OVERVIEW

The American Society of Clinical Oncology, Inc. (“ASCO”) is a non-profit professional oncology society founded in 1964 and committed to conquering cancer through research, education, prevention, and delivery of high quality patient care. In furtherance of this mission, ASCO seeks to improve the ability of its community-based oncology members to efficiently conduct and manage clinical trials. ASCO has created the ASCO Clinical Trial Workload Assessment Tool (the “Tool”), which is designed to help community-based oncology practices assess research staff workload and calibrate allocation of necessary human and other resources.

USE OF TOOL

Generally, The Tool is provided by ASCO free of charge to help community-based oncology practices assess research staff workload and calibrate allocation of necessary human and other resources. From time to time and in its sole discretion, ASCO may make additional services available to authorized users of the Tool, including but not limited to making staff of the ASCO Community Research Forum available to respond to inquiries about use of the Tool (the “Services”).

The data received by ASCO from the Practice’s use of the Tool or the Services will be used in operational and quality improvement activities designed to improve the ability of ASCO’s members, who practice in community-based oncology groups, to efficiently conduct and manage clinical trials. ASCO’s primary objective will be to continue to establish the reliability and validity of the Tool and effectively assist oncology group practices in evaluating how they are conducting trials from a workload-associated perspective, focusing on elements such as research staff workload associated with subject accrual, on-study/on active treatment, on-study/off active treatment, and off-study follow-up.
ASCO makes no representation that the Tool or the Services are appropriate or available for use in all locations. The Tool or the Services may not be available in your location. By using the Tool or the Services, you agree to the following Terms and Conditions.

1. DEFINITIONS

1.1 “ASCO Confidential Information” shall mean non-public, proprietary or confidential information about ASCO or the ASCO Intellectual Property learned by the Practice through use of the Tool or the Services.

1.2 “ASCO Intellectual Property” shall mean the Tool; the Services; Derivative Works; any and all software, databases, and forms; and any other items or information prepared, developed, collected, modified, compiled, or provided by or on behalf of ASCO.

1.3 “Data” shall mean all data submitted by the Practice through the forms, surveys, the Tool, and the Services. The parties agree that the Data do not constitute “protected health information” regulated by HIPAA or state security breach laws.

1.4 “Derivative Works” shall mean, without limitation, any analyses, excerpts, aggregated data compilations, summaries, reports, publications, or other works created by or on behalf of ASCO using or referring to the Data.

1.5 “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations promulgated thereunder.

1.6 “Practice-Specific Information” shall mean non-public, proprietary or confidential information about the Practice such as the number of patients accrued to the Practice’s clinical trials, the workload distribution of the Practice, and the number of research trials in which a Practice participates, except when such information is aggregated with information about other practices in such a manner that the Practice is not readily identifiable.

1.7 “Program Administrator” shall have the meaning set forth in Section 2.1.

1.8 “Services” shall have the meaning set forth above.

1.9 “Tool” shall have the meaning set forth above.

2. USER RESPONSIBILITIES

2.1 Contact Person. The Practice will designate a primary contact person for using the Tool (the “Program Administrator”). This contact person is typically the Practice’s Research Manager. The Program Administrator will complete the Tool, the Registration Form, and any follow-up questionnaires on behalf of the Practice.
2.2 Completion of Forms. The Program Administrator will complete any forms, in the Tool and otherwise, on behalf of the Practice accurately and consistent with this Agreement, the Tool instructions, and any other applicable instructions.

(a) Registration Form. The Registration Form will be used to gather contact information and basic demographic information about the Practice to confirm eligibility for use of the Tool.

(b) Identification of Staffing, Protocols, and Acuity Scores. The Program Administrator will be required to enter data into the Tool that provides information about the Practice’s staffing, clinical trial protocols, and acuity scores.

(c) Tool. The Program Administrator, or designated staff, will enter Data into the Tool on an approximately monthly basis. The Practice will be assigned confidential and anonymous login information to access the Tool. The Program Administrator may designate additional Practice staff members to enter Data into the Tool.

