

Benchmark Medical LLC, Data Services Agreement

This Data Services Agreement (the “Agreement”) is entered into as of the dated signatures below between the Benchmark Medical LLC (“BMM”), a Washington LLC and the signing organization (hereafter “Facility”).

WHEREAS, BMM has developed a registry for the treatment of vertebral compression fracture (“VCF registry”);

WHEREAS, the Facility has agreed to participate in the VCF registry; and

WHEREAS, BMM has the expertise and is willing to provide such Data Services as described in section 1.0, either directly or through the use of contractors,

NOW, THEREFORE, in consideration of the mutual agreements contained herein, BMM and Facility hereby agree as follows:

1.0 Services

BMM will provide Facility access to the online VCF registry for the Facility to enter patient and procedural data about vertebral compression fracture treatments (“case data”). BMM will also perform the post-discharge patient follow up by survey at 1, 3, and 6 months and optionally, 12 months on behalf of the Facility (“post-discharge data”) and enter the post-discharge data into the VCF registry. BMM will submit the case data entered by Facility and post-discharge data ups to Noridian Healthcare Solutions, LLC on a periodic basis. BMM will also provide Facility with access to reports and their own registry data.

If problems with the system or data are found, the Facility will cooperate with BMM in resolving these issues in a timely manner. BMM may further require the Facility to comply with reasonable quality assurance procedures to assure the validity and integrity of Facility Information. The Facility, for itself and for its associated Individual Providers, if applicable, shall use its best efforts to ensure that the Facility Information provided is true, accurate and complete.

2.0 Fees

2.1 Facility will pay an initial enrollment fee of one thousand US dollars (\$1000.00) which shall include the fee of the first five cases entered into the VCF registry. Each subsequent case will be billed at one hundred twenty five US dollars (\$125.00) on a monthly or quarterly basis. If the 12 month follow up option is requested, the fee will be one hundred fifty US dollars (\$150.00) per case. The fee may change from time to time with written notice to the Facility of no less than 60 days unless it is associated with a change in the scope of services provide to the Facility.

3.0 Term and Termination

3.1 Effective Date and Term. This Agreement is effective as the date of signing of the agreement and shall remain in effect until terminated in accordance with the terms of this Agreement.

3.2 Termination. Either party may terminate this Agreement for any reason upon 30 (thirty) days' written notice to the other party. Termination of this Agreement by either party shall not affect the rights and obligations of the parties accrued prior to the effective date of the termination.

3.3 Survival. Unless expressly provided otherwise herein, each provision of this Agreement reasonably interpreted as intending to survive after the termination or expiration of this Agreement shall survive any such termination or expiration.

4.0 Compliance

4.1 Conformation to Applicable Laws and Professional Standards. BMM agrees that it will conform to and obey all laws, ordinances, rules, regulations, requirements and orders of all municipal, county, state or federal authorities or agencies and all professional standards applicable to the provision of Services under this Agreement.

4.2 No Obligation or Agreement to Refer. In no event shall this Agreement be interpreted to impose any obligation by either party or any health care professional of either party to refer patients to any person or entity or to order any health care services from any person or entity. No party and no person or entity shall receive, either directly or indirectly, any payment under this Agreement for the referral of any patient or ordering of any test or procedure.

4.3 Legal Compliance. The parties intend this Agreement to comply with all laws, regulations and requirements applicable to physicians, hospitals, Medicare and Medicaid participants, and health-care providers in general. The parties further agree this Agreement shall be applied and interpreted in a manner consistent with full compliance with all such statutes and regulations. If at any time either party has reasonable grounds to believe that this Agreement may not conform to the then-current requirements or interpretations relevant to such matters, both parties agree that they will immediately negotiate in good faith for the purposes of bring this Agreement into full compliance with such then-current requirements and interpretations.

4.4 Debarment. Each party represents that it is not excluded, debarred, suspended or otherwise ineligible to participate in federal health care programs. In connection with the performance of their respective obligations under this Agreement, the parties shall not knowingly employ or contract with, whether or not for compensation, any individual, or entity currently listed by a federal agency as excluded, debarred, suspended or otherwise ineligible to participate in federal programs.

4.5 Nondiscrimination. Both parties agree that they will not engage in any unlawful discrimination nor will they discriminate against any person because of race, color, religion, national origin, age, handicap, status as a Vietnam era or disabled veteran, sex, or sexual orientation with respect to their employment, personnel, or patient care policies and practices as those matters may relate to the performance of the parties' respective obligations under this Agreement.

