

Clinic Name: _____

SART Number: _____

Clinic Address: _____

City, State Zip: _____

The Society of Assisted Reproductive Technology
1209 Montgomery Highway
Birmingham, Alabama 35216

Re: Licensing of SART CORS Import Gateway Software

Dear SART Executive Director:

Upon execution of this document, the document shall constitute the "Agreement" which is hereby entered into by and between the Society of Assisted Reproductive Technology ("SART") and _____ (the "Clinic") on the following terms and conditions:

WHEREAS, SART owns the software known as the SART CORS Import Gateway Software (the "Import Software");

WHEREAS, the Import Software is accessible from the website located at www.sartcorsonline.com (the "SART CORS Website") and permits clinics to electronically transfer data from the Clinic's internal data collection system to the Society for Assisted Reproductive Technology Clinical Outcome Reporting System ("SART CORS") without the need for the Clinic to manually re-enter the data; and

WHEREAS, consistent with its obligations under the ART Data Collection Agreement between SART and the Clinic (the "Data Collection Agreement") and subject to the terms and conditions of this Agreement, SART is making the Import Software available to the Clinic for the purpose of allowing the Clinic to send data from the Clinic's internal data collection system to SART CORS.

NOW THEREFORE, in consideration of the premises, agreements, covenants, and conditions contained herein, the parties do hereby agree as follows:

- 1) **GRANT OF LICENSE:** SART hereby grants to the Clinic a non-exclusive, nontransferable, revocable license to access from the SART CORS Website, and use in accordance with the Data Collection Agreement and the terms and conditions of this

Agreement, the Import Software for the sole purpose of transferring data from the Clinic's internal data collection system to SART CORS. The license granted herein permits only the Clinic, as identified above, to use the Import Software, and the Clinic has no right to sublicense the Import Software.

- 2) **DESCRIPTION OF IMPORT SOFTWARE:** The Import Software allows transmission of properly formatted, SART compliant data from the Clinic's internal data collection system to SART CORS. The Import Software analyzes the data, and determines if it is properly formatted and in compliance with SART specifications. If the Clinic data is not properly formatted for the transfer, the Import Software will produce detailed error reports indicating why the data is not compliant with SART CORS requirements.
- 3) **OBLIGATIONS OF THE CLINIC:** The Clinic has reviewed and will comply with Data Transfer Specifications (attached hereto as Exhibit A), including but not limited to:
 - a) **Transfer Function.** The Clinic will utilize the services of a skilled software developer or software development team to create a "Transfer Function" which will perform the extraction of data from the Clinic's internal data collection system and create therefrom a file in a format the Import Software can transfer to SART CORS.
 - b) **User Support.** The Clinic is required to provide technical support of any errors due to failure of the Transfer Function. SART technical support for Import Software users will be limited to Import Software malfunctions.
 - c) **Early Data Submission.** During the first year of use of the Import Software, the Clinic must submit sample data to SART forty-five (45) days prior to the data submission deadline as specified in the Data Collection Agreement.
 - d) **Timely Correction.** In the event that SART notifies the Clinic of corrections required to be made to the Clinic's annual data submission, the Clinic agrees to utilize its best efforts to make the necessary corrections within ten (10) business days from such notification.
 - e) **Contact Information.** The Clinic agrees to provide SART with current contact information for the Clinic and the Clinic's designated contact person, including a valid e-mail address and phone number for the contact person. The Clinic agrees to update contact information with SART within ten (10) business days of a change in the Clinic's contact or contact information.
- 4) **OBLIGATIONS OF SART:**
 - a) **Delivery of Documentation and Instructions.** Upon execution of this Agreement by all parties, the Clinic will receive instructions on how to access the Import Software via the SART CORS Website and all related documentation will be provided to the Clinic electronically. The Clinic may make a reasonable number of copies of such documentation, provided that the Clinic maintains a

record of the number of copies and the location of these copies, and provides that record to SART upon request.