(d) Questionnaire(s). The Program Administrator will be asked to complete certain questionnaires to be granted access to the Tool. These questionnaires may gather basic corporate and operational information about the Practice and the clinical trial-associated workload of the Practice, including information about its research program, the types of research trials it conducts, and the number of patients screened and enrolled onto trials. These questionnaires may also solicit basic employment and demographic information about the Practice’s research staff. Periodically, the Program Administrator will be asked to complete follow-up questionnaires to assist with the evaluation of the Tool.

2.3 Training. The Program Administrator and any designated staff who use the Tool are required to complete a tutorial about the use of the Tool.

2.4 No Violations of Other Parties’ Rights. The Practice represents and warrants that the performance of its obligations under this Agreement (including the completion of the Tool and other questionnaires described in this Agreement, and provision of Data to ASCO), will not violate or impinge on any third party’s rights, including, but not limited to, any property rights, contractual rights, intellectual property rights and rights to trade secrets, confidentiality, or non-disclosure of information. The Practice further recognizes and agrees that nothing contained herein shall be deemed to make ASCO a party to, participant in or an investigator under any research agreement, protocol, or project between the Practice and any third party, and the Practice represents and warrants that it will not upload or otherwise transmit any confidential research data, protocol information or other third-party proprietary information to the Tool or to ASCO.

2.5 Compliance with Laws. The Practice represents and warrants that its use of the Tool and the Services will be in compliance with all applicable laws and regulations, as well as any other legal obligations to which the Practice may be subject. Without limiting the foregoing, the Practice recognizes and agrees that ASCO is not a Business Associate for the purposes of HIPAA, and represents and warrants that it will not upload or otherwise transmit any patient information protected by HIPAA to the Tool or to ASCO.
2.6 **Prohibited Activities.** The Practice agrees that it will not (i) reverse engineer the Tool; (ii) take any actions that disrupt any third party’s use of the Tool or the website through which the Tool is made available; (iii) upload any software viruses or other computer code, files, or programs designed to interrupt, destroy, limit the functionality of, or obtain unauthorized access to any computer software, computer hardware, or telecommunications equipment to the Tool or the website through which the Tool is made available; (iv) attempt to probe, scan or test the vulnerability of any system or network run by or on behalf of ASCO; (v) circumvent or breach any technological protection mechanisms or security or authentication measures that control access to the Tool or the website through which the Tool is made available; (vi) use manual or automated software, devices, scripts, robots, or other means or processes to access, scrape, crawl, or spider the contents of the Tool or the website through which the Tool is made available; or (vii) otherwise take any actions that would impair the integrity or availability of the Tool or the website through which the Tool is made available.

3. **DATA LICENSING.** The Practice hereby grants to ASCO a non-exclusive, perpetual, irrevocable, assignable, sublicensable, no-charge, royalty-free, worldwide license to use, prepare derivative works of, display, transmit, distribute, and reproduce any of the Data and any Derivative Works thereof, subject to the terms of this Agreement.

4. **INTELLECTUAL PROPERTY**

4.1 All intellectual property rights in and the ASCO Intellectual Property, are owned solely by ASCO.

4.2 Unless explicitly stated herein, nothing in this Agreement shall be construed as conferring any license to use the ASCO Intellectual Property, whether by estoppel, implication or otherwise. The Practice may not do or allow anyone else to do anything with the ASCO Intellectual Property which is not specifically permitted under this Agreement.

4.3 Permission is granted to display, copy, distribute, and use any ASCO Intellectual Property to which the Practice is granted access provided that: (a) any copyright notices are retained, and a permission notice (e.g., “used with permission”) is added to any reproductions thereof; (b) the use of the ASCO Intellectual Property is solely for the Practice’s internal business purposes; (c) the ASCO Intellectual Property or access thereto is not redistributed, resold or used to imply that ASCO endorses, sponsors or is affiliated with any product or service; (d) the ASCO Intellectual Property is not copied or posted on any networked computer or published in any medium, except as explicitly permitted by valid permission or license covering such materials; and (e) no modifications are made to ASCO Intellectual Property. This permission terminates automatically without notice if the Practice breaches any of the terms or conditions in this Agreement. Upon termination, the Practice must immediately cease all use of the ASCO Intellectual Property, and destroy any copies in its possession.

