

## FELLOWSHIP GRANT RECIPIENT AGREEMENT

Grant Application No. \_\_\_\_\_

This Grant Recipient Agreement is between OMeGA Medical Grants Association LLC (“Administrator”) and the Applicant listed in the above-noted Grant Application (“Recipient”).

### **Terms, Co Terms, Conditions, and Purposes**

Description of Program. Administrator has established a grant management system under which Administrator receives funds from participants in the orthopaedic industry (the “Donors”). OMeGA administers such grants to educational organizations to support orthopaedic education by matching funding sources with programs in need (the “Grant Program”). This supports Administrator’s values of education, independence and transparency. The sole purpose of the Grant Program is to support scientific and educational endeavors, and the Grant Program will not promote any specific proprietary business interest of any Donor or other commercial interest.

1. Funding Areas. The Administrator has established separate fellowship funding areas in each of the major subspecialty areas of orthopaedics (“Funding Areas”), including (a) Spine; (b) Trauma; (c) Adult Reconstruction/Arthroplasty; (d) Orthopaedic Sports Medicine; (3) Pediatric Orthopaedics; (e) Foot and Ankle; (f) Orthopaedic Oncology; (g) Hand and Upper Extremity; and (h) Shoulder and Elbow. Recipient has requested and received this Grant in the Funding Area and amount as described in online application (the “Application”) and the grant award e-mail (the “Grant Award”), incorporated into this Agreement.

2. Availability of Grant Funds. Recipient acknowledges and agrees that Administrator’s ability to provide the Grant is dependent on receiving funds from Donors. Accordingly, Administrator shall use commercially reasonable best efforts to collect funds from Donors on the time frames required in each Donor’s agreement with Administrator. Provision of Grant funds to Recipient shall be conditioned upon Administrator receiving such funds from Donor and Administrator shall not be financially responsible to provide the Grant if Donors fail to provide funding. Administrator will promptly provide Recipient with relevant information regarding the unavailability of funds for the Grant.

3. Grant Application. Recipient has completed a “Grant Application” and, as described in the Grant Application, Recipient has made all decisions regarding the identification of educational needs, determination of educational objectives, and expenses for which the Grant will be used. Recipient represents and warrants that the information provided in the Grant Application is true, correct, and complete and that Recipient will use funds only as provided or allowed in this Agreement and the Grant Application. The Grant Application is hereby incorporated into this Agreement by this reference.

4. Donor Influence Prohibited. Administrator agrees that it shall not disclose the identity of the fellows in the supported program to any third party, including without limitation the device companies supporting the Grant Program. The Donor(s) will not have influence over Recipient’s use of funds, except to ensure that funds are used in accordance with Administrator’s guidelines and the terms of this Agreement.

5. Entire Funding. The funds described in this Agreement represent the entire funding from the Grant Program to Recipient related to the Grant Application described in the Application and the Grant Award. Recipient represents and warrants that it has not received any other payments from any Donor or other organization in connection with the functions described in the Grant

Agreement Application and the Grant Award, except as specifically disclosed to Administrator. Recipient will not use funds for any capital improvement, capital equipment purchases, malpractice insurance coverage, endowment funding, meals, travel, housing, or other expenses prohibited by this Agreement, Administrator's guidelines, and/or applicable industry standards.

6. Reporting; Payment Terms; Return of Unused Funds.

- a. *Required Reports.* Recipient will provide Administrator with brief quarterly reports regarding the use of funds provided by Administrator. Acceptance of the grant and use of the funds is conditional upon Recipient's completion of all information fields requested in online reporting required by Administrator, without modification. Recipient will provide reports using an online reporting system created by Administrator. Quarterly reports are due on October 15, January 15, and April 15. Recipient will provide follow-up information requested by Administrator within the timeframes established by Administrator. Recipient will provide Administrator with a detailed final report using the online template provided by the Administrator. The final report is due on July 31 and should describe attainment of Fellowship objectives and outcomes, reconciliation of all expenses, and other requested information as described in Administrator's report request documents. If a final report is not submitted, the Recipient will be ineligible to apply for grants in subsequent funding cycles. Portions of the quarterly and final reports will be communicated to the orthopaedic community and Donor(s) in aggregate form with information provided by other grant recipients and may be published by Administrator in electronic or print format.

