

Participant acknowledges that all portions of the Data and all related applications, software, and processes shared with Participant by NDI are proprietary to and owned solely by NDI. Participant shall not, directly or indirectly: reverse engineer, decompile, disassemble, decode or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Data or any software, documentation or information related to the Data (collectively, the “**Proprietary Information**”); modify, translate, combine or merge, or create derivative works based on the Proprietary Information; grant sublicenses, leases, or other rights in or to the Proprietary Information; or permit use of or access to the Proprietary Information (including access codes or passwords) by non-employees or third parties.

REGARDING THE DATA THAT NDI MAY SHARE AND THE SUPPORT THAT NDI MAY PROVIDE, PARTICIPANT UNDERSTANDS THAT NDI MAKES NO WARRANTIES OF ANY NATURE WHATSOEVER WITH RESPECT TO ANY SERVICES OR DATA INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS. PARTICIPANT WILL ACCEPT ANY SUCH SHARED DATA AS IS/WHERE IS AND WILL USE SUCH DATA AT PARTICIPANT’S OWN RISK.

LIMITATION OF LIABILITY.

WHEN CLAIMS ARISE DIRECTLY OR INDIRECTLY FROM OR RELATE TO THIS AGREEMENT, IN NO CASE WILL EITHER PARTY BE LIABLE TO THE OTHER IN AN AMOUNT EXCEEDING \$5,000.00; AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES INCLUDING, WITHOUT LIMITATION, LOSS OF USE, TIME OR DATA, INCONVENIENCE, COMMERCIAL LOSS, LOST PROFITS OR SAVINGS, OR LOST POTENTIAL PROFITS OR BUSINESS, WHETHER ARISING FROM BREACH OF CONTRACT OR TORT, TO THE FULLEST EXTENT SUCH MAY BE DISCLAIMED BY LAW EVEN IF THE DISCLAIMING PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

FURTHER ASSURANCES.

Each party will take such action and deliver all such agreements, certificates, instruments, and documents, as the other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement.

MISCELLANEOUS.

- (a) This Agreement shall be binding on all successors and assigns of a party. All terms which by their nature should reasonably be expected to survive termination of this Agreement shall survive such termination.
- (b) This Agreement shall be governed by the laws of the State of Illinois, excluding its conflict of law provisions. Any action or proceeding by either of the parties to enforce this Agreement shall be brought only in a state or federal court located in the state of Illinois, county of Lake. The parties hereby irrevocably submit to the exclusive jurisdiction of such courts and waive all defenses designed to defeat the jurisdiction of such courts, including, without limitation, the defense of inconvenient forum.
- (c) NO CLAIM OR ACTION DIRECTLY OR INDIRECTLY ARISING FROM OR RELATED TO THIS AGREEMENT MAY BE FILED MORE THAN 12 MONTHS AFTER THE DATE GIVING RISE TO SUCH CLAIM OR ACTION. THE PARTIES UNDERSTAND THAT, WHILE THE STATUTE OF LIMITATIONS FOR ANY SUCH CLAIMS MAY BE LONGER THAN 12 MONTHS, THE PARTIES AGREE TO BE BOUND BY 12 MONTH PERIOD OF LIMITATIONS SET FORTH HEREIN, AND WAIVE ANY STATUTE OF LIMITATIONS TO THE CONTRARY.
- (d) This Agreement may be separately signed by each party, and each copy shall constitute an original and both together will be deemed to be the same instrument.
- (e) All notices, request, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered by reputable overnight carrier.
- (f) This Agreement is the entire agreement of the parties and replaces any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement. No other promise relating to the subject matter of this Agreement has been made by a party. This Agreement may not be changed except by an agreement in writing, signed by both parties against which enforcement of such modification or amendment is sought.
- (g) The parties acknowledge that each is an independent contractor, nothing herein constitutes a joint venture or partnership, and neither party has the right to bind or act for the other as agent in any other capacity.
- (h) If any of the terms of this Agreement is or becomes or is declared to be invalid or void by any court or tribunal of competent jurisdiction, such term or terms shall be null and void and shall be deemed severed from this Agreement without affecting any remaining terms hereof.
- (i) The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver of such party’s rights or deprive such party of the right thereafter to insist upon strict adherence to that term or any other term of this Agreement.
- (j) The Section headings contained in this Agreement are for reference only and shall not affect the meaning or interpretation of this Agreement.