

**SETTLEMENT AGREEMENT**

**Between**

**DePuy Orthopaedics, Inc.**

**And**

**The Counsel Listed on the Signature Pages Hereto**

**Dated As Of November 19, 2013**

**TABLE OF CONTENTS**

	<b><u>Page</u></b>
Article 1 Definitions .....	2
Section 1.1.    General.....	2
Section 1.2.    Terms .....	3
Article 2 Claimant Eligibility.....	14
Section 2.1.    Eligibility Requirements .....	14
Article 3 Registration of All Filed and Unfiled ASR Hip Implant-related Claims .....	17
Section 3.1.    Registration .....	17
Section 3.2.    Plaintiff-Attorney Requirements.....	17
Section 3.3.    Registration Declaration .....	19
Article 4 Enrollment into the U.S. Program .....	19
Section 4.1.    Enrollment.....	19
Section 4.2.    Additional Claim Information.....	25
Section 4.3.    Submissions Review .....	25
Section 4.4.    Unrepresented Claimants .....	26
Article 5 Qualified United States Claimants.....	27
Section 5.1.    Qualifying for Base Award.....	27
Section 5.2.    Determination and Appeal of Program Awards.....	29
Article 6 U.S. Program: General Terms and Funding .....	31
Section 6.1.    General Provisions .....	31
Section 6.2.    No Punitive Damages .....	32
Section 6.3.    Aggregate Limit on DePuy’s Funding Obligations .....	32
Section 6.4.    Aggregate Funding Limit for the PART A Base Award Program.....	32
Section 6.5.    Aggregate Funding Limit for the PART B Award Program.....	33
Article 7 PART A Base Award Program.....	34
Section 7.1.    PART A Base Awards and Funding .....	34
Section 7.2.    Reductions to PART A Base Awards .....	36
Section 7.3.    Multiple Reductions.....	37
Section 7.4.    Minimum PART A Base Award.....	37
Article 8 PART B Claims and Awards .....	38

Section 8.1.	PART B Claims and Awards.....	38
Section 8.2.	Determinations of PART B Awards .....	38
Section 8.3.	Bilateral ASR Hip Implants Revised .....	39
Section 8.4.	Extraordinary Injury Fund (“EIF”) Award Categories and Benefits -- Present.....	40
Section 8.5.	Future Extraordinary Injury Fund (“EIF”) Award Categories and Benefits .....	48
Section 8.6.	Current Spouses of QUSC’s Who Execute Releases.....	50
Article 9 Reductions to PART B Awards .....		50
Section 9.1.	PART B Award Reductions.....	50
Section 9.2.	Appeals of PART B Awards.....	51
Article 10 Timing of DePuy’s Funding Obligations.....		51
Section 10.1.	Timing of PART A Base Award Payments.....	51
Section 10.2.	Timing of PART B Award Payments .....	53
Section 10.3.	Limit on Award Funding and Payments .....	54
Section 10.4.	Form of Notices to Escrow Agent .....	55
Article 11 U.S. Program Administration Costs and Expenses.....		56
Section 11.1.	Administrative Costs.....	56
Section 11.2.	Funding of Administrative Expenses Escrow Account .....	56
Section 11.3.	Payments of U.S. Program Administrative Expenses.....	57
Section 11.4.	Audits of Administrative Expenses and Payments .....	57
Article 12 Administrators .....		57
Section 12.1.	Appointment and Replacement of Administrative Personnel.....	57
Section 12.2.	Claims Administrator.....	58
Section 12.3.	Claims Processor.....	58
Section 12.4.	Special Masters .....	59
Section 12.5.	Certain General Authority of the Claims Processor .....	59
Section 12.6.	Liability of Administrative Personnel.....	60
Article 13 Certain Litigation Matters.....		60
Section 13.1.	DePuy Defenses .....	60
Section 13.2.	Tolling.....	60
Section 13.3.	Use of Dismissal With Prejudice Stipulations and Releases Prior to Certain Events.....	61
Section 13.4.	Pursuit of Certain Claims.....	61
Article 14 Submission to Authority .....		62

Section 14.1.	Submission to Authority of Claims Administrator and Special Masters .....	62
Article 15	Attorneys’ Fees .....	64
Section 15.1.	Individual Counsel Attorneys’ Fees.....	64
Article 16	Quality Control and Audit Procedures.....	65
Section 16.1.	Prevention and Detection of Fraud - General .....	65
Section 16.2.	Mandatory Periodic Audits .....	66
Section 16.3.	DePuy/SOC Audit Right.....	67
Section 16.4.	Relief.....	67
Section 16.5.	Quality Control .....	69
Section 16.6.	Inaccuracy of Representations, Warranties or Certifications .....	69
Section 16.7.	No Misrepresentation of U.S. Program.....	70
Article 17	Walk Away Rights and Participation Requirements .....	70
Section 17.1.	Walk Away Rights and Termination of the Agreement .....	70
Section 17.2.	Good Faith Participation .....	71
Section 17.3.	Calculation of Claimants for Walk Away Rights .....	74
Section 17.4.	Time to Exercise Walk Away Right .....	74
Section 17.5.	Notice of Exercise.....	74
Section 17.6.	Effects of Termination .....	74
Article 18	Liens.....	75
Section 18.1.	Lien Responsibilities.....	75
Article 19	No Admission of Liability or Lack of Merit.....	77
Section 19.1.	No Admission of Liability or Lack of Merit.....	77
Article 20	Reporting Obligations; DePuy and SOC Access to Data .....	78
Section 20.1.	Reporting Obligations .....	78
Section 20.2.	DePuy and the SOC Access to Data .....	78
Article 21	Public Statements; Confidentiality .....	78
Section 21.1.	Program Claimant Confidential Information .....	78
Section 21.2.	Accurate Public Statement.....	79
Article 22	Miscellaneous .....	79
Section 22.1.	Notice by Parties .....	79
Section 22.2.	Receipt of Documentation .....	81

Section 22.3.	Governing Law. ....	81
Section 22.4.	Waiver of Inconsistent Provisions of Law; Severability .....	81
Section 22.5.	Facsimile Signatures. ....	82
Section 22.6.	Construction. ....	82
Section 22.7.	Entire Agreement .....	83
Section 22.8.	Headings; References. ....	83
Section 22.9.	No Third Party Beneficiaries; Assignment .....	83
Section 22.10.	Amendments; No Implied Waiver .....	84
Section 22.11.	Counterparts .....	84
Section 22.12.	Tax Matters .....	84
Section 22.13.	Further Assurances.....	84

TABLE OF EXHIBITS

- Exhibit 3.2 — Form of Registration Order
- Exhibit 4.1.3.1 — Enrollment Form
- Exhibit 4.1.3.2 — Form of Release
- Exhibit 4.1.3.4 — Claims Form and Lien Checklist
- Exhibit 11.1.1 — Form of Escrow Agreement

**SETTLEMENT AGREEMENT**

SETTLEMENT AGREEMENT, dated as of November 19, 2013 (the “Execution Date”), between (i) DePuy Orthopaedics, Inc., an Indiana corporation (together with its successors and assigns, “DePuy”), and (ii) the counsel listed in the signature pages hereto under the heading “Settlement Oversight Committee” (collectively, the “SOC”; the SOC and DePuy, each a “Party” and collectively the “Parties”).

**PREAMBLE**

This is an agreement between (i) DePuy and (ii) the SOC, which is a committee comprised of certain counsel appointed by the Hon. David A. Katz to the Plaintiffs’ Executive Committee in *In re DePuy Orthopaedics, Inc. ASR Hip Implant Products Litigation*, MDL Docket No. 1:10 md 2197, a federal multi-district litigation which is venued in the United States District Court for the Northern District of Ohio (such court, the “MDL Court”, and such executive committee, the “PEC”) and plaintiffs’ leadership counsel in state court coordinated proceedings currently pending in state courts in California before Judge Richard Kramer, JCCP 4649; Illinois before Judge Deborah Dooling, Case No. 10 L 10506 and New Jersey before Judge Brian Martinotti, Master Docket No. BER-L-3971-11. This Agreement establishes a private settlement program to resolve the actions, disputes and claims – whether filed or unfiled – of U.S. claimants against DePuy relating to the implantation, use and removal of the ASR™ XL Acetabular Hip System (“ASR XL”), or the ASR™ Hip Resurfacing System (“ASR Resurfacing”), and any and all Component and Ancillary Parts (collectively referred to as “ASR Hip Implants” and each ASR Hip Implant also being a “Qualified Device”) under the terms set forth below.

**RECITALS**

- A. DePuy issued a voluntarily global recall of the ASR™ XL Acetabular Hip System and ASR™ Hip Resurfacing System from the market in August 2010 (“Recall”).
- B. As of August 31, 2013, there were approximately 7,700 active ASR Hip Implant personal-injury or wrongful death actions filed against DePuy nationwide.
- C. The lawsuits of the active plaintiffs are presently pending in one of the following four “Coordinated Proceedings” and in other state and federal courts “Other Courts”:
  - a. *In re DePuy Orthopaedics, Inc. ASR Hip Implant Products Litigation*, MDL 2197, venued in the MDL Court;
  - b. *DePuy ASR™ Hip System Cases*, No. CJC-10-004649, venued in the Superior Court of the State of California, County of San Francisco;

- c. *In re DePuy ASR Hip Litigation*, No. 10 L 10506, venued in the Circuit Court of Cook County, Illinois, County Department, Law Division; and
- d. *In re DePuy ASR™ Hip Implants Litigation*, Case No. 293, Master Docket No.: BER-L-3971-11, venued in the Superior Court of New Jersey, Law Division, Bergen County.

D. DePuy, while not admitting any wrongdoing or liability, or conceding that plaintiffs in the ASR Hip Implant-related litigation or others have suffered any cognizable injury, nonetheless wishes to resolve the ASR Hip Implant-related claims **whose claimants have had their hips revised prior to August 31, 2013**, whether filed or unfiled, in order to avoid the costs, expense, time, effort, and uncertainty inherent in further litigation.

E. The SOC, on behalf of and in the best interests of their clients, also wishes to avoid the costs, expense, time, effort and uncertainty inherent in litigation and in continuing to litigate ASR Hip Implant-related claims for clients who have had their hips revised.

F. The SOC and DePuy have agreed to establish a private settlement program intended to resolve the claims of all persons who are eligible to enroll into the private settlement program and qualify for compensation pursuant to the requirements set forth below. This private resolution program will be referred to as the “U.S. Program.”

G. Aside from agreeing to the monetary payments specified and other express rights and obligations under this Agreement, DePuy will not have any responsibility for or role in administering or operating the U.S. Program or in allocating or dispensing funds among those eligible claimants who enroll and qualify for compensation under the U.S. Program as set forth by the terms of this Agreement.

H. This Agreement and the U.S. Program will not be construed as evidence of, or as an admission by, DePuy or any Released Party of any fault, Liabilities, wrongdoing or damages of any kind whatsoever or as an admission by any eligible claimant who enrolls in the U.S. Program of a lack of merit in their claims.

I. The SOC and DePuy hereby agree as follows:

#### Article 1

#### Definitions

#### Section 1.1. General.

1.1.1. As used in this Agreement, and in addition to the definitions set forth in the introduction, preamble, and recitals above, capitalized terms shall have the following definitions and meanings or such definitions and meanings as are accorded to them elsewhere in this Agreement. Terms used in the singular shall be deemed to include the plural and vice versa; the term “person” shall include, as appropriate, legal and

governmental entities as well as natural persons. When a term is first used, it will be underscored.

Section 1.2. Terms

1.2.1. “Administrative Agreement” means any agreement among (i) an Administrator, (ii) DePuy and (iii) a majority in number of the SOC, with respect to such Administrator’s service in connection with the Program.

1.2.2. “Administrative Expenses” means (i) any fees, expenses, indemnification payments or other like amounts payable from time to time to past or present Administrators pursuant to past or present Administrative Agreements, (ii) any amounts required to be expended to acquire and maintain insurance for the benefit of the past or present Administrators pursuant to the terms of any past or present Administrative Agreement and (iii) such other amounts as may be specified in any past or present Administrative Agreement to constitute “Administrative Expenses” for purposes of this Agreement.

1.2.3. “Administrators” means the Persons from time to time serving as the Claims Administrator, Claims Processor, any Special Master, the Escrow Agent, consulting physicians, if any, and/or the employees or agents of an Administrator.

1.2.4. “Aggregate Maximum Payment Obligation” is DePuy’s maximum aggregate funding obligation under the Agreement as set forth in Section 6.3, and subject to certain reductions as defined in the Agreement.

1.2.5. “Agreement” means this Settlement Agreement, including the Exhibits and Schedules thereto, as the same may be amended or modified from time to time in accordance with the terms hereof.

1.2.6. “ASR HIP Administrative Expenses Escrow Account” means the escrow sub-account account of such name established under the Escrow Agreement.

1.2.7. “ASR Hip Implants” means the ASR™ XL Acetabular Hip System (“ASR XL”), or the ASR™ Hip Resurfacing System (“ASR Resurfacing”), and any and all Component and Ancillary Parts.

1.2.8. “ASR Index Surgery” means the surgical implantation of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System in a surgery occurring in the United States.

1.2.9. “ASR Revision Surgery” means a surgery subsequent to the ASR Index Surgery to remove the cup of an ASR™ XL Acetabular Hip System (“ASR XL”) or ASR™ Hip Resurfacing System (“ASR Resurfacing”) and in which all of the following criteria are met:

1.2.9.1. the revision surgery must have taken place prior to August 31, 2013;

1.2.9.2. the revision surgery must have occurred more than 180 days following the ASR Index Surgery;<sup>1</sup>

1.2.9.3. the revision surgery is not an “Excluded Trauma-Related Revision”;

1.2.9.4. the revision surgery is not an “Excluded Infection-Related Revision”; and

1.2.9.5. the revision surgery is not an “Excluded ASR Resurfacing and Hemiarthroplasty Revision.”