5. **CONFIDENTIALITY**

5.1 **Confidentiality of Practice-Specific Information.** ASCO will not, without the Practice’s consent, use or disclose to others any Practice-Specific Information for purposes other than to aid in ASCO’s
mission-based activities, to aid in the provision of the Tool and the Services, or to support organizational effectiveness and quality improvement activities of ASCO, unless such information: (a) is generally known to the public; (b) becomes known to the public through no fault of ASCO; (c) is known by ASCO prior to the Practice’s use of the Tool or the Services and/or becomes known to ASCO in any way other than through the use of the Tool or the Services; or (d) is the subject of a judicial or governmental request, requirement or order.

5.2 ASCO Confidential Information. The Practice will not use, disclose or permit anyone else to use or disclose, without ASCO’s consent, any ASCO Confidential Information for any purpose not allowed under this Agreement, unless the information: (a) is generally known to the public; (b) becomes known to the public through no fault of Practice; (c) is known by Practice prior to the Practice’s use of the Tool or the Services and/or becomes known to the Practice in any way other than through the use of the Tool or the Services.

6. TERM AND TERMINATION

6.1 Effective Date. This Agreement will be effective as of the date the Practice is granted access to the Tool or the Services, and will continue in force so long as the Practice continues to use the Tool or the Services.

6.2 Termination. ASCO may terminate this Agreement at any time upon notice to the Practice, or withdrawal of the Tool.

6.3 Effect of Termination. The Practice acknowledges and agrees that, if this Agreement is terminated for any reason, Practice shall immediately cease any further use of the Tool or the Services. The Practice acknowledges and agrees that ASCO will retain the right to use all Data submitted by the Practice prior to the effective date of termination following termination of this Agreement.

7. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY.

The Tool and the Services are provided by ASCO on an “AS IS,” “AS AVAILABLE,” and “WITH ALL FAULTS” basis.

THE PRACTICE’S USE OF THE TOOL AND THE SERVICES IS AT THE PRACTICE’S SOLE RISK UNLESS OTHERWISE EXPLICITLY STATED. ASCO DISCLAIMS ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES OF ANY KIND, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. ASCO MAKES NO REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES AS TO THE USEFULNESS, QUALITY, SUITABILITY, TRUTH, ACCURACY OR COMPLETENESS OF THE TOOL OR THE SERVICES.

ASCO MAKES NO WARRANTY OR REPRESENTATION THAT: (a) ACCESS TO THE TOOL OR THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE; (b) THE RESULTS
THAT MAY BE OBTAINED FROM THE USE OF THE TOOL OR THE SERVICES WILL BE ACCURATE OR RELIABLE; OR (c) ANY ERRORS IN THE TOOL OR THE SERVICES WILL BE CORRECTED.

THE PRACTICE ASSUMES ALL RISK FOR ANY DAMAGE TO ITS COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM USE OF THE TOOL OR THE SERVICES, INCLUDING ANY DAMAGES RESULTING FROM COMPUTER VIRUSES.