5. Authorized Uses and Disclosures of Facility Information.

As an acknowledged Business Associate of Facility and to support Facility in providing required documentation to Noridian Healthcare Solutions, LLC, Facility hereby authorizes BMM and its Subcontractors, to use and disclose Facility Information as follows:

This authorization includes all information provided by or on behalf of the Facility, or derived from such information.

- (a) To review, analyze and process Facility Information in order to submit information requested by Noridian Healthcare Solutions, LLC,
- (b) To disclose any Facility Information to the Facility for purposes of the Facility's review, analysis, planning and related functions;
- (c) To derive de-identified data from Facility Information as provided in 45 CFR § 164.502(d); provided further that de-identified data shall not be considered Facility Information subject to this Agreement and may be used by BMM for its own commercial purposes, including the sale of that information to third parties.
- (d) To disclose Facility Information if required by law or to use or disclose Facility Information as otherwise necessary for legitimate purposes pertaining to performance under this Agreement.

6.0 Confidentiality and Use of Patient Records

6.1 Patient Records. BMM and Facility agree to respect and abide by all federal, state and local regulations pertaining to the confidentiality of patient medical records. All records of patients receiving medical care from Facility shall be the property of Facility. Facility agrees that it shall have sole responsibility for maintaining and safeguarding all patient records relating to the provision of care or treatment by Facility.

6.2 Disclosure and Confidentiality. BMM and Facility agree that from time to time Facility may make available to Consultants for review selected records of individual treatment in order to facilitate performance of the Services. To the extent required by law, BMM shall not disclose or otherwise disseminate, either directly or indirectly, to any entity or person not employed by or affiliated with BMM, any patient records or confidential information of Facility without the prior written consent of the Facility. This provision does not apply to de-identified data derived from Facility's information through aggregation or summarization and shall not contain any Confidential Information or Protected Health Information (PHI).

6.3 The parties acknowledge that Facility is a Covered Entity as defined in 45 CFR § 164.103, and that Facility's privacy and information protection practices may be subject to requirements of both HIPAA and other information protection laws. BMM is therefore the Facility's Business Associate as defined in 45 CFR § 160.103. The parties therefore agree to execute a Business Associate Agreement, the terms of which are incorporated in this Agreement by this reference.

7.0 Relationship of the Parties

7.1 Independent Status. The parties hereby agree that they are at all times each acting as independent contractors who have entered into this Agreement on the terms and conditions set

forth herein. Nothing in this Agreement will be construed or deemed to create a relationship of employer and employee, partner, joint venturer, or principal and agent between Facility and BMM, its Consultants, employees, agents or officers. Except as set forth in this Agreement, Facility shall neither have nor exercise any control or direction over the methods by which BMM performs their Services, work and functions under this Agreement.

7.2 Trademarks, Trade Names and Service Marks. Neither party will use the other party's name, either alone or in connection with another word or words, nor shall it use the other's proprietary marks, trademarks, service marks, trade names, symbols, logos or designs, for any purpose whatsoever (including, but not limited to, any press release, sales or marketing publication or correspondence, advertisement, or similar communication), without the express prior written approval of the other party's officer who has been duly-designated for such purposes.

7.3 No Patient-Physician Relationship. The parties acknowledge that the purpose and objective of the Services to be furnished under this Agreement is to provide assistance in the form of data abstraction and integration services and not for BMM to provide, either directly or indirectly, any form of treatment or care to or second opinion for any patient or person receiving care. The parties agree that nothing in this Agreement shall be deemed to create any form of professional relationship between BMM and Facility's patients, and that Facility shall retain sole and exclusive responsibility and make all decisions for the care of its patients. In no event shall BMM provide any Services under this Agreement in the form of medical care, treatment or therapy to Facility's patients.

8.0 Indemnification and Insurance

8.1 BMM Indemnification. To the extent permitted by law, BMM will defend, indemnify and hold Facility, including its officers, agents, and employees, harmless from any loss, claim or damage, including attorney fees and legal costs, arising from the negligent acts and omissions of BMM and their officers, agents and employees. Notwithstanding the foregoing, in no event will BMM be liable to Facility for any claims for punitive or exemplary damages or for lost profits or any other form of consequential damages alleged to arise from any breach by BMM of this Agreement or alleged to arise from any other act by BMM relating to the Services provided under this Agreement.