1.2.10. “Body Mass Index” or “BMI” means the number derived as follows:

$$\frac{\text{Weight (in lbs.)}}{\text{Height (in inches) x Height (in inches)}} \times 703 = \underline{\hspace{2cm}}$$

For example, a person who is 65 inches tall and weighs 150 pounds has a BMI of 24.96.

1.2.11. “Business Day” means any day that is not a Saturday, a Sunday or other day on which commercial banks in the City of New York, New York or the State of New Jersey are required or authorized by law to be closed.

1.2.12. “Claims” means any and all rights, remedies, actions, claims, demands, causes of action, suits at law or in equity, verdicts, suits of judgments, judgments and/or Liens (including any of the foregoing for wrongful death, personal injury and/or bodily injury, sickness, disease, emotional distress and/or injury, mental or physical pain and/or suffering, emotional and/or mental harm, fear of disease or injury, loss of enjoyment of life, loss of society, loss of companionship, loss of income, loss of consortium, medical expenses, future cost of insured services, past cost of insured services or any other form of injury, and including any of the foregoing for direct damages, indirect damages, consequential damages, incidental damages, punitive damages or any other form of damages whatsoever), whether based upon contract, breach of contract, warranty or covenant, breach of warranty or covenant, tort, negligence, gross negligence, recklessness, joint and several liability, guarantee, contribution, reimbursement, subrogation, indemnity, defect, failure to warn, fault, strict liability, misrepresentation, common law fraud, statutory consumer fraud, quantum meruit, breach of fiduciary duty, violation of statutes or administrative regulations and/or any other legal (including common law), statutory, equitable or other theory or right of action, whether presently known or unknown,

---

<sup>1</sup> DePuy has the right, in its sole discretion, to waive the 180 day requirement for EUSCs who enroll in the U.S. Program.

developed or undeveloped, discovered or undiscovered, foreseen or unforeseen, matured or unmatured, accrued or not accrued, or now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision or in any other manner.

1.2.13. “Claims Administrator” means the Person or Persons from time to time appointed by mutual agreement of DePuy, on the one hand, and a majority in number of the SOC, on the other hand, to fulfill the functions of the “Claims Administrator” under this Agreement (so long as such Person or Persons continues to serve in such capacity).

1.2.14. “Claims Form” means a U.S. Program Claims Form in the form of Exhibit 4.1.3.4.

1.2.15. “Claims Processor” means the Person or Persons from time to time appointed by mutual agreement of DePuy, on the one hand, and a majority in number of the SOC, on the other hand, to fulfill the functions of the “Claims Processor” under this Agreement (so long as such Person or Persons continues to serve in such capacity).

1.2.16. “Component and Ancillary Parts” means each and every component or ancillary part implanted contemporaneously with and/or intended to function as part of the prosthetic construct that includes the ASR or ASR XL cup, including but not limited to the femoral stem.

1.2.17. “Connected With ASR Hip Implants” means to any extent, or in any way, arising out of, relating to, resulting from and/or connected with the implantation, use and/or removal of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System, and/or Component and Ancillary Parts (collectively “ASR Hip Implants”) and/or any injury, losses, or damages caused or claimed to have been caused, in whole or in part, by any such ASR Hip Implants and/or revision to remove all or part of such ASR Hip Implants.

1.2.18. “Coordinated Proceedings Counsel” means any lawyer or law firm that had an action pending in any of the Coordinated Proceedings as of the Execution Date.

1.2.19. “Counsel” means, with respect to any particular Person, a lawyer and/or law firm who represents such Person pursuant to a written agreement, or who has an Interest in such Person’s Claim Connected with ASR Hip Implants.

1.2.20. “Covered Re-Revision Surgery--Future” has the meaning ascribed to such term in Section 8.5.6.

1.2.21. “Covered Re-Revision Surgery--Past” has the meaning ascribed to such term in Section 8.4.4.1.

1.2.22. “Derivative Claimant” means, in relation to any particular Eligible U.S. Claimant or U.S. Program Claimant, any Person having or asserting the right, either statutory or under applicable common law (including the laws of descent and distribution)

or otherwise, to sue DePuy or any other Released Party, independently, derivatively or otherwise:

1.2.22.1. by reason of their personal relationship with such Eligible U.S. Claimant or U.S. Program Claimant (or the Product User with respect to such Eligible U.S. Claimant or U.S. Program Claimant); and/or

1.2.22.2. otherwise by, through or under, or otherwise in relation to, such Eligible U.S. Claimant or U.S. Program Claimant (or the Product User with respect to such Eligible U.S. Claimant or U.S. Program Claimant);

including a court-appointed Legal Representative of a Product User or Product User's Estate, the heirs, beneficiaries, surviving spouse (including a putative or common law spouse), surviving domestic partner and next of kin of such Eligible Claimant or Program Claimant (or the Product User with respect to such Eligible Claimant or Program Claimant).

1.2.23. "Disbursement List" has the meaning ascribed to such term in Section 10.1.8.

1.2.24. "Dismissal With Prejudice Stipulation" means a "Dismissal With Prejudice Stipulation" in the form thereof included in the form of Enrollment Form attached hereto or in such other form as is mandated by the Enrollment Form.

1.2.25. "Eligible U. S. Claimant" means a natural person or the Legal Representative(s) thereof who meets the requirements of Section 2.1.

1.2.25.1. For the avoidance of doubt, it is understood and agreed that (i) subject to clause (ii), the Legal Representative (or, if more than one, the Legal Representatives collectively), of a particular natural person (including a deceased natural person), in such capacity, has the same status hereunder as such particular natural person, and (ii) a natural person (including a deceased natural person) and his or her Legal Representative(s) shall constitute a single Eligible United States Claimant. Notwithstanding the foregoing provisions of this Section 1.2.19, no Person who prior to the Execution Date had an action against DePuy Connected With ASR Hip Implants (a) dismissed with prejudice which dismissal is not as of the Execution Date under appeal (or their respective Legal Representatives), (b) tried to verdict against DePuy and on appeal, or (c) subject to a separate settlement agreement, shall constitute "Eligible U.S. Claimants" (and accordingly none of such Persons (or their respective Legal Representatives) may participate in the U.S. Program).

1.2.26. "Enrolled U.S. Program Claimant" means a Person who (as a purported "Eligible United States Claimant") has submitted an Enrollment Form with all Required Submissions (or on whose behalf an Enrollment Form has been submitted) to the Claims Processor and DePuy on or prior to the Enrollment Deadline Date, which Enrollment Form has not been rejected by DePuy pursuant to Section 17.2.

1.2.27. “Enrolling Counsel” means the Primary Law Firm or other Counsel who files an Enrollment Form on behalf of any EUSC.

1.2.28. “Enrollment Deadline Date” means April 1, 2014 unless extended by the agreement of the Parties.

1.2.29. “Enrollment Form” or “U.S. Program Enrollment Form” means the form, including all necessary attachments thereto, all substantially in the form of Exhibit 4.1.3.1.

1.2.30. “Escrow Agent” means JPMorgan Chase Bank, N.A., or such other Person or Persons from time to time appointed by DePuy, with the consent of SOC (not to unreasonably be withheld), to fulfill the functions of the “Escrow Agent” under the Escrow Agreement (so long as such Person or Persons continues to serve in such capacity).

1.2.31. “Escrow Agreement” means an escrow agreement substantially in the form of Exhibit 11.1.1, with such changes from such form that may be requested by the proposed “Escrow Agent” thereunder, are agreed to by DePuy and either (i) are not material or (ii) are consented to by a majority in number of the SOC (such consent not to be unreasonably withheld or delayed), as the same may be amended from time to time in accordance with the terms thereof.

1.2.32. “Escrow Funds” means the Administrative Expenses Fund and any Escrowed Settlement Funds for either the PART A Base Award Program or the PART B Award Program.

1.2.33. “Excluded ASR Resurfacing and Hemiarthroplasty Revision” means a surgery on the femoral side without revision of the cup of the ASR XL or ASR Resurfacing and thus does not constitute an ASR Revision Surgery and does not entitle a Claimant to a Base Award. If the cup is revised in a Resurfacing Claimant, that Claimant may qualify as a Qualified U.S. Claimant eligible for a Base Award in connection with said ASR Revision Surgery, but is also subject to all of the other terms, exclusions, and reductions in this Agreement. A Qualified U.S. Claimant is entitled to only one PART A Base Award. If a Qualified U.S. Claimant had more than one ASR cup subject to ASR Revision Surgery, compensation, if any, based on ASR Revision Surgery for additional cups is an award under PART B.

1.2.34. “Excluded Infection-Related Revision” means a surgery to remove the cup of an ASR XL or ASR Resurfacing that is necessitated by Infection (as defined below), and thus is not an ASR Revision Surgery under this Agreement. If the contemporaneous operative record or Discharge summary from an ASR Revision Surgery taking place between 181 and 547 days (a year and a half) after an ASR Index Surgery states that the cause of the ASR Revision Surgery was an Infection, and the contemporaneous medical records show either (1) a sinus tract communicating with the affected prosthetic joint, or (2) a pathogen isolated by culture from at least two separate tissue or fluid samples obtained from the affected prosthetic joint prior to or during the

ASR Revision Surgery hospitalization (where at least one of the samples is obtained prior to or during the Revision Surgery), then the revision was caused by Infection and is not an ASR Revision Surgery for purposes of this Agreement and the EUSC shall cease to be an EUSC and will be unable to qualify as a QUSC or for a PART A Base Award or PART B Award under this Agreement. The EUSC shall then have a right to request a review of this determination by a Special Master who shall then review the relevant contemporaneous medical records to determine whether that Infection was the sole cause for the revision surgery. **The final decision shall be made by a Special Master in accordance with the standards in this paragraph, whose decision will be final and Non-Appealable.**

1.2.35. “Excluded Trauma-Related Revision Surgery” means a revision that is not an ASR Revision Surgery because the revision was caused by “Trauma” which is defined as a change in the alignment or fixation of the Qualified Device caused by the application of an external force in a sudden or unexpected manner. Trauma affecting a Qualified Device will be deemed to have occurred if:

1.2.35.1. a change in the position of any Component and Ancillary Parts of the Qualified Device, or in its alignment or fixation, is verified by radiological studies, or

1.2.35.2. such change is described in contemporaneous medical records by the treating physician who attributes the immediate medical cause for revision to be due to that traumatic event.

1.2.35.3. If Trauma is identified in the contemporaneous medical records as the immediate cause for revision, then the revision is not an ASR Revision Surgery for purposes of this Agreement and the EUSC shall be deemed unable to qualify for the U.S. Program, unless preoperative medical records show, more likely than not, the EUSC would have required revision in the near term regardless of the Trauma. The EUSC shall have a right to request a review of this determination by the Special Master, randomly chosen, who shall then review the relevant contemporaneous medical records submitted by the EUSC to determine whether the trauma was the sole cause for the revision. **The final decision shall be made by a Special Master in accordance with the standards in this paragraph whose decision will be final and Non-Appealable.**

1.2.36. “Executing Derivative Claimant” means, in relation to any particular U.S. Program Claimant, any Derivative Claimant in relation to such U.S. Program Claimant that has executed such U.S. Program Claimant’s Release.

1.2.37. “Governmental Authority” means any government or political subdivision, department, commission, board, bureau, agency, or other governmental authority, whether United States federal, state, District of Columbia, city, county, municipal, territorial, or foreign, or any agency or instrumentality whether domestic or foreign, or any United States federal, state, District of Columbia, city, county, municipal, territorial or foreign court.

1.2.38. “Government Program” means the Medicare and Medicaid programs, the CHAMPVA Program, the TRICARE Program, and any other federal, state or local reimbursement program involving payment of governmental funds (including “Federal healthcare programs” as defined in 42 U.S.C. §1320a 7b(f)) or other payor program administered by any Governmental Authority.

1.2.39. “Implantation of ASR XL or ASR Resurfacing” or “ASR Index Surgery” means the surgical implantation of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System in a surgery occurring in the United States.

1.2.40. “Infection” means the following:

1.2.40.1. For purposes of PART A, Infection means a periprosthetic joint infection evidenced by the contemporaneous medical records reflecting either (A) a sinus tract communicating with the prosthesis; or (B) a pathogen is isolated by culture from two or more separate tissue or fluid samples obtained from the affected prosthetic joint prior to or during the ASR Revision Surgery hospitalization (where at least one of the samples is obtained prior to or during the Revision Surgery).

1.2.40.2. For purposes of PART B, Infection means the diagnosis of a periprosthetic joint infection (i) associated with undergoing the ASR Revision Surgery or Covered Re-Revision Surgery, (ii) documented in the contemporaneous medical records, and (iii) which required surgical debridement with prosthesis retention, a Covered Re-Revision Surgery in either a one or two-step procedure, arthrodesis, or extended intravenous antibiotic treatment greater than eight consecutive weeks in length.

1.2.41. “Initial PART A Funding Report” means the report to be provided to DePuy, the SOC and the Escrow Agent thirty (30) days after the expiration of DePuy’s Walk Away Rights, including the right under Section 17.2, without such rights being exercised, in such form and in such detail as DePuy (in consultation with the SOC) reasonably may specify, identifying those EUSCs who have qualified as QUSCs together with the amount of each QUSC’s PART A BASE Award, setting forth the reductions to such awards to be retained by DePuy and those to be transferred to PART B, and assessment amounts for each QUSC as per MDL CMO-13, as amended, and certifying those **PART A Base Awards in accordance with the Agreement that are final, binding and Non-Appealable and not subject to audit** (or having successfully completed an audit).

1.2.42. “Interested Counsel” means any Counsel (as defined) with an Interest (as defined) in a Person, or in a Claim of a Person who has a Claim, filed or unfiled, Connected with ASR Hip Implants (as defined).