- b. *Payment Terms.* Grant funds will be provided in 3 payments as described below. Payments will be made within 4 weeks of the milestones described below.

50% of Grant funds will be provided to Recipient upon acceptance of this Agreement by Recipient or August 1, 2010, whichever comes later.

40% of Grant funds will be provided to Recipient upon Administrator's receipt of the 2<sup>nd</sup> quarterly report (ie, following completion of the 2<sup>nd</sup> quarter of the funding cycle) or February 1, 2011, whichever comes later.

10% of Grant funds will be provided to Recipient upon Administrator's receipt of the final report (ie, at the conclusion of the funding cycle and completion of all funded fellowship activities) or August 15, 2011, whichever comes later.

(No funding is provided subsequent to Recipient's submission of 1<sup>st</sup> and 3<sup>rd</sup> quarterly reports.)

- c. *Reconciliation and Return of Unused Funds.* If the final report shows unused funds or if Administrator determines that Recipient has used funds for purposes other than those specifically approved in the Grant Application or in violation of the terms of this Agreement, Recipient shall promptly reimburse Administrator all unused or improperly used funds. Reimbursement shall be due at the time of submission of the final report in order for Recipient to be eligible for grant funding in the next funding cycle. **Recipient will not use funds for any capital improvement, capital equipment purchases, malpractice insurance coverage, endowment funding, meals, travel, housing, or other expenses prohibited by this Agreement, Administrator's guidelines, and/or applicable industry standards.**
- d. *Duplication of Funding and Return of Funds.* If Recipient receives additional outside funding for a fellowship that duplicates funding provided by the Grant Program,

Recipient shall notify Administrator immediately and return the Grant Program funds to Administrator, unless the Administrator determines otherwise in its sole discretion.

7. Representations and Warranties of Recipient.

- a. Recipient agrees to comply with the Advanced Medical Technology Association's revised (2009) Code of Ethics ("AdvaMed Code") and the PhRMA guidelines as part of the Grant Agreement.
- b. Recipient covenants, warrants, and agrees that neither Recipient, nor any of its affiliates, officers, directors, subcontractors, agents, or agents who may benefit from this grant have ever been debarred, excluded, or suspended by the Office of Inspector General of the Department of Health and Human Services ("OIG"), or otherwise deemed ineligible to participate in federal or state health care programs or from federal or state procurement programs, or convicted of a criminal offense with respect to health care reimbursement, nor threatened to be debarred, excluded, suspended or indicted for a crime or otherwise engaged in conduct for which a person can be debarred, excluded or suspended.
- c. Recipient and its employees, agents or affiliates will comply with the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) with respect to the performance of the terms and conditions of this Agreement.

8. Compliance.

- a. *Independence.* This activity is for scientific and educational purposes only and will not promote any specific proprietary business interest of any Donor. Recipient is responsible for all decisions regarding the identification of educational needs, determination of educational objectives, selection and presentation of content, selection of all persons and organizations that will be in a position to control the content of Recipient's program, selection of education methods, and the evaluation of Recipient's activities.
- b. *No Promotion.* Nothing in this Agreement requires, or shall be construed to require any party or any grant recipient, or any of their employees or contracted personnel, to use, order, and purchase or recommend the use, order or purchase of any products or services products of any specific Donor or medical device manufacturer.
- c. *Preservation of Professional Judgment.* Recipient represents and warrants that the receipt of funds shall not affect professional judgment as to the products and services that are best for patients (if any) serviced by the Recipient or its employees or contracted personnel, or otherwise affect decisions regarding the use, ordering or purchase of medical products or services. The parties agree that there will be no product-specific advertisement or promotion of any type in connection with this Grant. The provision of promotional materials and promotional activities at meetings at which Donor(s) and Recipients are present will be conducted in accordance with Administrator's guidelines.
- d. *Promotion Guidelines.* Product-specific advertisement or promotion of any type is prohibited in relation to activities conducted under this Agreement. The juxtaposition of editorial and advertising material on the same products or subjects is not allowed. Promotional activities of Donors must be kept separate from activities conducted under this Agreement. Recipient shall not display promotional materials related to any Donor(s) in connection with the activities supported by the Grant. Recipient shall

not permit Donor(s) to engage in sales or promotional activities in connection with the Grant.

