

DATA TRANSFER AGREEMENT
Version November 1st 2010

This **DATA Transfer Agreement** (the "Agreement") is made as of the __ day of _____, 20__ ("Effective Date"), between _____, having an address at _____ ("Researcher") and affiliated with **[name of institution]** and The Endo-Urology Society ("Recipient"), a not-for-profit corporation formed under the laws of New York, United States of America, having a principal place of business at 4100 Duff Place, Lower Level, Seaford, New York 11783.

Background

WHEREAS, Recipient desires for Researcher to provide it with Data; and

WHEREAS, Researcher desires to provide such Data to Recipient, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. DATA. The data to be furnished by Researcher to Recipient consists of the items defined in and set forth in **Appendix 1** (attached hereto and incorporated in this Agreement) ("Data").

2. PERMITTED USES. Recipient will only use Data for the purpose(s) and project(s) specifically set forth in **Appendix 1** (the "Study"). However, it is acknowledged that the Data may be a resource for other scientific projects or uses. As such, the parties agree that the Recipient has the right to use and further distribute and/or transfer the Data to any third-party; provided that such use or transfer is made for a scientifically approved project or use as determined by Recipient, and is done in accordance with applicable laws, rules and regulations regarding the use, handling and transfer of the Data.

3. RESEARCHER'S COMPLIANCE WITH PATIENT PRIVACY OBLIGATIONS. Researcher represents, warrants and covenants that its transfer of Data to Recipient is compliant with all applicable rules, regulations and policies of any and all applicable Institutional Review Boards, the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA"), patient informed consent documents, as well as all applicable federal, state and local laws, statutes, ordinances, rules and regulations regarding patient privacy and/or the transfer of the Data. In the event a patient from whom Data has been derived and provided to Recipient decides to withdraw its consent for use of the Data, the Researcher shall immediately notify Recipient that such consent has been withdrawn.

4. RECIPIENT OBLIGATIONS.

a. Collaboration Requirement. When required by **Appendix 1**, Recipient agrees to work closely with the Researcher familiar with the Data provided hereunder.

b. Informed Consents. Recipient agrees to comply fully with study participants' informed consent documents as provided by Researcher. Recipient expressly agrees that its use of the Data shall be in compliance with all applicable laws, rules and regulations, including those relating to patient confidentiality.

c. Confidential Information. Subject to Sections 2 and 9 hereof, Recipient agrees that the Data, shall be held in confidence by the Recipient. This confidentiality obligation shall not apply to Data that: (i) is known or open to the public or otherwise in the public domain at the time of disclosure; (ii) becomes part of the public domain during the term of this confidentiality obligation by any means other than breach of this Agreement by Recipient; (iii) is already known to Recipient at the time of disclosure and is free of any obligations of confidentiality; or (iv) has been obtained by Recipient, free of any obligations of confidentiality, from a third party who has a lawful right to disclose it.

5. TERM AND RIGHT TO TERMINATE. This Agreement shall be effective from the Effective Date until the completion of the Study unless otherwise extended or amended by agreement of the parties, or as earlier terminated pursuant to this Section 5. Either party to this Agreement may terminate this Agreement at any time for any reason or no reason, upon ten (10) days prior written notice to the other party. Upon termination of this Agreement, the parties agree that the Recipient shall have no obligation to return any Data, whether used, unused or otherwise, furnished to Recipient pursuant to this Agreement. It is specifically acknowledged and agreed that any Data, whether, used, unused or otherwise, furnished to Recipient pursuant to this Agreement prior to the termination of this Agreement may be used by Recipient in the Study and/or for any other permitted use under this Agreement.

6. DATA AND INTELLECTUAL PROPERTY OWNERSHIP. Recipient shall have the sole and absolute right to create, control, own, have title in, disclose and use any Intellectual Property that relates to the subject matter of, or arises out of, the Study, the Data or the services performed by Researcher under this Agreement. Intellectual Property shall include but not be limited to any trademarks, service marks, copyrights, patents, inventions, products, equipment, processes, technology, computer programs, works of authorship, improvements, discoveries, developments, designs, data, know-how, ideas made or conceived or reduced to practice, in whole or in part.

7. COSTS. The Researcher and Recipient agree to cover their own costs and expenses incurred in the performance of this Agreement.