1.2.43. A lawyer or law firm or other Person shall be deemed to have an “Interest” in a Person, or in a Claim of a Person, if the lawyer or law firm or any Person affiliated or related in any way to the lawyer or law firm, whether or not an attorney:

- 1.2.43.1. has an engagement or retainer agreement with such Person;
- 1.2.43.2. is listed as the counsel of record for such Person in filed pleadings;
- 1.2.43.3. has entered an appearance for such Person;
- 1.2.43.4. would benefit directly or indirectly from any payment to settle any Claim of such Person Connected With ASR Hip Implants, including but not limited to a Person engaged in the funding of litigation; or
- 1.2.43.5. otherwise has any financial interest in any Claim of such Person Connected With ASR Hip Implants.

For the avoidance of doubt (and without limitation), an individual lawyer or other individual or entity is deemed to have an “Interest” in a Person, or in a Claim of a Person, in which any law firm of or with which such individual lawyer is a partner, associate or otherwise affiliated has an Interest, and vice versa.

1.2.44. “Legal Representative” means, as to any particular natural person (including a deceased natural person), the estate, executor, administrator, guardian, conservator or other legal representative thereof.

1.2.45. “Liabilities” means any and all debts, liabilities, covenants, promises, contracts, agreements and/or obligations of whatever kind, nature, description or basis, whether fixed, contingent or otherwise, whether presently known or unknown, developed or undeveloped, discovered or undiscovered, foreseen or unforeseen, matured or unmetered, or accrued or not accrued.

1.2.46. “Lien” means any mortgage, lien, pledge, charge, security interest, encumbrance, assignment, subrogation right, third-party interest or adverse claim of any nature whatsoever, in each case whether statutory or otherwise.

1.2.47. “Maximum PART B Payment Obligation” is the maximum funding obligation of DePuy for the PART B Program as calculated according to Sections 6.3 and 6.5. For illustration purposes, if exactly 8,000 Qualified U. S. Claimants enroll in the U.S. Program, the Maximum PART B Payment Obligation will be Four Hundred Seventy-five Million Dollars (\$475,000,000.00).

1.2.48. “Medical Records” means the entire record maintained by an individual healthcare provider or facility relating to the medical history, care, diagnosis, surgery, and treatment of an Enrolled U.S. Program Claimant including new patient intake forms completed by or on behalf of an Enrolled U.S. Program Claimant, doctor’s notes, operative reports, hospital chart, nurse’s notes, physician’s orders, consultation reports, laboratory test results, EEGs, EKGs, x-ray reports, CT scan reports, MRI scan reports, reports of any diagnostic procedures, tests or imaging studies, operative reports, history

and physicals, pathology reports, anesthesia records, admission summaries, discharge summaries, consent forms, prescription records, and medication records.

1.2.49. “Net Base Award” means the PART A Base Award for a given QUSC following the application of any reductions or limitations applicable to such PART A Base Award, including but not limited to, reductions for length of implantation, a QUSC being an Unrepresented Claimant, and the reductions set forth in Section 7.2.

1.2.50. “Net PART B Award” means the PART B Award for a given QUSC following the application of any reductions or limitations applicable to such PART B Award, including but not limited to, reductions referenced in Section 8.1, a QUSC being an Unrepresented Claimant, and any reduction pursuant to Sections 9.1 and 10.3.

1.2.51. “Non-Appealable” means not subject to (i) any further right of appeal to any Administrator or otherwise within the U.S. Program or (ii) any right of judicial review or appeal to the MDL Court, any other Coordinated Proceedings court or any other court.

1.2.52. “PART B EIF Award Schedule” means the schedule of available PART B EIF awards by EIF category to be determined by the SOC in its sole discretion following consultation with the Team and DePuy and which shall be included in the informed consent materials made available to potential claimants and their Counsel to the U.S. Program. The PART B EIF Award Schedule shall also include the exact percentage reductions to be established by the SOC in accordance with the Agreement for certain reductions to both PART A Base Awards and PART B Awards (e.g., BMI, smoking).

1.2.53. “Person” means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, Governmental Authority, custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

1.2.54. “Personal Signature” means the actual handwritten signature by the person whose signature is required on the document. Unless otherwise specified in this Settlement Agreement, a document requiring a Personal Signature may be submitted by: (a) an actual original handwritten “wet ink” signature on hard copy; or (b) a PDF or other electronic image of an actual handwritten signature, but cannot be submitted by an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, *et seq.*, the Uniform Electronic Transaction Act or their successors.

1.2.55. “Primary Law Firm” means the Counsel, including the Principal Responsible Attorney, responsible for the client and the client’s Claim Connected with ASR Hip Implants, identified in connection with Registration of Claims under Article 3 and which shall fulfill the responsibilities for the Primary Law Firm identified under this Agreement. If two or more lawyers or law firms are designated as the Primary Law Firm,

any dispute that cannot be resolved by the Counsel may be submitted to the Special Masters for review and resolution.

1.2.56. “Principal Responsible Attorney” is the single attorney jointly identified by the Primary Law Firm and Interested Counsel by name, state bar number, business address, phone number, and email address who will be primarily responsible to provide notice to the Court for obligations of the Primary Law Firm relating to this Agreement and compliance with any Court Orders entered in the jurisdiction in which the case or claim is pending, and fulfill the other responsibilities described in this Agreement.

1.2.57. “Product User” means, in relation to any particular Eligible United States Claimant or U.S. Program Claimant, the natural person (including the deceased natural person) referred to in the definition of the term “Eligible U.S. Claimant” (as opposed to any Legal Representative in respect of such natural person).

1.2.58. “Program Claim” or “U.S. Program Claim” means all Required Submissions and Additional Claim Information submitted by or on behalf of a Person (and/or his counsel) to attempt to enroll in, and qualify to receive an Award under, the U.S. Program.

1.2.59. “Program Claimant” or “U.S. Program Claimant” means a Person who (as a purported “Eligible U.S. Claimant”) has submitted an Enrollment Form (or on whose behalf an Enrollment Form has been submitted) to the Claims Administrator on or prior to the Enrollment Deadline Date. For the avoidance of doubt, a Counsel to a Person is not (in such capacity) a “Program Claimant” or “U.S. Program Claimant”.

1.2.60. “Qualified Device” means the ASR™ XL Acetabular Hip System and/or ASR™ Hip Resurfacing System and any and all Component and Ancillary Parts.

1.2.61. “Qualified U.S. Claimant” or “QUSC” means each Enrolled U.S. Program Claimant who has demonstrated by the submission of his Required Submissions to meet the Eligibility Requirements of Section 2.1 and the Claim Administrator has made a determination of eligibility for such Enrolled U.S. Program Claimant or other such Enrolled U.S. Program Claimant has been deemed to be a QUSC pursuant to Section 5.1.5.

1.2.62. “Registration Declaration” has the meaning ascribed to such term in the form of Registration Order attached hereto as Exhibit 3.2.

1.2.63. “Released Claims and Liabilities” has the meaning ascribed to such term in the Release, Exhibit 4.1.3.2.

1.2.64. “Released Party” and “Released Parties” means (i) DePuy Orthopaedics, Inc., (ii) Johnson & Johnson, (iii) any other defendants currently or formerly named in any litigation a claimant has brought as a result of a ASR Hip Implant, (iv) any past or present distributors, distributor representatives, sales representatives, manufacturers, suppliers, suppliers of materials or components, distributors, wholesalers,

or other persons or entities involved in the design, research, development, manufacture, testing, sale, marketing, labeling, promotion, advertising, or distribution of the ASR Hip Implants implanted at any time, including but not limited to designers and design surgeons, including but not limited to Dr. Thomas Schmalzried, Thomas P Schmalzried, A Professional Corporation, Dr. Thomas Vail, and Vail Consulting LLC, as well as any physicians, healthcare professionals, or hospitals connected with the prescription, implantation, use, or removal of the ASR Hip Implants that I (or the Product User of my claim) allegedly used or use, including but not limited to the individuals and entities named on Exhibit 1 and Broadspire Services, Inc., (v) for each person or entity referred to in clauses (i), (ii), (iii) and (iv) of this paragraph, its respective past, present, and/or future parents, subsidiaries, divisions, affiliates, joint venturers, predecessors, successors, assigns, and transferees and its respective past, present and/or future shareholders (or the equivalent thereto), directors (or the equivalent thereto), officers (or the equivalent thereto), owners, managers, principals, employees, consultants, advisors, attorneys, agents, servants, representatives, heirs, trustees, executors, estate administrators, and the personal representatives (or the equivalent thereto), and (vi) the respective insurers of all such entities or persons referred to in clauses (i), (ii), (iii), (vi), and (v) to the extent of their capacity as the insurer of such entities or persons.

1.2.65. “Settlement Escrow Funds” means the PART A Awards Settlement Escrow Fund and the PART B Supplemental Awards Escrow Fund.

1.2.66. “Settlement Award Payment” means any PART A Award Payment or PART B Supplemental Award Payment.

1.2.67. “Signature” means the actual signature by the person whose signature is required on the document or on behalf of such person by a person authorized by a power of attorney or equivalent document to sign such documents on behalf of such person. Unless otherwise specified in this Settlement Agreement, a document requiring a Signature may be submitted by: (a) an actual original handwritten “wet ink” signature on hard copy; (b) a PDF or other electronic image of an actual handwritten signature; or (c) an electronic signature within the meaning of the Electronic Records and Signatures in Commerce Act, 15 U.S.C. §§7001, *et seq.*, the Uniform Electronic Transaction Act or their successors.

1.2.68. “Special Master” means the Person or Persons from time to time appointed by DePuy and a majority in number of the members of the SOC to fulfill the functions of the private “Special Master” under this Agreement (so long as such Person or Persons continues to serve in such capacity). If, at any time, two or more Persons constitute the “Special Master”, then any determination of any Special Master shall be a decision of the Special Master. To the extent an issue or claim is to be referred to “a” or “the” Special Master or Special Masters, it is referred to one of the Special Masters who will be chosen randomly or pursuant to a rotating selection process among Special Masters to be determined by the Claims Administrator and effectuated by the Claims Processor. Under this Agreement, there will be three appointed Special Masters.

1.2.69. “Supplementary Claims Form” means a claim form for the submission of requested Additional Claim Information in the form to be determined by the Claims Administrator.

1.2.70. “Supplemental PART A Funding Report” has the meaning ascribed to such term in Section 10.1.5.

1.2.71. “Team” refers to the Claims Administrator, Claims Processor and Special Masters who shall cooperate and work together with the Parties in the implementation of this Agreement, including working with the SOC in connection with the implementation of the PART B Award process and the informed consent and good faith participation requirements of this Agreement.

1.2.72. “United States” means the United States of America, its 50 states, the District of Columbia, any Commonwealth or Territory of the United States, and any United States Military Hospital wherever located.

1.2.73. “United States Patient” means, for purposes of eligibility, a United States citizen or legal resident who underwent an ASR Index Surgery, *i.e.*, receiving a surgical implant of the ASR XL or ASR Resurfacing in a surgery that occurred in the United States.

1.2.74. “U.S. Program” means the private resolution program established by this Agreement, which is comprised of a PART A Base Award program and a PART B Award Program.

1.2.75. “Walk Away Deadline Date” is the date by which DePuy may timely exercise its rights under Section 17.1. The initial Walk Away Deadline Date is June 1, 2014 or sixty (60) days after the Enrollment Deadline Date, if such Enrollment Deadline Date is extended beyond April 1, 2014.

## Article 2

### Claimant Eligibility

#### Section 2.1. Eligibility Requirements

2.1.1. “Eligible United States Claimant” or “EUSC” is defined as follows: To be eligible to enroll in the U.S. Program, the plaintiff or unfiled claimant must (1) be a “United States Patient”; (2) have had Implantation of ASR XL or ASR Resurfacing System in an “ASR Index Surgery”; and (3) underwent “ASR Revision Surgery”. If each of these requirements is met, the plaintiff or claimant is referred to as an Eligible United States Claimant or “EUSC”. The term EUSC includes those represented by Counsel and those not represented by Counsel. The following chart indicates those claimants who are or who are not eligible as a United States Patient.

<b>Patients</b>	<b>ASR Hip Implant Implanted Inside of the United States (as defined)</b>	<b>ASR Hip Implant Implanted Outside of the United States (as defined)</b>
United States Citizen	Eligible	Not Eligible
United States Legal Resident	Eligible	Not Eligible

2.1.2. This Agreement covers United States Patients who have claims arising out of or in any way related to the surgical implantation of the ASR XL or ASR Hip Resurfacing System in an ASR Index Surgery and which was subsequently the subject of an ASR Revision Surgery.<sup>2</sup> This Agreement specifically excludes DePuy ASR Hip Implants implanted in foreign citizens in foreign countries. This Agreement also does not pertain to DePuy ASR Hip Implants implanted outside of the United States, except that the Agreement does apply to U.S. citizens or legal residents who were surgically implanted with a Qualified Device in a United States Military Hospital.

2.1.3. Pinnacle Hip Implants. Except as expressly set forth in connection with re-revisions under Sections 8.4 and 8.5.6, nothing in this Agreement is intended to release or address a claim directed to a Pinnacle hip implant product that was implanted as an index device or a revision device resulting from a revision of a device that is not a Qualified Device. This Agreement does not affect the Pinnacle litigation. The application of the Release to Pinnacle implants is as follows:

2.1.3.1. Where a Pinnacle hip implant is revised to an ASR XL or ASR Resurfacing, which is subsequently revised to another device, the Release will have no impact on any legal rights pertaining to that revised Pinnacle hip implant, if any.

2.1.3.2. Where an ASR Hip Implant is revised pursuant to an ASR Revision Surgery to a Pinnacle hip implant or components of a Pinnacle hip implant and that Pinnacle hip or components of a Pinnacle hip was subsequently revised at the same hip to another device in a Covered Re-Revision Surgery, the Release will result in both ASR Hip Implant and Pinnacle hip implant claims being released. This is the re-revision situation set forth in Section 8.4 and 8.5.6.

2.1.3.3. Where an ASR Hip Implant is revised pursuant to an ASR Revision Surgery to a Pinnacle hip implant but there are no subsequent Covered Re-Revisions at that same hip, the Release will have no impact on a claim, if any,

---

<sup>2</sup> For any ASR Revision Surgery that takes place outside of the United States, DePuy will not assume responsibility for liens under Article 18 for surgery or treatment that occurs outside of the United States.

pertaining to that unrevised Pinnacle hip implant; all legal rights, if any, being reserved and not released.