- e. *Donor guidelines.* Administrator represents that Donor(s) have also agreed to comply with the guidelines in their respective industry in connection with this grant.

9. Policies and Procedures. Recipient agrees to abide by the policies and procedures of Administrator in connection with this Grant and the Grant Program.

10. Term and Termination. This Agreement will continue in effect for one (1) year or until the conclusion of the academic year for which funding is provided. Recipient acknowledges that the availability of funds to support educational activities depends on continuing donations from Donors. Accordingly, Recipient acknowledges that funds may not be available to fully fund the Grant Award or for additional years. Recipient must re-apply for each additional year. Administrator may terminate this Agreement by providing notice to Recipient in the event Donors do not provide required funding as described herein. In such event, Administrator shall provide as much notice to Recipient as possible. Recipient may terminate this Agreement at any time upon thirty (30) days' notice, in which event Recipient must return any unused funds, provide an accounting to Administrator of funds used up to the date of termination, and provide a final report in the form provided by Administrator. Administrator reserves the right to request refund of any improperly used funds. In the event such request is made by Administrator, Recipient shall issue payment to Administrator within 10 days of notice from Administrator.

11. Miscellaneous Provisions.

- a. *Publicity.* Recipient agrees to provide the following public statement through official press releases, newsletters and/or websites. The text should read as follows:

(Your program name) acknowledges OMeGA Medical Grants Association and the support of (category donor names) for its generous (sub-specialty fellowship) grant.

Recipient will send Administrator the text of any other proposed publicity by Recipient concerning the Administrator or utilizing Administrator's name or logo with at least 10 business days for review. Recipient shall not publicly release said text without prior written approval of Administrator.

- b. *Assignment.* Neither party shall be permitted to assign any of its rights hereunder without the prior written consent of the other party, except to an affiliate thereof.
- c. *Counterparts.* This Agreement may be executed in two or more counterparts, each such counterpart executed shall for all purposes be deemed an original, and all counterparts together shall constitute but one and the same instrument.
- d. *Governing Law.* This Grant Agreement shall be governed by the law of the State of Illinois without regard to conflict of law rules and venue for resolution of dispute will reside with the state and federal courts located in Cook County, Illinois.
- e. *Notices.* All notices required by this Agreement shall be in writing and shall be delivered personally, sent by certified mail or overnight delivery service to the intended recipient at the address for such intended recipient set forth below, or sent by facsimile to the fax number for such intended recipient set forth below, or to such other address or facsimile number as the party may designate in writing.

To Administrator: OMeGA Medical Grants Association  
Attn: Kristin Glavin  
6300 River Road  
Rosemont, IL 60019  
847-318-7339

To Recipient: To the Individual and address as specified in the Grant Application

- f. *Relationship of Parties.* The relationship of the parties for purposes of this Agreement shall be that of an independent contractor and not of employment or partnership. By entering into this Agreement, neither party to this Agreement is, in any way, assuming any liabilities, debts or obligations of the other party, whether now existing or hereafter created.
- g. *Third Party Beneficiaries.* This Agreement is solely for the benefit of the parties and no provision of this Agreement shall be deemed to confer upon third parties.
- h. *Unenforceability.* Should any part of this Agreement be determined to be legally invalid or unenforceable, such invalidity or unenforceability shall not affect the validity and enforceability of the remaining portions.
- i. *Authorization.* The entity signing this Agreement warrants that such execution has been duly authorized by the party for which he or she is signing. The execution and performance of this Agreement by each party has been duly authorized by all necessary corporate action, and this Agreement constitutes the valid and binding obligation of each party, enforceable against such party in accordance with its terms.
- j. *Amendment; Binding Effect.* This Agreement may not be modified except in writing executed by both parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- k. *Entire Agreement.* This Agreement constitutes the entire agreement of the parties hereto and supersedes all prior agreements and representations with respect to the subject matter hereof.

Please acknowledge your agreement to be bound by the terms and conditions of this Agreement by clicking "I Accept" and entering your electronic signature below. If you do not accept this Agreement, you will receive no funding related to the Grant Application.

**Program and institution leadership are aware of and agree to the terms of the agreement.**

I Accept

I Do Not Accept

Electronic signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_