TO THE FULLEST EXTENT PERMITTED BY LAW, ASCO DISCLAIMS AND WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA, ELECTRONICALLY TRANSMITTED ORDERS OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF OR IN CONNECTION WITH THE TOOL OR THE SERVICES, EVEN IF ASCO HAS PREVIOUSLY BEEN ADVISED OF, OR REASONABLY COULD HAVE FORESEEN, THE POSSIBILITY OF SUCH DAMAGES, HOWEVER THEY ARISE, WHETHER IN BREACH OF CONTRACT OR IN TORT (INCLUDING NEGLIGENCE), INCLUDING WITHOUT LIMITATION DAMAGES DUE TO: (a) THE USE OF OR THE INABILITY TO USE THE TOOL OR THE SERVICES; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED, OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO, THROUGH, OR FROM THE TOOL OR THE SERVICES; (c) STATEMENTS OR CONDUCT OF ANY THIRD PARTY WITH RESPECT TO THE TOOL OR THE SERVICES, INCLUDING WITHOUT LIMITATION UNAUTHORIZED ACCESS TO OR ALTERATION OF TRANSMISSIONS OR DATA, MALICIOUS OR CRIMINAL BEHAVIOR OR FALSE OR FRAUDULENT TRANSACTIONS; OR (d) CONTENT OR INFORMATION THE PRACTICE MAY DOWNLOAD, USE, MODIFY OR DISTRIBUTE.

To the extent that any jurisdiction does not allow the exclusion or limitation of direct, incidental or consequential damages, portions of the above limitation or exclusion may not apply.

8. INDEMNIFICATION. The Practice agrees to indemnify, defend, and hold harmless ASCO, its officers, directors, volunteers, trustees, employees, agents, independent contractors, subcontractors, and affiliates from and against any and all liabilities, damages, losses, claims, attorney’s fees, costs of litigation, or costs and expenses incident thereto (“Losses”), to the extent that such Losses arise from or are related to any negligent or willful acts or omissions, breach of the terms of this Agreement, or violation of any applicable law by the Practice or the Practice’s directors, trustees, employees or agents.

9. GENERAL PROVISIONS

9.1 Miscellaneous. This Agreement constitutes the entire understanding of the parties with respect to use of the Tool and the Services, and supersedes all prior oral or written agreements with respect to the same subject matter. This Agreement is not transferable or assignable by the Practice without the prior written consent of ASCO. If one or more provisions of this Agreement are held to be unenforceable, they shall be excluded, and the remaining provisions enforced. Sections 3, 4, 5, 6.3, 7, 8 and 9 of this Agreement are intended to survive the termination or expiration of this Agreement.
9.2 **Governing Law.** This Agreement is governed by the laws of the Commonwealth of Virginia, without regard to conflict or choice of law principles. Any disputes concerning this Agreement shall be subject to the exclusive jurisdiction of the federal and state courts serving the city of Alexandria, Virginia.

9.3 **Notices.** Except as otherwise explicitly stated herein, any notice required to be given under this Agreement may be sent by fax, email, or certified mail, return receipt requested, and shall be deemed given three (3) days after the date of sending. Notices to ASCO should be addressed as follows:

American Society of Clinical Oncology, Inc.
Attn: ASCO Community Research Forum
2318 Mill Road, Suite 800
Alexandria, VA 22314
Phone: 571-483-1300
Fax: 571-366-9530
E-mail: asco@asco.org

9.4 **Relationship of the Parties; Use of Name.** The Parties acknowledge that they are at all times acting and performing as independent contractors to, and not as agents, legal representatives, subsidiaries, joint venturers, partners, servants, or employees of, each other. No Party will use the name, trademark, logos, symbols or other images of the other Party without the prior written approval of such Party.

9.5 **Authority.** The persons executing this Agreement on behalf of the Practice represents and warrants that they have the full power and authority to enter into this Participation Agreement on behalf of the entities on whose behalf they are signing.

9.6 **Personal Information.** Use of personal information about the Program Administrator, the Practice and other users of the Tool and the Services are subject to ASCO’s Privacy Policy (http://www.asco.org/about-asco/privacy-policy).

If you have any questions or concerns about this agreement, please email ASCO’s Community Research Forum (communityresearchforum@asco.org).

*THIS IS A BINDING LEGAL AGREEMENT BETWEEN THE AMERICAN SOCIETY OF CLINICAL ONCOLOGY, INC. AND YOUR PRACTICE.*