2.1.4. If it is determined that a U.S. Program Claimant is not an EUSC because the Claims Processor determines that the revision surgery was an Excluded Infection-Related Revision Surgery, the U.S. Program Claimant shall then have a right to request a review of this determination by a Special Master who shall then review the contemporaneous medical records to determine whether Infection was the sole cause for the revision surgery. **The decision of the Special Master shall be made in accordance with the standards in this Agreement and shall be final and Non-Appealable.**

2.1.5. If it is determined that a U.S. Program Claimant is not an EUSC because the Claims Processor determines that the revision surgery was an Excluded Trauma-Related Revision, the U.S. Program Claimant shall then have a right to request a review of this determination by a Special Master, who shall then review the contemporaneous medical records to determine whether the Trauma was the sole cause for the revision surgery. **The decision of the Special Master shall be made in accordance with the standards in this Agreement and shall be final and Non-Appealable.**

2.1.6. **If it is determined that a U.S. Program Claimant is not an EUSC for any other reason, the U.S. Program Claimant has the ability to appeal such determination to a Special Master pursuant to Section 5.2.**

2.1.7. Any EUSC who qualifies as a QUSC and is entitled to a PART A Base Award, is entitled to only one PART A Base Award. If a QUSC had more than one ASR cup subject to ASR Revision Surgery, compensation, if any, for the additional ASR Revision Surgeries for additional cups is under PART B and not PART A of the U.S. Program.

2.1.8. Unrevised Patients. For the avoidance of doubt, persons who did not have an ASR Revision Surgery as defined above are not EUSCs and thus are not eligible to enroll or otherwise participate in this settlement. Nothing in this Agreement impacts the rights, obligations, claims or defenses with respect to any individuals who did not have an ASR Revision Surgery. If an EUSC has undergone an ASR Revision Surgery on one Qualified Device but has another Qualified Device implanted that has not been revised, any claims related to the unrevised Qualified Device are preserved and not released pursuant to this Agreement.

2.1.9. Notwithstanding the foregoing provisions, no Person who prior to the Execution Date had an action against DePuy Connected With ASR Hip Implants (1) dismissed with prejudice, which dismissal is not as of the Execution Date under appeal, (or their respective Legal Representatives), (2) who had a case tried to verdict against DePuy, or (3) entered into a previous settlement with DePuy shall constitute a EUSC (and accordingly none of such Persons (or their respective Legal Representatives) may participate in the U.S. Program).

Article 3

Registration of All Filed and Unfiled ASR Hip Implant-related Claims

Section 3.1. Registration

3.1.1. The purposes of the registration requirements set forth below are to allow the Parties and the Courts to identify the filed and unfiled cases and claims Connected With ASR Hip Implants, to create a joint database of such cases and claims which will help the MDL Court and Other Courts cooperatively manage this litigation and assist the Parties with effectuating the provisions of this Agreement.

Section 3.2. Plaintiff-Attorney Requirements

3.2.1. Case Specific Data and Court Orders. The Parties agree to apply jointly in each of the Coordinated Proceedings and Other Courts for an order, substantially in the form of Exhibit 3.2 (the "Registration Order"), within ten (10) days following the execution of this Agreement, requiring any plaintiffs' counsel representing clients with ASR-related claims pending in court to identify to DePuy, the SOC, and the Claims Processor, all clients with ASR-related claims, whether or not involving a Revision Surgery, whether their claims are filed or unfiled, and regardless if that plaintiffs' counsel agrees to enroll clients under the settlement, as well as the identity of the Primary Law Firm responsible for the claim, together with the Principal Responsible Attorney and legal assistant for that claim, and all Interested Counsel with an Interest in that claim, and to provide certain information about each claim. The Registration Orders also shall apply to Pro Se Plaintiffs with ASR-related claims. The Registration Order shall direct Counsel and Pro Se Plaintiffs to use a standard template issued by the Claims Processor without deviating from its format for the accurate and efficient transfer of the required information about each claimant and claim to the Claims Processor and the Parties.

3.2.2. The Claims Processor will maintain a joint database of all cases filed in any court and all unfiled claims identified pursuant to the Registration Orders, which database shall be made available to the MDL Court, the courts in the Coordinated Proceedings, Other Courts and the SOC and DePuy. The database may include for every registered ASR-related claim, *inter alia*, the current venue, case number, the identity of the Primary Law Firm responsible for the claim, together with the Principal Responsible Attorney for that claim and Interested Counsel for that claim as well as other claim-specific information. Nothing herein prevents either DePuy or the SOC from maintaining their own separate database of all registered Plaintiffs and Unfiled Claimants. Subject to the Registration Orders entered by the courts, the registration obligations are set forth below.

3.2.3. Filed Cases—Obligations of Plaintiffs' Counsel.

3.2.3.1. Designation of Principal Responsible Attorney. In addition to the other information required pursuant to the Registration Orders, the registration of each filed case must designate the Principal Responsible Attorney

and legal assistant for that case. The Principal Responsible Attorney so designated shall be jointly identified by the Primary Law Firm and Interested Counsel by name, state bar number, business address, and email address.

3.2.3.2. Designation of Primary Law Firm. For each filed case pending in either state or federal court, there must be a single designation of a Primary Law Firm. The Primary Law Firm must also identify all of the clients in which they are Primary Law Firm by serving a list of all filed ASR XL and ASR Resurfacing claims – whether revised or unrevised -- in which such law firm, or any attorney at such law firm, is Primary Law Firm as of the Execution Date of this Agreement or the date of the implementation Order, whichever is later. Service requirements shall be set forth in the Final Settlement Agreement. For any filed case or unfiled claim in which multiple firms have been designated as the Primary Law Firm, any dispute over representation that cannot be resolved by the law firms may be submitted to the Special Masters for review and resolution.

3.2.3.3. The designation of a Primary Law Firm and/or Principal Responsible Attorney is not intended to impact in any way the rights or obligations of all Counsel who represent a client, including all Interested Counsel, nor shall such designation alter the relationship among Counsel.

3.2.3.4. Interested Counsel. For each filed case pending in state or federal court, all counsel who have an Interest in the ASR-related claim of a plaintiff but who are not designated the Primary Law Firm shall be referred to as Interested Counsel in this Agreement and shall be identified. However, the term Interested Counsel includes the Primary Law Firm and Principal Responsible Attorney unless stated otherwise. This Agreement is not intended to impact the rights and obligations of Interested Counsel's attorney-client relationship with any such EUSC. Interested Counsel and the Primary Law Firm shall be jointly responsible for compliance with any Court Orders.

3.2.4. **Unfiled Claims –Obligations of All Plaintiffs' Counsel.**

3.2.4.1. Identification of Unfiled Claims. Pursuant to the Registration Orders, Plaintiffs' Counsel, including all Interested Counsel, must **identify clients** by serving on DePuy and the Settlement Oversight Committee a **list of all unfiled ASR XL**, ASR Resurfacing and/or Hemiarthroplasty claims – whether revised or unrevised -- in which such counsel has any financial interest and which will include basic information about each claim in the form of Exhibit 3.2 and shall identify the Primary Law Firm, Principal Responsible Attorney and Interested Counsel for such unfiled claims.

3.2.5. Pro Se Registration Filed Cases. EUSCs who have not retained counsel as of November 11, 2013 but who have a pending lawsuit also must register pursuant to any Registration Orders. The forms for Pro Se registration and the deadline for registration will be determined by the Parties. The SOC will be available to assist EUSCs

who have not retained counsel with registration, but such EUSCs who avail themselves of the assistance of the SOC remain Pro Se or Unrepresented Claimants.

3.2.6. Unfiled Cases of Unrepresented Claimants. Unrepresented Claimants with unfiled claims who are EUSCs may enroll in the U.S. Program pursuant to the provisions below. The SOC will make available information to EUSCs who have not retained counsel necessary for registration, but such EUSCs who avail themselves of the assistance of the SOC remain Unrepresented Claimants and shall not have an attorney-client relationship with the SOC or any of its members.

3.2.7. For sake of clarity, according to the terms of the Registration Order, all counsel of record in cases Connected With ASR Hip Implants filed in any of the Coordinated Proceedings and Other Courts must take such steps as are necessary to ensure that all “Claims” asserted on behalf of a “Person” asserting a personal injury or wrongful death Claim (whether or not in a pending action or currently unfiled), and all Claims derivative thereof, Connected With ASR Hip Implants (or in any way involving an ASR Hip Implant, including those not involving ASR Revision Surgery) in which such counsel had an Interest as of the date of this Agreement are registered and all Counsel with an Interest in any such cases or Claims are identified. Such registration requirement will apply regardless of (i) whether such Claims are the claims of EUSCs, (ii) whether such counsel intend to enroll any such Claims in the U.S. Program, (iii) whether such Claims are filed in any court or are unfiled claims (i.e., not yet filed as a lawsuit or otherwise asserted against DePuy), and (iv) whether such Claims involve an ASR Revision Surgery or not.

Section 3.3. **Registration Declaration**

The Primary Law Firm and other Interested Counsel shall register such Claimants and Claims by serving in accordance with the Registration Order a “Registration Declaration” under oath no later than January 6, 2014 covering each Plaintiff and Unfiled Claimant (as such terms are defined in the Registration Order) asserting such Claims, the date retained by the Plaintiff or Unfiled Claimant, and the Primary Counsel and Interested Counsel of such Plaintiff or Unfiled Claimant, if another counsel. Pro se plaintiffs must also file and serve a Registration Affidavit by January 6, 2014. Registration Declarations shall be in the form set forth in Exhibit 3.2, and shall include the information set forth in Exhibit 3.2, in an exhibit to such declaration.

Article 4

Enrollment into the U.S. Program

Section 4.1. Enrollment

4.1.1. The purpose of the enrollment and documentation requirements with respect to EUSCs’ entry into the U.S. Program is to obtain information and documentation to establish eligibility and to determine whether EUSCs qualify as QUSCs for settlement

awards. Additional documents may be required at the time of the PART A Base Award allocation and will be required for any PART B Award Program claim.

4.1.2. Only EUSCs (and, to the extent required, Legal Representatives and Derivative Claimants) may enroll in the U.S. Program.

4.1.3. **In order for a EUSC to participate in the U.S. Program, such EUSC must deliver to the Claims Processor the following materials not later than the Enrollment Deadline Date, which, subject to extension as provided herein, is April 1, 2014, which materials must be properly and fully completed, and properly and fully executed by the various Persons specified therein:**

4.1.3.1. An Enrollment Form signed by counsel in the form of Exhibit 4.1.3.1 and containing all required information;

4.1.3.2. A full valid Release, in the form of Exhibit 4.1.3.2<sup>3</sup>, to (without limitation) release, and indemnify and hold harmless all Released Parties and any Released Party, according to the terms set forth in the Release, and which shall release all Derivative Claimants and potential future claims (“Release”) and only in the re-revision context will such release include a Pinnacle device implanted during the ASR Revision Surgery and later re-revised to a different device).<sup>4</sup> The release must bear the Personal Signature of the EUSC, and any Spouse or Legal Representative, if applicable.<sup>5</sup>

4.1.3.3. Dismissal With Prejudice Stipulations signed by counsel, or Pro Se Plaintiffs, for any ASR Hip Implant-related lawsuit of an enrolling EUSC that is pending in any court, including lawsuits involving derivative claims, with each party to bear its own costs, shall be provided in a form to be agreed upon by the Parties consistent with the terms of this Agreement;

---

<sup>3</sup> The Exhibit attached is the form of a living claimant release. The Parties shall agree to a form of the Release for use in connection with current wrongful death cases or claims or where a QUSC has died by the time of the execution of the release, which will be materially similar to the attached Exhibit 4.1.3.2 and shall apply and be governed by the law of the state of the decedent’s domicile at the time of his/her death. The form of wrongful death release will be available from the Claims Processor and the SOC.

<sup>4</sup> Except as indicated, in the event a pending filed lawsuit has claims relating to other manufacturer’s devices (“non-DePuy”) and that lawsuit names other manufacturers or parties, the claims against those other manufacturers or parties as to the non-DePuy devices are not covered by this Agreement and those claims will not be dismissed.

<sup>5</sup> In connection with any divorced, separated, or estranged spouses who were spouses at any time from the date of the EUSC’s ASR Index Surgery to the date of the Release, an indemnity agreement in the form agreed to by the Parties and available from the Claims Processor and SOC shall be executed and supplied by the Enrolling EUSC/Releasing Party together with this executed and notarized Release by the EUSC in lieu of obtaining a signature of a such divorced, separated or estranged spouse.

4.1.3.4. A Claim Form bearing the Personal Signature of the EUSC in the form of Exhibit 4.1.3.4, which shall include a Lien Checklist;

4.1.3.5. The Product Code/Lot Code for each Qualified Device implanted into the EUSC (or Product User if the EUSC is the legal representative of a Product User) and all contemporaneous medical records showing the implantation of each ASR XL or ASR Resurfacing device surgically implanted in the EUSC (or Product User) in an ASR Index Surgery, including but not limited to a true and correct copy of the medical records with manufacturer/product stickers from the ASR Index Surgery and ASR Revision Surgery showing the device identifications, in accord with the following:

4.1.3.5.1. The EUSC has the burden of proof and burden of producing what records the EUSC or their counsel already possess and ordering, obtaining, and submitting at their own expense what additional records are needed to prove identification of the device. EUSC's or their counsel may not intentionally withhold records from the Claims Processor already in their possession or obtained as a result of ordering the records).

4.1.3.5.2. The Claims Processor will review the totality of the evidence on device identification. Product stickers are dispositive of the device identification issue.

4.1.3.5.3. Notwithstanding anything to the contrary, if the Claims Processor accepts proof of a Qualified Device's identification based on evidence other than Product Stickers (e.g., operative report or discharge summary), the Claims Processor will notify DePuy and DePuy has the right to appeal that decision to a Special Master.