- b) **Timely Service Releases.** In the event that SART learns of a malfunction in the Import Software or modifications to the Import Software are required to comply with changes in SART CORS, SART will use reasonable efforts to issue updates/corrections of the Import Software ("Service Releases") in a timely manner. The Clinic will be notified of Service Releases via e-mail and provided with any corresponding updates to the documentation. SART will provide as much notice to the Clinic as is reasonably possible in order to allow the Clinic to make corresponding updates to the Transfer Function.
 - c) **Technical and User Support.** During the times in which the Clinic's software developers are creating the Transfer Function or updating the Transfer Function as a result of changes to SART CORS and/or the Import Software, SART will provide technical support to the software developers. Following development or updating of the Clinic's Transfer Function, SART will provide user level support for Import Software malfunctions only.
- 5) **WARRANTIES BY SART:** SART has tested the operation of the Import Software and warrants that it operates in accordance with the documentation provided to the Clinic; however, this warranty does not guarantee error free operation of the Import Software. SART DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.
- 6) **TERM AND TERMINATION:** The term of this License begins upon execution by SART and continues for as long as the Data Collection Agreement remains in effect between the parties, unless terminated by either of the parties in accordance with the provisions below.
- a) **Cancellation by the Clinic.** The Clinic may cancel this Agreement at any time upon 90 days prior written notice to SART, provided the Clinic also terminates the Data Collection Agreement concurrently with termination of this Agreement. Such termination by the Clinic shall be effective 90 days after SART's receipt of the written notice.
 - b) **Cancellation by SART.** SART may cancel this Agreement at any time upon 90 days prior written notice to the Clinic, provided that SART also terminates the Data Collection Agreement concurrently with termination of this Agreement. Such termination by SART shall be effective 90 days after the Clinic's receipt of the written notice.
 - c) **Termination Due to Breach.** SART may terminate this Agreement by written notice to the Clinic in the event the Clinic materially breaches this Agreement in any manner and such material breach continues for a period of thirty (30) days

after written notice is given to the Clinic by SART specifying the nature of the breach and requesting that it be cured.

- d) **Consistent with the Data Collection Agreement.** Notwithstanding any other provisions of this Agreement, this Agreement shall automatically terminate upon the termination, cancellation or expiration of the Data Collection Agreement and the Data Collection Agreement shall automatically terminate upon the termination, expiration, or cancellation of this Agreement
- 7) **EFFECT OF TERMINATION:** Upon expiration, termination or cancellation of this Agreement for any reason, Clinic will cease all use of the Import Software and Clinic shall return or destroy all documentation for the Import Software whether in paper, electronic or other format (and destruction of all electronic copies shall be in a manner reasonably anticipated to prevent the recovery of such copy).
- 8) **LIMITATION OF LIABILITY:** TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SART BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT. IN NO EVENT WILL SART'S TOTAL LIABILITY UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CLINIC TO SART UNDER THE DATA COLLECTION AGREEMENT IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE CLAIM.
- 9) **ENTIRE AGREEMENT:** This Agreement together with the Data Collection Agreement constitutes the entire and exclusive agreement of the parties hereto with respect to the matters set forth herein and supersedes any prior understanding or agreement, oral or written, with respect hereto. No modifications of or amendments to any of the terms hereof shall have effect unless agreed to in writing by both SART and the Clinic.
- 10) **AUTHORITY:** Each party represents that it has the authority to execute and deliver this Agreement and perform according to the terms and conditions hereof.
- 11) **ARBITRATION:** With the exception of any claims for injunctive or other equitable relief, any controversy or claim arising out of or relating to this Agreement or the breach, termination, or validity thereof will be finally settled by binding arbitration conducted in Birmingham, Alabama in accordance with the Rules of the American Arbitration Association. Judgment upon the award rendered by the arbitrator(s) shall be binding on the parties and may be entered by either party in any court having jurisdiction.
- 12) **GOVERNING LAW:** This Agreement shall be governed by, and interpreted in accordance with the internal laws of the State of Alabama, without giving effect to the provisions of conflicts of laws. The parties agree that the state or federal courts located in Jefferson County, Alabama shall be the exclusive venue for such actions, and each party irrevocably consents to such courts having personal jurisdiction over the parties and agree that such courts shall be the exclusive forum of resolving the dispute.

- 13) **NOTICE.** Any notices required or permitted under this Agreement shall be sent by nationally recognized, overnight delivery service to the address set forth on the first page of this Agreement or to such other address as the parties may provide to the other during the term of this Agreement. All such notices shall be effective upon receipt by the other party as evidenced by the delivery records of the delivery service.
- 14) **MISCELLANEOUS:** The waiver by either Party of a breach of any provision of this Agreement by the other shall not operate or be construed as a waiver of any subsequent breach of the same or any other provision hereof. Paragraph headings herein are for convenience only and shall in no case be considered in construing this Agreement. Should any one or more of the provisions hereof be determined to be illegal or unenforceable, all other provisions hereof shall be given effect separately therefrom and shall not be affected thereby. This Agreement may not be assigned, delegated, or otherwise transferred by either party without the prior written consent of the other party. The Clinic acknowledges that SART may retain one or more subcontractors to provide the services pursuant to this Agreement.

IN WITNESS WHEREOF, for adequate consideration and intending to be legally bound, the parties hereby execute this Agreement on the date last below written:

CLINIC

Clinic Name: _____

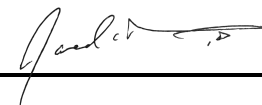
By: _____

Name: _____

Title: _____

Accepted and Agreed to this _____ day of _____, 20____

Society of Assisted Reproductive Technology

By:  _____

Jared C. Robins, MD, MBA, CEO SART