8.2 Facility Indemnification. To the extent permitted by law, Facility will defend, indemnify and hold BMM and their officers, agents and employees, harmless from any loss, claim or damage, including attorney fees and legal costs, arising from the negligent acts and omissions of Facility and its officers, agents and employees. Notwithstanding the foregoing, in no event will Facility be liable to BMM for any claims for punitive or exemplary damages or for lost profits or any other form of consequential damages alleged to arise from any breach by Facility of this Agreement or alleged to arise from any other act by Facility relating to this Agreement.

8.3 Insurance. Both parties agree to maintain during the term of this Agreement professional liability coverage with limits of not less than \$1 million per occurrence and \$3 million annual aggregate (or an equivalent program of self-insurance).

8.4 Proof of Coverage. Upon the request of a party, the other party will provide proof of insurance or loss coverage required under the terms of this Agreement. In addition, each party agrees to notify the other party in writing in the case of material modification or change in such coverage.

9.0 Disputes; Governing Law; Attorney's Fees

9.1 Notice of Dispute, Negotiation and Mediation. Prior to commencing any legal action, the parties will attempt in good faith to resolve through negotiation any dispute, claim or controversy arising out of or relating to this Agreement. Either party may initiate such negotiations by providing written notice to the other party specifying that this provision of this Agreement is being utilized and setting forth the subject of the dispute and the relief requested. The party receiving such notice will respond in writing within five business (5) days with a statement of its position on and recommended solution to the dispute. If the dispute is not resolved by this exchange of correspondence, then representatives of each party with full settlement authority shall meet at a mutually agreeable time and place in Seattle, Washington within ten business (10) days of the date of the initial notice in order to exchange relevant information and perspectives, and to attempt in good faith to resolve the dispute. If the dispute is not resolved by these negotiations, the matter will be submitted to a mutually agreeable and recognized mediation service prior to initiating legal action. Any such mediation shall be conducted in Seattle, Washington and the costs of the mediation service shall be shared equally by the parties.

9.2 Governing Law, Jurisdiction and Venue. This Agreement shall be governed by and enforced according to the laws of the State of Washington, without giving effect to its or any other jurisdiction's choice of law provisions, and the Superior Court of Washington for King County shall have exclusive jurisdiction and venue of all disputes arising under this Agreement, except that in any case where the courts of the United States shall have exclusive jurisdiction over the subject matter of the dispute, the United States District Court for the Western District of Washington, Seattle division, shall have exclusive jurisdiction and venue.

9.3 Attorney Fees. The prevailing party in any action sought to enforce or interpret this Agreement or any provision of this Agreement shall be entitled to its reasonable attorney's fees and costs, including any appeals thereon, as determined by a court in conjunction with any such legal proceeding.

10.0 Miscellaneous

10.1 Waiver. No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

10.2 Assignment. Neither party may assign (whether by operation or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, either party shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of that party, without the prior approval of the other party.

10.3 Severability. If any provision of this Agreement or of any other Agreement, document or writing pursuant to or in connection with this Agreement, shall be wholly or partially invalid or unenforceable under applicable law, said provision will be ineffective to that extent only, without in any way affecting the remaining parts or provision of said agreement, provided that the remaining provisions continue to effect the purposes of this Agreement.

10.4 Amendment. This Agreement may only be modified by a subsequent written Agreement executed by the duly-authorized representatives of the parties.

10.5 Force Majeure. Nonperformance by a party, other than payment of any amounts due hereunder by Facility, shall not operate as a default under or breach of the terms of this Agreement to the extent and for so long any such nonperformance is due to: strikes or other labor disputes; prevention or prohibition by law; the loss or injury to products in transit; an Act of God; or war or other cause beyond the control of such party.

10.6 Entire Agreement. This Agreement constitutes the complete agreement between BMM and Facility relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters.

10.7 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 document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the party against whom enforcement of this Agreement is sought.

10.8 Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery; or (iv) facsimile with return facsimile acknowledging receipt. Notices shall be sent to the addresses below the signatures. Neither party shall refuse delivery of any notice hereunder.

BenchMarket Medical LLC

Facility

By: _____

By: _____

Print Name: Justine Norwitz

Print Name: _____

Title: Chief Executive Officer

Title: _____

Date: _____

Date: _____



NOTICES

FACILITY:

Attention: _____
Tel. No.: _____
Fax No.: _____
Email: _____

BUSINESS ASSOCIATE:

Benchmark Medical, LLC
2815 Eastlake Ave E, Suite 300
Seattle, WA 98102
Attention: Justine Norwitz
Tel. No.: 206-336-5550
Fax No.: _____
Email: justine.norwitz@benchmarkmedical.com