4.1.3.6. A true and correct copy of the following contemporaneous Medical Records: Admission, including History and Physical Examination Records, Discharge Summaries, and Anesthesia Record and Operative Reports pertaining to any ASR Index Surgery and ASR Revision Surgery.<sup>6</sup>

4.1.3.7. The EUSC has the burden of proof and burden of producing what medical records the EUSC or their counsel already possess and

---

<sup>6</sup> For purposes of meeting participation requirements under Article 17, an EUSC, or their counsel, who may not yet physically possess all of the documents required under Sections 4.1.3.5 or 4.1.3.6 may still enroll in the U.S. Program. However, such enrollment does not ensure qualification as a QUSC unless the EUSC meets the criteria for ASR Index Surgery and ASR Revision Surgery as defined herein, and will not impact participation rates until the Claims Processor confirms through contemporaneous Medical Records that the Claimant is a EUSC pursuant to Article 2. However, all required submissions must be submitted to the Claims Processor no later than thirty (30) calendar days after the Enrollment Deadline date.

ordering, obtaining, and submitting at their own expense what additional medical records are required under the Agreement. To the extent any specified medical record is not obtainable (e.g., an anesthesia record), but the evidence required under the Agreement is contained in another contemporaneous medical record, the Claims Processor may accept that evidence, provided notice is given to DePuy and DePuy may appeal the acceptance of such evidence to a Special Master.

4.1.4. The materials set forth in Sections 4.1.3.1 through 4.1.3.6, inclusive, constitute the “Required Submissions.” Those Required Submissions identified in Sections 4.1.3.4 through 4.1.3.6, inclusive, may also be referred to as the “Claim Package.”

4.1.5. Evidence of product usage, ASR Index Surgery, ASR Revision Surgery, and any of the other medical conditions described herein must be demonstrated solely by medical records of the Enrolled U.S. Program Claimant contemporaneous to the initial product usage, ASR Index Surgery, ASR Revision Surgery, or the initial onset, diagnosis, treatment and/or occurrence of the medical condition at issue. Except for the limited purpose of proving lost wages or loss of earnings under PART B, evidence that is not a medical record and/or is prepared for the purpose of establishing a claim in the U.S. Program (e.g., a medical report or affidavit) and/or is not contemporaneous to the ASR Index Surgery, Revision Surgery, or medical condition at issue is not acceptable as evidence of, or to establish, a claim or award in the U.S. Program. No affidavits, expert reports, depositions, transcripts or medical articles may be submitted as part of Required Submissions, Claim Package, or otherwise in connection with a claim to the U.S. Program.

4.1.6. **The submission of the Enrollment Form, Release, Claim Form, and other Required Submissions to the Claims Administrator constitutes an EUSC’s (and any Derivative Claimants’) irrevocable election to enroll and participate in the U.S. Program regardless of the amount of that EUSC’s final award pursuant to the U.S. Program. Except as provided in Sections 4.1.7.1, 4.1.7.2, and 4.1.7.3, no EUSC (or related Derivative Claimant) may under any circumstances or reason withdraw an Enrollment Form, request the return of his Release or Dismissal With Prejudice Stipulation, or otherwise unilaterally exit the U.S. Program.**

4.1.7. An EUSC who enrolls in the U.S. Program and who demonstrates that he is qualified to receive a PART A Base Awards under the terms of the U.S. Program is referred to as a Qualified U.S. Claimant (“QUSC”). Enrollment in the U.S. Program by an EUSC constitutes an irrevocable election to participate in the settlement regardless of the amount of any final award unless and until the EUSC does not qualify for compensation as a QUSC as set forth in Section 4.1.7.2, or DePuy rejects the EUSC’s Enrollment Form pursuant to Section 17.2, if applicable. By enrolling in the U.S. Program, EUSCs agree to abide by any Orders entered in the jurisdiction in which the case is currently venued in furtherance of this Agreement.

4.1.7.1. Termination of the Settlement Program. If the U.S. Program terminates under Article 17, the documents executed as part of the

enrollment are null and void. The Release identified in Section 4.1.3.2 will be rescinded and will have no effect, and the Dismissals identified in Section 4.1.3.3. will not be filed with the Court and will be destroyed. The Plaintiff's claims in litigation will not be prejudiced by entering and exiting this program under these circumstances.

4.1.7.2. Failure to Qualify as a QUSC. If an EUSC does not qualify for compensation as a QUSC, the documents executed as part of the enrollment are null and void and the Release identified in Section 4.1.3.2 will be rescinded and will have no effect, and the Dismissals, identified in Section 4.1.3.3 will not be filed with the Court and will be destroyed. Failure to qualify as a QUSC in the settlement program is confidential and shall not be disclosed outside of the settlement program, nor be admissible in any proceeding or at trial. The case will proceed in the same jurisdiction in which it was filed without prejudice.

4.1.7.3. Qualification as a QUSC and Filing of Dismissals with Prejudice. DePuy shall not file the Dismissal Stipulation with Prejudice set forth above in Section 4.1.3.3 with the appropriate Court until the claim has been qualified and accepted in the settlement program as a QUSC and DePuy has funded that Claimant's PART A Base Award.

4.1.8. This private Settlement Agreement involves claims pending in both the MDL Court under Judge Katz and various Other Courts, including but not limited to the cooperating jurisdictions of California (Judge Kramer), New Jersey (Judge Martinotti) and Illinois (Judge Dooling). By enrolling in the U. S. Program, EUSCs agree to abide by any Orders entered by the Judge sitting in the jurisdiction in which his case is pending (MDL Court or Other Court) or, if unfiled, by the MDL Court in the furtherance of this Agreement. **By enrolling EUSCs in the Settlement Program, the Primary Law Firm, Principal Responsible Attorney, and all Interested Counsel for EUSCs agree to abide by MDL Case Management Order 13, as amended ("CMO 13"), which *inter alia*, will in part be used for the funding of the administration of the U.S. Program<sup>7</sup> and all Interested Counsel shall (1) comply with any Orders entered by the MDL Court in the furtherance of CMO 13, (2) consent to the jurisdiction of the MDL Court for that purpose, and (3) permit the holdback of 5% fees and 1% costs from any final award/gross monetary recovery.** In accordance with CMO 13, the assessment withheld from any and all amounts awarded to claimants and their counsel, or to Unrepresented Claimants, shall be paid to designated escrow accounts for common benefit fees and costs and to pay the administrative expenses of the U.S. Program pursuant to an escrow agreement to be agreed between the Parties and an escrow agent. These assessments continue to constitute settlement payments under the Agreement.

---

<sup>7</sup> The administrative funding of the U.S. Program will be from the "ASR HIP Administrative Expense Fund" of the Escrow Account established pursuant to this Agreement and Escrow Agreement.

4.1.9. The deadline for EUSCs to enroll in the U.S. Program and submit the Required Submissions is April 1, 2014, unless otherwise extended by agreement of DePuy and a majority in number of the SOC.

4.1.10. The Enrollment Form for an EUSC who is represented by counsel must be submitted to the Claims Processor on his behalf by his Primary Law Firm. (For the avoidance of doubt, references herein to Enrollment Forms submitted “by” a Program Claimant(s) shall be deemed to include Enrollment Forms so submitted on behalf of such Program Claimant.) EUSCs not represented by counsel may submit an Enrollment Form, Claim Form, and all other Required Submissions without the assistance of counsel. However, in any event, all Claim Forms and Releases must be properly and fully executed by the EUSCs themselves and Derivative Claimants (in addition to being executed by Counsel, if any, as specified therein).

4.1.11. Dismissal With Prejudice Stipulations shall be executed by the EUSCs’ (other than Eligible U.S. Claimants who do not have a lawsuit pending against DePuy Connected With ASR Hip Implants) respective Counsel, or if not represented by counsel, by the EUSCs .

4.1.12. EUSCs who have not enrolled by the Enrollment Deadline Date shall not be eligible to participate in the U.S. Program except with the consent of DePuy in its sole discretion. A EUSC who timely enrolls in the U.S. Program may be referred to as a “U.S. Program Claimant” or “Enrolled Program Claimant.”

4.1.12.1. All current spouses also must execute by Personal Signature and deliver to the Claims Processor their respective U.S. Program Claimant’s Release and (unless having an unfiled claim) a Dismissal With Prejudice Stipulation in order for such EUSC to enroll in the U.S. Program. However, any term of this Agreement to the contrary notwithstanding, such U.S. Program Claimant shall not be eligible to receive any Settlement Award or payment unless they are in full compliance with the terms herein. Current Spouses and Derivative Claimants have no direct rights or standing under the U.S. Program, and their status under the U.S. Program, and any recovery of \$1500.00 under the PART B Program by current spouses of QUSCs who execute the Release, is totally derivative of that of their related Enrolled U.S. Program Claimant.

4.1.12.2. In the case of spouses who were married to a U.S. Program Claimant at any time during the period from the date of the ASR Index Surgery to the date of this Agreement, and who are now divorced, separated or estranged, the U.S. Program Claimant may provide an indemnity to DePuy and other Released Parties in a form agreed to by the Parties in lieu of execution of the Release by such divorced, separated or estranged spouse.

4.1.13. By submitting an Enrollment Form, the Enrolling Counsel, and all U.S. Program Claimants covered by such Enrollment Forms (and all related Executing

Derivative Claimants), shall be deemed to have agreed to be bound by all of the terms and conditions of this Agreement.

4.1.14. Enrolling Counsel may submit Enrollment Forms for EUSCs on a rolling basis. However, without limitation, DePuy at any time on or prior to the 90th day after the Enrollment Deadline Date, DePuy in its sole and absolute discretion may exercise any right existing under Section 17.2 to cause the Claims Administrator to reject any or all Enrollment Forms submitted by an Enrolling Counsel, in relation to any or all of the U.S. Program Claimants enrolled by that Counsel or with which that Counsel has an Interest.

4.1.15. Any portion of any or all of the Enrollment Forms, Claim Forms, and Required Submissions may be required to be filed electronically. All Enrollment Forms, Claim Forms, and Required Submissions shall be filed under penalty of perjury.

4.1.16. The Claims Administrator, Claims Processor, Special Masters, the SOC, and DePuy, and their respective representatives and others deemed necessary by each to assist them and/or their representatives, will have unlimited access to all submitted Enrollment Forms and other Required Submissions.

#### Section 4.2. Additional Claim Information

4.2.1. The Claims Processor may require Enrolled U.S. Program Claimants to submit such additional medical records (or other records) determined to be material and necessary (i) to determine whether a particular Enrolled Program Claimant meets the *Eligibility Requirements* to qualify for an award, or (ii) for purposes of the *Claims Valuation Process* (any such further required records or other documentation, the “Additional Claim Information”), including in connection with any audits of the U.S. Program. In such cases, the Claims Processor shall issue a written request to the Enrolled Program Claimant’s Counsel, or if without counsel, to the Enrolled Program Claimant.

4.2.2. An Enrolled Program Claimant must produce Additional Claim Information requested pursuant to Section 4.2.1 either within 30 days of service of a written request by the Claims Processor or by the deadline set forth in such request, whichever is later.

4.2.3. Additional Claim Information shall be submitted by means of a Supplementary Claims Form or other means to be determined by the Claims Processor.

#### Section 4.3. Submissions Review

4.3.1. To the extent an Enrollment Form, Release, Claim Form, or other Required Submission is incomplete, the Claims Processor will inform the appropriate U.S. Program Claimant’s Counsel, or if not represented by Counsel, the U.S. Program Claimant, of the deficiency in a written notice and provide the opportunity to correct the deficiency. Failure to respond to and correct the deficiency by the Deadline Date that is specified in the notice of deficiency (which shall be at least 30 days from the sending of the notice of deficiency by the Claims Processor) will result in a determination that the

U.S. Program Claimant has not met the Eligibility Requirements and thus is not entitled to a U.S. Program Award. **Such a determination is final, binding and Non-Appealable.**

4.3.2. Without limitation of Section 4.3.1 or Section 17.2, the Claims Processor (with DePuy's sole and necessary consent) may accept or reject an Enrollment Form in relation to any particular U.S. Program Claimant at any time on or prior to the 90th day after the Enrollment Deadline Date if (i) the Enrollment Form, Claim Form and Release is not properly completed and executed by each Person required to execute such documents, or (ii) such Enrollment Form, Claim Form and/or Release (x) fails to provide the information required therein to be provided in relation to such U.S. Program Claimant, (y) fails to include the other Required Submissions, or (z) fails to include a Dismissal With Prejudice Stipulation executed on behalf of such Program Claimant, and all related Executing Derivative Claimants, by their Counsel or if not represented by counsel, on their own behalf.

4.3.3. The Claims Processor, with the consent to DePuy and SOC, shall establish deadlines and other procedures not inconsistent with this Agreement that are necessary for the timely, accurate, and efficient submission, review, and evaluation of U.S. Program Claims in order to keep the administrative costs of the U.S. Program to a minimum and to allow for the responsible, accurate and fair issuance of U.S. Program Awards. To the extent DePuy and SOC are unable to consent to the establishment of deadlines and other procedures pursuant to this Section 4.3.3, the Claims Administrator will set such deadlines and procedures in conjunction with the Claims Processor and Special Masters. However, in no event, shall any U.S. Program Awards be due or paid or any funding of U.S. Program Awards by DePuy occur until all of DePuy's Walk Away Rights, including the right described in Section 17.2, have expired without any of them being exercised.