8. NO WARRANTIES.

THE INSTITUTE IN WHICH THE RESEARCHER CONDUCTED THE STUDY IS NOT RESPONSIBLE FOR WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE DATA OR OTHER RESULTS ARISING FROM THE STUDY OR WITH RESPECT TO ANY CONFIDENTIAL INFORMATION IT MAY DISCLOSE TO RECIPIENT. RESEARCHER'S INSTITUTE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF NON-INFRINGEMENT OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND WILL IN NO EVENT BE LIABLE FOR ANY LOSS OF PROFITS, BE

THEY DIRECT, CONSEQUENTIAL, INCIDENTAL, OR SPECIAL OR OTHER SIMILAR OR LIKE DAMAGES ARISING FROM ANY DEFECT, ERROR OR FAILURE TO PERFORM, EVEN IF THE INSTITUTE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. PUBLICATION. Nothing contained in this Agreement shall infringe or otherwise adversely impact Recipient's sole, exclusive and unfettered right to publish any and all results of the Study, including the Data and any information relating to or derived from the Study or Data. Recipient shall provide appropriate acknowledgement of the Researcher in all publications arising from the Study, if possible.

10. LIABILITY. Each party hereto agrees to be responsible and assume liability for its/his/her acts or omissions, and for the acts and omissions of those for whom it/he/she is in law responsible, arising out of or as a result of, or in connection with the conduct of the Agreement to the full extent required by law, and agrees to hold the other party harmless from any such liability, limitation, reasonable legal fees and cost, and each party agrees to maintain reasonable and customary insurance coverage for the activities contemplated under this Agreement.

11. GENERAL.

a. Relationship of Parties. Nothing in this Agreement shall be construed so as to create a legal relationship of partnership, agency, joint venture, or employment among or between the parties. Each party is an independent contractor and is not authorized or empowered to act as agent for any other for any purpose, except as explicitly set forth herein.

b. Force Majeure. No party shall be responsible to the other for any delay in the performance of, or failure to perform, this Agreement where such delay or failure is caused by circumstances beyond the reasonable control of the affected party including, without limitation, strikes, lockouts or any other labor disruptions, war, civil commotion, natural disaster, disease or epidemics, or acts of God. In the event of any such delay or failure in performance, the affected party shall be granted an extension of time for performance that is equitable in light of the cause of the delay.

c. Governing Law. This Agreement shall be governed by the laws of the State of New York, United States of America, without reference to any choice of law rules that would result in the application of the substantive law of any other jurisdiction. The situs of any action or lawsuit arising out of this Agreement shall be brought in the New York State, Supreme Court located in the County of Nassau or the United States Federal Court, Eastern District of New York.

d. Waiver. No waiver of any term, provision or condition of this Agreement whether by conduct or otherwise in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such term, provision or condition of this Agreement.

e. Integration. **Appendix 1** constitutes a part of the Agreement and will be binding upon the parties as if it was part of the Agreement itself.

f. Entire Agreement. This Agreement represents the entire understanding of the parties with respect to the subject matter hereof. This Agreement supersedes any and all prior agreement or understandings, whether oral or written, among the parties. Furthermore, any terms and provisions which by the terms of this Agreement require their performance by the parties hereto after the completion or termination of this Agreement shall be and remain in force notwithstanding such completion or other termination of this Agreement for any reason whatsoever.

g. Severability. The invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of any other term or provision hereof.

h. Amendment. This Agreement can only be amended if the amendment is in writing and signed by all parties.

i. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

j. Notices. Any notices relating to this Agreement shall be in writing and be sent by certified mail, postage prepaid, return receipt requested, or by overnight courier service addressed to the party at the addresses set forth in the introductory clause of this Agreement, or at such different address as a party has advised to the other party in writing and shall be deemed given and received when actually received.

k. Assignment. Neither party may assign or otherwise transfer (by operation of law or otherwise) its rights or its duties hereunder unless the other party agrees in writing to such assignment or transfer. Notwithstanding the foregoing, the Recipient may assign or transfer its rights or the performance of any of its duties to its parent, subsidiary, or affiliate without the consent of the Researcher.

l. Inspection. Researcher represents, warrants and covenants that the Data is accurate, objective and verifiable. The Researcher agrees and acknowledges that Recipient (or any other third-party as designated by Recipient), upon reasonable advanced notice to Researcher, shall have the right to audit, inspect, verify and/or validate the accuracy and objectivity of the Data, including the methodology and/or processes used in obtaining the Data. In this regard, Researcher shall allow access to the Recipient and/or its designee to Researcher's premises, employees, books, records, computers, data, information, tests, patients, and any other information as determined by Recipient and/or its designee used in connection with the Study or the Data.

m. Survival. All provisions of this Agreement which by their nature should survive the termination of this Agreement shall survive termination.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

_____ (Researcher)

THE ENDO-UROLOGY SOCIETY

Signature _____

Name _____

By: _____

Name: _____

Position: _____