Section 4.4. **Unrepresented Claimants**

4.4.1. Enrolled U.S. Program Claimants **who were not represented by counsel** as of November 11, 2013 (or such date decided by the MDL Court upon motion to impose a bar order on any counsel of as of a date earlier than November 11, 2013) are "Unrepresented Claimants." For the avoidance of doubt, if an Enrolled U.S. Program Claimant was represented by **counsel earlier than November 11, 2013 (or any such earlier date decided by the MDL Court), but prior to November 11, 2013** (or such earlier date decided by the MDL Court) had terminated the representation and was unrepresented by counsel on November 11, 2013 (or such earlier date decided by the MDL Court), the Enrolled U.S. Program Claimant is an **Unrepresented Claimant.**

4.4.2. **Unrepresented Claimants who obtain assistance from the SOC or other counsel or who retained counsel after November 11, 2013 (or after such earlier date utilized by the MDL Court to impose a bar order) remain Unrepresented Claimants for purposes of the U.S. Program and are subject to the Unrepresented Claimant reductions applicable in the U.S. Program.**

Article 5

Qualified United States Claimants

Section 5.1. **Qualifying for Base Award**

5.1.1. The Claims Processor will review the Enrollment Form and all Required Submissions of all Enrolled U.S. Program Claimants to determine whether each Enrolled U.S. Program Claimant (1) has submitted all the Required Submissions properly completed (including with respect to any Derivative Claimants), and (2) meets the Eligibility Requirements. Each Enrolled U.S. Program Claimant that the Claims Administrator determines meets the requirements of this Section 5.1 becomes a “Qualified U.S. Program Claimant” or “QUSC”.

5.1.1.1. An Enrolled U.S. Program Claimant has the burden of proof and burden of production that the Required Submissions (including the Claim Package) submitted by such Enrolled U.S. Program Claimant (and any Additional Claim Information that may be requested) establishes that the Enrolled U.S. Program Claimant has met the Eligibility Requirements of Section 2.1.

5.1.1.2. **Any Enrolled U.S. Claimant who has submitted all Required Submissions properly completed, but who is determined by the Claims Administrator not to meet the Eligibility Requirements will have the right to appeal such determination to a Special Master.**

5.1.1.3. Any Enrolled U.S. Program Claimant determined by the Claims Processor to be a QUSC will have his claim evaluated for the appropriate Base Award and any Supplemental Award, if applicable, subject to the reductions, limitations, and additions on such awards as set forth in this Agreement, and all the other terms of this Agreement.

5.1.1.4. The fact that an Enrolled U.S. Program Claimant fails to qualify as a QUSC is confidential and shall not be disclosed outside of the settlement program, nor be admissible in any proceeding or trial, unless such failure involved potential fraud or other intentional misconduct.

5.1.2. The Claims Processor may, to verify completeness of the Required Submissions, or to verify the presence or absence of a fact material to determining that the Eligibility Requirements have been met, or the validity and amount of the U.S. Program Claim, or in cases of inconsistency, suspicion of irregularity, for audit purposes and/or similarly appropriate circumstances, review and analyze other documents or materials that the Claims Processor has access to pursuant to this Agreement or which is requested and submitted as Additional Claims Information.

5.1.3. The Claims Processor promptly shall notify the Claims Administrator, the SOC, and DePuy and the respective Enrolled U.S. Program Claimant, or his Principal Responsible Attorney, in writing, of a determination that the Enrolled U.S. Program

Claimant is not a QUSC because the Eligibility Requirements have not been met pursuant to Section 5.1.1.

5.1.4. Within thirty (30) days following service of the Claims Processor's notice pursuant to Section 5.1.3, an Enrolled U.S. Program Claimant or his Principal Responsible Attorney may appeal such determination to one of the Special Masters by serving written notice of such appeal to the Claims Processor who shall direct such appeal to one of the Special Masters. If an Enrolled U.S. Program Claimant or his Principal Responsible Attorney does not timely serve an appeal pursuant to this Section 5.1.4, the Claims Processor's determination is final, binding, and Non-Appealable, and absent a decision by DePuy to the contrary pursuant to Section 5.1.5, the Enrolled U.S. Program Claimant shall cease to have any further rights under the U.S. Program, and the Claims Processor shall return to the Enrolled U.S. Program Claimant any Dismissal With Prejudice Stipulation and Release previously submitted by that Enrolled U.S. Program Claimant.

5.1.4.1. With respect to any timely appeal under Section 5.1.4, the Special Master will review, for an abuse of discretion, whether the Enrolled U.S. Program Claimant meets the Eligibility Requirements for status as a QUSC based solely on (1) the Required Submissions before the Claims Processor when it issued the award determination, (2) any Additional Claim Information provided by that QUSC to the Claims Processor prior to the issuance of the Claims Processor's award determination, and (3) the terms of this Agreement. No new or additional evidence may be submitted in connection with any appeal.

5.1.4.2. The Special Master's determination of such appeal promptly will be communicated to the Claims Administrator, the SOC, DePuy, and the Enrolled U.S. Program Claimant or his Principal Responsible Attorney. The Special Master's determination of such appeal will be final, binding and Non-Appealable.

5.1.4.3. If the Special Master's decision on this matter results in an Enrolled U.S. Program Claimant becoming a QUSC, the Claims Processor will process the Program Claim pursuant to Section 5.2.

5.1.4.4. If the Special Master's decision on this matter results in the determination that the Enrolled U.S. Program Claimant does not meet the Eligibility Requirements, and absent a decision by DePuy to the contrary pursuant to Section 5.1.5, the Enrolled U.S. Program Claimant shall cease to have any further rights under the U.S. Program, and the Claims Administrator shall return to the Enrolled U.S. Program Claimant any Dismissal With Prejudice Stipulation and Release previously submitted by that Enrolled U. S. Program Claimant. Upon release from the U.S. Program, claimant may pursue any legal rights, if any.

5.1.5. Regardless of any contrary decision of the Claims Processor and/or Special Master, an Enrolled U.S. Program Claimant also will be deemed to be a QUSC if DePuy's representatives, in their sole and absolute discretion, deem (by written notice to

such effect to the Claims Processor) such Enrolled U.S. Program Claimant to constitute a QUSC (for the avoidance of doubt, with or without regard to the Eligibility Requirements).

Section 5.2. **Determination and Appeal of Program Awards**

5.2.1. Pursuant to Article 7, the Claims Processor will make an initial determination for each QUSC of the applicable Base Award under the PART A Base Award Program for that QUSC, if any; any applicable additions or reductions to that proposed Base Award; the proposed Net Base Award, which is the Base Award after application of any additions or reductions to PART A Base Awards for that QUSC.

5.2.2. Pursuant to Article 8, the Claims Processor will make an initial determination for each QUSC who claims an Award under the PART B Program whether a QUSC is eligible for an Award under PART B, the applicable Award under the PART B Program for each QUSC, if any; any applicable additions or reductions to those proposed PART B Awards; and the proposed Net PART B Awards for each QUSC after application of any additions or reductions, for that QUSC including any reductions to PART B EIF Awards to give effect to DePuy's Maximum PART B Payment Obligation.

5.2.3. The determinations by the Claims Processor of PART A Base Awards and PART B Awards for a given QUSC may be issued separately and at different time intervals that, consistent with the other terms of this Agreement, would permit the payment of PART A Base Awards prior to the awarding and payment of any PART B Awards.

5.2.4. The Claims Processor promptly shall notify the Claims Administrator, the SOC, and DePuy and the respective QUSC, or his Principal Responsible Attorney, in writing, of any of the award determinations made under Section 5.2.1 and/or Section 5.2.2.

5.2.5. **Within thirty (30) days following service of any notice of the Claims Processor pursuant to Section 5.2.4, a QUSC or his Counsel may appeal the determination that was the subject of that notice received within thirty (30) days, to one of the Special Masters by serving written notice of such appeal with the reasons for the appeal stated in writing to the Claims Processor. Upon receipt of the notice of appeal, the Claims Processor will review the claim before sending it to one of the Special Masters to determine if the Claims Processor agrees with the QUSC's appeal.** If the Claims Processor agrees with the QUSC's position, the Claims Processor will issue an amended determination notice, which will then provide the QUSC a new period to consider an appeal. If the Claims Processor does not agree with the QUSC's position on appeal, such appeal shall be directed to one of the Special Masters. If a QUSC or his Counsel does not timely serve an appeal pursuant to this Section 5.2.5, the Claims Processor's award determination set forth in the notice provided will be final, binding, and Non-Appealable.

5.2.5.1. With respect to any timely appeal under Section 5.2.5, the Special Master will review, for an **abuse of discretion**, whether the award determination by the Claims Processor was correct based solely on (1) the

Required Submissions before the Claims Processor when it issued the award determination, (2) any Additional Claim Information provided by that QUSC to the Claims Processor prior to the issuance of the Claims Processor's award determination, and (3) the terms of this Agreement. No new or additional evidence may be submitted in connection with any appeal. The Special Master shall determine whether the Claims Processor's award determination should be affirmed or revised in any way.

5.2.5.2. The Special Master's determination of such appeal promptly will be communicated to the Claims Administrator, the SOC, DePuy, and the QUSC or his Counsel.

5.2.5.3. The Special Master's determination of an appeal involving a PART A Base Award or Net Base Award will be final, binding and Non-Appealable. The Claims Processor shall process the Net Base Award as determined by the Special Master.

5.2.6. The Special Master's determination of an appeal involving a PART B Award shall be communicated, in writing, to the Claims Processor, the Claims Administrator, the SOC, and DePuy and the respective QUSC, or his Principal Responsible Attorney, in writing, of any Part B Award.

5.2.6.1. The Special Master, in his or her sole discretion, may assess costs of \$600.00 to a QUSC or his Principal Responsible Attorney upon a finding of no legitimate grounds for the appeal.

5.2.6.2. Within thirty (30) days following service of the Special Master's Part B determination, the Claims Processor may appeal that determination to the Claims Administrator by serving written notice of such appeal upon the Claims Administrator and the QUSC or his Principal Responsible Attorney with the reasons for the appeal stated in writing to the Claims Administrator.

5.2.6.3. If a Claims Processor does not timely serve an appeal pursuant to Section 5.2.6.2, the Special Master's Part B award determination set forth in the notice provided will be final, binding, and Non-Appealable. The Claims Processor will issue an amended determination notice to reflect the Special Master's Part B award determination.

5.2.6.4. Upon receipt of the notice of appeal by the Claims Processor, the Claims Administrator will determine whether the award determination by the Claims Processor and/or Special Master was correct based solely on (1) the Required Submissions before the Claims Processor when it issued the award determination, (2) any Additional Claim Information provided by that QUSC to the Claims Processor prior to the issuance of the Claims Processor's award determination, and (3) the terms of this Agreement. No new or additional evidence may be submitted in connection with any appeal. The Claims

Administrator shall determine whether the Claims Processor's award determination should be affirmed or revised in any way. This determination will be final, binding, and Non-Appealable and the Claims Processor will issue an amended determination notice to reflect the Claims Administrator's Part B award determination.

5.2.7. DePuy shall have no role in the allocation process or the distribution process relating to the PART A Base Award Program or the PART B Award Program. However, DePuy will receive periodic reports from the Claims Processor. If DePuy believes that any such report contains clear error, it may point out such error to the Claims Processor, Special Master, the SOC and/or the Claims Administrator, but is under no obligation to do so.

5.2.8. Nothing in this Article 5 or in any other terms of the Agreement limits DePuy's rights and remedies in the event of fraud or other intentional misconduct.

## Article 6

### U.S. Program: General Terms and Funding

#### Section 6.1. General Provisions

6.1.1. No settlement award payments under PART B shall be funded by DePuy, nor will any settlement award payments under either PART A or PART B be made to QUSCs pursuant to the U.S. Program until all of DePuy's Walk Away Rights, including the right set forth in Section 17.2, have expired without any being exercised.

6.1.2. Broadspire is a voluntary program that was created by DePuy and it is DePuy's unilateral right to determine when the Broadspire program ends. DePuy has determined that once an EUSC enrolls in the U.S. Program, any benefits from Broadspire for that EUSC shall be terminated or otherwise no longer available. Without limiting the effect of the preceding sentence, Broadspire will only review and process claims of EUSCs to the extent such claims were filed prior to October 31, 2013 regardless of the date of the EUSC's enrollment in the U.S. Program.

6.1.3. All awards issued pursuant to the U.S. Program are subject to the provisions on Liens in Article 18.

6.1.4. The consideration for the Releases and Dismissal With Prejudice Stipulations, if applicable, provided by EUSCs is the establishment of the U.S. Program. The U.S. Program has a Base Award Program, which may also be referred to as the "PART A" Program and a Bilateral/Extraordinary Injury Fund ("EIF") Award Program, which is also referred to as the "PART B" Program. The PART A Program contains certain Base Awards for QUSCs, which awards are subject to reductions and limitations. The PART B Program provides supplemental awards other than Base Awards for qualifying QUSCs in connection with Bilateral Revisions, Re-Revision situations, and

Extraordinary Injuries incurred by some QUSCs to the extent such PART B Program Awards are claimed and established by the Claim Package and Additional Claim Information, if any, of the QUSCs in accordance with the terms of this Agreement. PART B Awards also are subject to reductions and limitations as specified.

Section 6.2. No Punitive Damages

By enrolling into the U.S. Program, each Enrolling U.S. Program Claimant (i) acknowledges that all settlement awards paid pursuant to the U.S. Program constitute damages on account of personal injuries or physical injuries or physical sickness within the meaning of Section 104 of the Internal Revenue Code of 1986, as amended, arising from the physical injuries alleged to have resulted from the implantation, use, and/or removal of ASR Hip Implants and/or ASR Revision Surgery, and no portion of the proceeds paid under the U.S. Program represents punitive or exemplary damages, nor prejudgment or post judgment interest, nor non-physical injuries, and (ii) waives any and all claims for punitive or exemplary damages.

Section 6.3. Aggregate Limit on DePuy's Funding Obligations

6.3.1. Assuming exactly 8,000 QUSCs enroll and qualify for PART A Base compensation, DePuy's aggregate maximum funding obligation for all aspects of the U.S. Program (both PART A and PART B) and this settlement is limited to a total of Two Billion Four Hundred Seventy-five Million U.S. Dollars (**\$2,475,000,000.00**) ("Aggregate Maximum Payment Obligation"). This amount includes the funding for both the PART A Base Award Program and the PART B Bilateral/EIF Supplemental Award Program of the U.S. Program.

6.3.1.1. This amount assumes participation by 8,000 QUSCs. In the event there are fewer than 8,000 QUSCs, the Aggregate Maximum Payment Obligation and Maximum PART B Payment Obligation (defined below) will be **subject to proportionate reductions** based on how many QUSCs actually participate in the U.S. Program compared to the estimate of 8,000.

6.3.1.2. In the event there are greater than 8,000 QUSCs, the Aggregate Maximum Payment Obligation and Maximum PART B Payment Obligation will be proportionately increased based on the total number of QUSCs compared to the estimate of 8,000.

6.3.2. For the avoidance of doubt, any Net Investment Earnings (as defined in the Escrow Agreement) shall not increase or decrease the Aggregate Maximum Payment Obligation or Maximum PART B Payment Obligation.

Section 6.4. Aggregate Funding Limit for the PART A Base Award Program

6.4.1. PART A Base Award Program. Assuming exactly 8,000 QUSCs are admitted into the U.S. Program, DePuy shall fund the PART A Base Award Program sufficient to pay the actual Base Awards of those 8,000 QUSCs, but in no event shall it pay more than \$2 Billion into the PART A Base Award Program for 8,000 QUSCs. The

PART A Base Award funding and accounting rules are set forth in Article 6. The PART A payment obligation for DePuy’s for exactly 8,000 QUSCs within the PART A Base Award Program is \$2 Billion minus the reduction amounts for Implantation Length in Section 7.1.2 and Unrepresented Claimants in Section 7.1.3.

Section 6.5. Aggregate Funding Limit for the PART B Award Program

6.5.1. The PART B Bilateral/EIF Award Program (or “PART B”) will operate separately from the PART A Base Award Program. Assuming exactly 8,000 QUSCs are admitted into the U.S. Program, DePuy shall fund exactly U.S. \$475 Million for the PART B Bilateral/EIF Program and this amount will be the “Maximum PART B Payment Obligation”, subject to reduction for the Unrepresented Claimants in Section 7.1.3.

6.5.2. The formula for calculating the actual size of the funding of the PART B Award Program is as follows:

$$\frac{\# \text{ QUSCs}}{8,000} : \frac{\$X}{\$475 \text{ Million}^8}$$

6.5.3. Examples of various DePuy funding level scenarios for the PART B Award Program include, but are not limited to:

6.5.3.1. If exactly 7,000 QUSCs are accepted into the U.S. Program, then the maximum funding of the PART B Award Program by DePuy will be reduced by 12.5% of \$475 million.<sup>9</sup>

6.5.3.2. If exactly 10,000 QUSCs are accepted into the U.S. Program, then the maximum funding of the PART B Award Program by DePuy will be increased by 25% of \$475 million.<sup>10</sup>

6.5.4. If there are 8,000 QUSCs participating in the U.S. Program who are to receive PART A Base Awards and any of those QUSCs will have their PART A Base Awards reduced due to length of implantation under Section 7.1.2, DePuy’s funding for the PART A Base Award Program will be less than the amounts calculated in Section 6.4.

6.5.5. To the extent any QUSCs who are Unrepresented Claimants receive awards under PART A and PART B of the U.S. Program, the amounts funded by DePuy

---

<sup>8</sup> The funding reduction for Unrepresented Claimants set forth in Section 7.1.3 applies here.

<sup>9</sup> The funding reduction for Unrepresented Claimants set forth in Section 7.1.3 applies here.

<sup>10</sup> The funding reduction for Unrepresented Claimants set forth in Section 7.1.3 applies here.

for those programs will be lower than the calculated amount for PART A in Section 6.4 and lower than the Maximum PART B Payment Obligation set forth in Section 6.5 due to the reductions set forth in Section 7.1.3.

Article 7

PART A Base Award Program

Section 7.1. PART A Base Awards and Funding

7.1.1. **Base Awards Accounting.** With respect to the Base Award Program (“PART A”), DePuy will fund precisely \$250,000 for every QUSC involving ASR Revision Surgery with two exceptions pertaining to (1) length of implantation, and (3) a QUSC who had not retained counsel prior to November 11, 2013, or such earlier date if decided by the MDL Court to impose a bar order on any counsel as of a date earlier than November 11, 2013, (“Unrepresented Claimants”).

7.1.2. **Base Award Reduction for Length of Implantation.** For each QUSC involving the Revision of an ASR XL that is accepted by the U.S. Program, DePuy shall fund the Base Award as follows:

Implantation Length from date of ASR Index Surgery to date of ASR Revision Surgery (“X”)	ASR XL Base Award Amount Funding
<sup>11</sup> 180 days < X < 5 Years	\$250,000
5 Years ≤ X < 6 Years	\$225,000
6 Years ≤ X < 7 Years	\$200,000
7 Years ≤ X ≤ 8 Years	\$150,000

7.1.3. **Base Award Reduction for Unrepresented Claimants.** QUSCs who had not retained counsel as of November 11, 2013, or such date decided by the MDL Court upon motion to impose a bar order on any counsel as of a date earlier than November 11, 2013, shall be considered Unrepresented Claimants for purposes of the U.S. Program, even if they retain counsel after that date (or earlier date decided by the MDL Court).

7.1.3.1. **PART A Base Awards and PART B Awards to Unrepresented Claimants.** DePuy shall only be required to fund PART A Base Award payments and PART B Awards to Unrepresented Claimants in amounts equal to 71% of the stated gross award amounts in PART A and PART B. The

---

<sup>11</sup> Patients who were revised less than 180 days following implantation are not eligible for participation in the U.S. Program.

remaining 29% of any such awards shall revert to DePuy. For example, the PART A Base Awards for Unrepresented Claimants applied in connection with the reduction for length of implantation rules are set forth as follows:

Implantation Length from date of ASR Index Surgery to date of ASR Revision Surgery (“X”)	71% Base Award for Unrepresented QUSC <sup>12</sup>
180 days < X < 5 Years	\$177,500
5 Years ≤ X < 6 Years	\$159,750
6 Years ≤ X < 7 Years	\$142,000
7 Years ≤ X ≤ 8 Years	\$106,500

7.1.3.2. To the extent PART B Awards go to Unrepresented Claimants, those PART B awards will be reduced by 29% and the Maximum PART B Payment Obligation shall be reduced by the aggregate amount of all PART B Award reductions because QUSCs were Unrepresented Claimants.

7.1.4. Each QUSC will be entitled to only one PART A Base Award.

7.1.4.1. If a QUSC had bilateral ASR Hip Implants revised (either in a single ASR Revision Surgery or two ASR Revision Surgeries) and the evidentiary requirements set forth herein are satisfied for each ASR Hip Implant, the QUSC will receive one PART A Base Award and one PART B Bilateral Award, subject to any additions, reductions or other limitations as indicated.

7.1.5. In the case of both two bilateral ASR Hip Implants being subject to ASR Revision Surgery, the first ASR Hip Implant in time subject to ASR Revision Surgery will be the PART A Hip for PART A Base Award purposes and the second ASR Hip Implant in time subject to ASR Revision Surgery will be the ASR Hip Implant for purposes of the PART B Award for Bilateral ASR Hip Implant Revision, even if the revisions occurred during a single ASR Revision Surgery surgical procedure.

7.1.6. All PART A Base Awards are subject to the reductions and limitations as set forth herein, the provision on Liens, and the other terms of the Agreement. However, PART A Base Awards are not subject to a proportionate reduction based on the number of QUSCs participating in the PART A Base Award Program.

7.1.7. All Reductions to PART A Base Awards pursuant to Section 7.1 will revert to, or will not be funded by, DePuy and will reduce DePuy’s PART A Base Award Program payment obligation.

7.1.8. The timing and amounts of DePuy’s payments to fund the PART A Base Award Program are set forth in Article 10.

<sup>12</sup> Common Benefit fees and costs will be deducted from these amounts pursuant to MDL CMO 13, as amended.

Section 7.2. Reductions to PART A Base Awards

7.2.1. The following circumstances, if applicable to an individual QUSC who underwent Revision shall result in a reduction of that QUSC's PART A Base Award, but in no instance shall the total reduction amount reduce the payment below the Minimum PART A Base Award set forth in Section 7.4.

7.2.2. Use of Tobacco Products. There will be a 5% reduction of the QUSC's applicable PART A Base Award if the QUSC is identified in the contemporaneous medical records as a **current smoker** at the time of the ASR Revision Surgery.

7.2.2.1. The EUSC has the burden of proof and burden of producing what records the EUSC or their counsel already possess and ordering, obtaining, and submitting at their own expense what additional records are needed to prove the QUSC's (or Product User's) current tobacco use status at the time of the ASR Revision Surgery. EUSCs or their counsel may not intentionally withhold records from the Claims Processor already in their possession or obtained as a result of ordering the records. To the extent, the records submitted to the Claims Processor qualify the EUSC as a QUSC, but do not identify tobacco use status at the time of ASR Revision, the QUSC will be classified as a current smoker as of the ASR Revision Surgery, the applicable reduction will be applied to the QUSC's PART A Base Award, and any applicable PART B Award, and the application of such reduction will not be subject to any review or appeal.

7.2.3. ASR XL Implanted as a Revision Device in place of an ASR XL or Non-ASR hip implant product. Where an ASR XL that was the subject of an ASR Revision Surgery was implanted as a revision device, the PART A Base Award will be reduced by up to 20% (with the exact percentage of reduction to be determined by the SOC).

7.2.4. BMI. There will be a up to 10% reduction of a U.S. Claimant's applicable PART A Base Award if the U.S. Claimant had a BMI of  $\geq 35 < 40$  at the time of the ASR Index Surgery. If the U.S. Claimant had a **BMI** of  $\geq 40 < 50$  at the time of the ASR Index Surgery, the reduction to the applicable PART A Base Award shall be up to 15%. If the U.S. Claimant had a BMI of  $\geq 50$  at the time of the ASR Index Surgery, the reduction to the applicable PART A Base Award shall be up to 20%.

7.2.4.1. The exact percentage of any reduction set forth in this Section will be determined by the SOC.

7.2.4.2. The EUSC has the burden of proof and burden of producing what records the EUSC or their counsel already possess and ordering, obtaining, and submitting at their own expense what additional records are needed to prove the QUSC's (or Product User's) BMI at the relevant time. EUSCs or their counsel may not intentionally withhold records from the Claims Processor already in their possession or obtained as a result of ordering records. To the extent, the records submitted to the Claims Processor qualify the EUSC as a

QUSC, but do not identify BMI at the relevant time, the QUSC will be classified as one having a BMI greater than 50 regardless of actual BMI, the applicable reduction will be applied to the QUSC's PART A Base Award, and any applicable PART B Award, and the application of such reduction will not be subject to any review or appeal.

7.2.5. Death. The PART A Base Award shall be reduced by up to 25% if the Product User of the QUSC died within five years of the date of that QUSC's ASR Revision Surgery and is not entitled to a Death Award under the PART B Award Program (with the exact percentage of reduction to be determined by the SOC).

7.2.6. **Age at Time of Implantation of ASR XL or ASR Resurfacing.** The PART A Base Awards shall be reduced by the percentages shown below based upon the QUSC's age at the time of Implantation of the ASR XL or ASR Resurfacing that was the subject of Revision (with the exact percentage of reduction to be determined by the SOC):

Age at ASR Index Surgery	Percent Reduction
Age ≥ 70	up to 4%
Age ≥ 75	up to 8%
Age ≥ 80	up to 12%
Age ≥ 85	up to 15%

7.2.7. No Reversionary Interest. DePuy has no reversionary interest in the reductions set forth in this Section 7.2, which shall be allocated as additional funding to the PART B Award Program.

Section 7.3. Multiple Reductions

The reductions to PART A Base Awards and PART B Awards shall be calculated separately. If multiple reductions apply to an award, the percentages of all reductions applicable to such award (other than reductions for Length of Implantation or Unrepresented Claimants) shall be added together and the sum total shall be the percentage that such award of that QUSC will be reduced. However, if a QUSC's PART A Base Award is subject to the Length of Implantation and Unrepresented Claimant reductions, those reductions shall be taken first, and all other reductions will be calculated on the remaining amount.

Section 7.4. Minimum PART A Base Award

7.4.1. **Except in cases of Unrepresented Claimants or in cases where the length of implantation lasted more than 5 years, the Minimum PART A Base Award to a QUSC shall be \$150,000, irrespective of the number of reductions.** The only exception to the Minimum PART A Base Award is for length of implantation and Unrepresented Claimants, and the minimum PART A Base Awards for which will be as follows:

<b>Implantation Length from ASR Index Surgery to date of ASR Revision Surgery (“X”)</b>	<b>Minimum PART A Base Award for Represented QUSC</b>	<b>Minimum PART A Base Award for Unrepresented QUSC</b>
5 Years $\leq$ X < 6 Years	\$150,000	\$106,500
6 Years $\leq$ X < 7 Years	\$125,000	\$88,750
7 Years $\leq$ X $\leq$ 8 Years	\$100,000	\$71,000

## Article 8

### PART B Claims and Awards

#### Section 8.1. PART B Claims and Awards.

The PART B Program or Bilateral/Extraordinary Injury Fund (“EIF”) Award Program is established as a means to provide supplemental awards to QUSCs who have incurred specified, unique, or extraordinary injuries in connection with their ASR Hip Implants, ASR Revision Surgery or a subsequent Covered Re-Revision Surgery. QUSCs who claim an award under the PART B Award Program and whose Claim Package and Additional Claim Information, if any, demonstrate to a reasonable degree of medical certainty that the QUSC is entitled to an award under the PART B Award Program, may receive a supplemental award under the PART B Program. Qualifying for a PART A Base Award does not automatically entitle a QUSC to a PART B Award. QUSCs bear the burden of proof in establishing that they qualify for an award or awards under the PART B Award Program. PART B awards are subject to reductions and limitations as indicated and (1) all PART B Awards are subject to reductions in connection with Unrepresented Claimants, and (2) all PART B EIF Awards are subject to reduction due to the Maximum PART B Payment Obligation.

#### Section 8.2. Determinations of PART B Awards

8.2.1. The PART B process is designed to evaluate claims on their merits pursuant to the terms of this Agreement and the contemporaneous medical records of the QUSC’s making a claim pursuant to PART B. The Claims Administrator, Claims Processor, Special Masters (collectively the “Team”), and the SOC will be entirely responsible for the administration, allocation and budgeting of funds under the PART B Program pursuant to the terms of this Agreement and the contemporary Medical Records provided by the QUSC.

8.2.2. Qualifying for a PART A Base Award does not automatically entitle a QUSC to a PART B Award.

8.2.3. The Team may seek information to assist in their impartial allocation of PART B Program Awards from the indicated sources, including from DePuy’s counsel. In addition to the Claim Package and any Additional Claim Information, the Team shall have access to all documents produced by the QUSCs in any pending ASR litigation (e.g.,

fact sheets, documents, interrogatory answers), or for QUSCs without a pending lawsuit, other contemporaneous documents to support their claim under the PART B Award Program. The Team may demand, at their sole discretion and at the QUSC's expense, to obtain additional medical records necessary to properly evaluate a PART B Program claim. The Team has the right to obtain authorizations for the release of medical records, to be obtained at the QUSC's expense, if necessary. The procedures for which will be determined in coordination with the Claims Administrator, Claims Processor, Special Masters and the SOC.

8.2.4. The Claims Administrator, Claims Processor, Special Masters and SOC shall work together to ensure that the PART B Award Program is conducted efficiently and fairly.

8.2.5. The initial determination of eligibility for, and amount of, a PART B Award will be made by the Claims Processor pursuant to Section 5.2 and based on the Claim Package, any Additional Claim Information, and the terms of this Agreement. Appeal rights also are set forth in Section 5.2.

8.2.6. For the avoidance of doubt, there is no discovery process involved in the evaluation or determination of PART B Awards. There are no depositions, no written discovery, no expert reports, affidavits, or hearings or trials in connection with the filing of PART B claims or the evaluation or determination of any PART B Awards. QUSCs have the burden of proof and burden of production with respect to the contemporaneous Medical Records submitted in the Claims Package and any additional contemporaneous Medical Records of such QUSC submitted for establishing that the criteria has been met for any PART B Award.

8.2.7. The categories, criteria, and amounts of PART B Awards are set forth in Sections 8.3 through 8.6, inclusive. Reductions are addressed below and in Article 9. All PART B Awards are subject to reduction for a QUSC being an Unrepresented Claimant and to enforce DePuy's Maximum PART B Payment Obligation.

### Section 8.3. Bilateral ASR Hip Implants Revised

8.3.1. QUSCs who had bilateral hip implants of an ASR XL and/or ASR Resurfacing in the United States and who underwent an ASR Revision Surgery in which only one of those ASR Hip Implants was the subject of an ASR Revision Surgery will receive one base award under PART A, but will reserve all rights with respect to the unrevised ASR hip implant outside of this U.S. Program; and will not be entitled to any Benefits with respect to the unrevised ASR hip implant as part of this U.S. Program (even to the extent that it is subsequently revised).

8.3.2. QUSCs who had bilateral hip implants of an ASR XL and/or ASR Resurfacing in the United States and who had both hips undergo ASR Revision Surgery, will receive one PART A Base Award, subject to all limitations and reductions to PART A Base Awards, and an additional bilateral award under PART B, which shall not be

subject to any reductions or limitations, except the reduction applicable to Unrepresented Claimants under Section 7.1.3.2. The following chart shows illustrates the awards for:

<b># of Sides Revised</b>	<b>Defined</b>	<b>Eligibility for Base Award</b>	<b>Eligible for Bilateral &amp; EIF Awards</b>
0	Both Sides Remain Implanted on August 31, 2013	Not Eligible to Participate	No; All Legal Rights Reserved
1	1 Side That Had Revision Surgery prior to August 31, 2013	Yes	Base Award Eligible EIF Eligible if Qualify
	1 Side That Remains Implanted on August 31, 2013	Not at this time	No Bilateral Revision Award; All Rights Reserved Relating to 2nd Unrevised Hip outside of the U.S. Program
2	Both Sides Underwent Revision Surgery prior to August 31, 2013	Yes: One hip results in PART A Base Award and other hip results in a PART B Award only (reductions apply as indicated)	Bilateral Award Eligible EIF Eligible If Qualify (All limitations and reductions apply to PART A Base Award; certain limitations and reductions apply to PART B Award)

8.3.3. The PART B Award for Bilateral ASR Revision Surgeries will be an amount equal to the gross PART A Base Award to which that QUSC qualified, subject only to the reduction for Unrepresented Claimants, if applicable, and the Maximum PART B Payment Obligation.

Section 8.4. Extraordinary Injury Fund (“EIF”) Award Categories and Benefits -- Present

8.4.1. For purposes of providing EIF Awards to those QUSCs who demonstrate their eligibility to receive such awards, the following are categories of extraordinary medical conditions related to an ASR Revision Surgery or subsequent Covered Re-Revision Surgery, provided such condition(s) occurred prior to January 1, 2014, for which PART B Program Awards may issue if the required criteria are met by the QUSC: (1) Covered Re-Revision, (2) Pulmonary Embolism/Deep Vein Thrombosis, (3) Dislocation, (4) Foot Drop (5) Infection, (6) Myocardial Infarction, (7) Stroke, (8) Death, and (9) Miscellaneous Extraordinary Injury or Damages.

8.4.2. All EIF Awards pursuant to Section 8.4 are Supplemental Awards under PART B and shall be governed by an award schedule to be issued by the SOC in its sole discretion following consultation with the Team and DePuy (“PART B EIF Award Schedule”), which will be part of the Informed Consent materials and subject to the

limitations and reductions set forth below, in Article 9, and DePuy's Maximum PART B Payment Obligation.

**8.4.3. Covered Re-Revision Surgery--Past**

8.4.4. For purposes of this Section and Article 8, in addition to the term ASR Revision Surgery, the following other term is used:

8.4.4.1. "Covered Re-Revision Surgery--Past" means a re-revision surgery to remove the cup of a hip implant device implanted in the QUSC during his/her ASR Revision Surgery on the same hip ("Re-Revision Surgery"), or during subsequent Re-Revision Surgeries on the same hip following the ASR Revision Surgery, provided the surgery (i) occurred on a date prior to April 1, 2014, and (ii) is not an "Excluded Trauma-Related Re-Revision Surgery.

**8.4.5. Eligibility.** QUSCs who underwent a Covered Re-Revision Surgery—Past shall be entitled to a Supplemental Award under PART B (subject to all reductions herein) per Covered Re-Revision Surgery, **except that no PART B award under this Section shall be made where:**

8.4.5.1. the Re-Revision Surgery is an "Excluded Trauma-Related Re-Revision Surgery" which is a Re-Revision Surgery necessitated because of a "Trauma" (as defined in section 1.2.35);

8.4.5.2. QUSCs who are making a claims for a Re-Revision that was caused by an Infection shall be governed by that provision for infection-related re-revisions described in Section 8.4.12 and not this Section;

8.4.5.3. QUSCs who are making claims for a Re-Revision that was caused by Dislocation shall be governed by the provisions for Dislocations in Section 8.4.10 and not this Section.

8.4.6. A PART B Award under Section 8.4 to a QUSC in whom the ASR XL was inserted as a revision device shall be reduced by up to 25% (with the exact percentage of reduction to be determined by the SOC). This reduction does not apply to QUSCs who had an ASR Hip Resurfacing device and then had an ASR Revision Surgery to an ASR XL.

8.4.7. The aggregate total of all awards for Covered Re-Revision Surgeries under Sections 8.4 and 8.5 per QUSC shall not exceed the maximum amount as set forth on the PART B Award Schedule.

8.4.8. The awards for all Covered Re-Revision Surgeries under Section 8.4 and Section 8.5, in the aggregate, shall not exceed the maximum amount per QUSC as set forth on the PART B Award Schedule.

**8.4.9. Pulmonary Embolism and/or Deep Vein Thrombosis.**

8.4.9.1. **Eligibility.** QUSCs who were diagnosed contemporaneously during the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery--Past with a pulmonary embolism (an obstruction of an artery in the lungs caused by a blood clot) or deep vein thrombosis (condition in which a blood clot forms in one or more of the veins in the legs or pelvis) requiring further hospitalization would be entitled to an award under this Section.

8.4.9.1.1. QUSCs who suffered and were diagnosed with a pulmonary embolism or deep vein thrombosis in close temporal proximity to, but following, the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery--Past may be entitled to an award under this Section, provided the ASR Revision Surgery or Covered Re-Revision Surgery—Past was a cause of the pulmonary embolism or deep vein thrombosis and based upon a process to be determined by the Team and SOC at a later date.

8.4.9.2. Only one PART B Award per ASR Revision Surgery or Covered Re-Revision Surgery may be given under this Section, regardless of the number or types of clots, pulmonary emboli, or deep vein thrombosis.

8.4.9.3. The pulmonary embolism or deep vein thrombosis had to have required hospitalization or extended a hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery—Past to be eligible for an award under this Section.

8.4.9.4. However, any PART B Award under this section also may be reduced by up to 50% prior to the calculation of any other reductions (with the exact percentage of reduction to be determined by the SOC), if the QUSC had a past history of a pulmonary embolism or a deep vein thrombosis.

8.4.9.5. The aggregate total of all awards for pulmonary embolism and/or deep vein thrombosis under Sections 8.4 and 8.5 per QUSC shall not exceed the maximum amount as set forth on the PART B Award Schedule.

**8.4.10. Dislocation.**

8.4.10.1. **Eligibility.** QUSCs who, prior to April 1, 2014, required hospitalization for a dislocation event of the femoral head of the hip that underwent an ASR Revision Surgery that is documented by diagnosis in contemporary medical records and which dislocation event necessitated (i) a closed reduction in a Hospital, (ii) an open reduction in a Hospital, or (iii) a Covered Re-Revision Surgery--Past, will be entitled to an award under this Section, subject to the following:

8.4.10.1.1. Dislocation events that occur before the ASR Index Surgery and/or before the ASR Revision Surgery do not qualify for a PART B Award.

8.4.10.1.2. A dislocation event after an ASR Revision Surgery or Covered Re-Revision Surgery--Past that is caused or precipitated by Trauma as defined in Excluded Trauma-Related Revision is not entitled to any PART B Award under this Section.

8.4.10.1.3. Repeat dislocation events that predate the ASR Index Surgery and continue post-ASR Index Surgery evidence a pre-existing condition, and may reduce a PART B Award under this section for otherwise covered dislocations after ASR Revision Surgery up to 50% of the applicable amount (with the exact percentage of reduction to be determined by the SOC).

8.4.10.2. The aggregate total of all awards for dislocation under Sections 8.4 and 8.5 per QUSC shall not exceed the maximum amount as set forth on the PART B Award Schedule.

8.4.10.3. Dislocation and Re-Revision. If a dislocation event was one of the causes of a Covered Re-Revision Surgery--Past, an eligible QUSC's award will issue under this Section and not the provision for Covered Re-Revision Surgery--Past.

**8.4.11. Foot Drop.**

8.4.11.1. **Eligibility.** QUSCs who have suffered injury to the peroneal nerve as a result of the ASR Revision Surgery or Covered Re-Revision Surgery, resulting in the inability to lift the front part of the foot and which is diagnosed during the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery--Past and is documented in contemporaneous medical records as existing more than 90 days after the date of the ASR Revision Surgery or Covered Re-Revision Surgery shall be entitled to a PART B Award under this section.

8.4.11.2. A higher award under this section will be issued for QUSCs qualifying for an award under this Section if the contemporaneous medical records show the qualifying foot drop as continuing to exist more than 365 days after the date of the ASR Revision Surgery or Covered Re-Revision Surgery--Past.

**8.4.12. Infection.**

8.4.12.1. **Eligibility.** QUSCs, who prior to April 1, 2014, underwent treatment for an Infection (i) associated with undergoing the ASR Revision Surgery or a Covered Re-Revision Surgery--Past, (ii) documented in the

contemporaneous medical records, and (iii) which required surgical debridement with prosthesis retention, a Covered Re-Revision Surgery--Past in either a one or two-step procedure, arthrodesis, or extended intravenous antibiotic treatment of at least eight (8) consecutive weeks in length, shall be entitled to a PART B award under this section.

8.4.12.1.1. The Team will create a process for evaluating claims under this section and may employ the services of consulting physicians to assist in evaluating claims under this section. The identity of such consulting physicians must be agreed to by the Parties in advance.

8.4.12.1.2. A QUSC can receive only one PART B Award due to Infection, regardless of the length or number of infections claimed, and only if eligible to receive a PART A Base Award.

8.4.12.1.3. QUSCs who are diagnosed with an Infection following an ASR Revision Surgery hospitalization but where the organism involved was present in the QUSC before the ASR Revision Surgery, may not be eligible for an award under this section (as determined by a process established by the Team and the SOC) if the contemporaneous medical records reflect that an organism identified pre-ASR Revision Surgery was not eradicated prior to the ASR Revision Surgery. The process to evaluate these claims will be determined by the Team as described in Section 8.4.12.1.1.

8.4.12.2. **Infection and Post ASR Re-Revisions.** If Infection was one of the causes for a Covered Re-Revision Surgery, then the QUSC will be eligible to receive benefits for Infection related Re-Revision under this Section, but will not be eligible to receive a Re-Revision award under Section 8.4.5 or other related section.

8.4.12.3. If Infection was the sole cause for a Covered Re-Revision Surgery, then the QUSC will be entitled to a PART B Award on a sliding scale as will be set forth on the PART B Award Schedule with such QUSCs falling into one and only one of the categories as follows:

8.4.12.3.1. At least eight (8) consecutive weeks of intravenous antibiotic treatment;

8.4.12.3.2. Surgical debridement with prosthesis retention;

8.4.12.3.3. Implantation with an antibiotic spacer;

8.4.12.3.4. Arthrodesis, or

8.4.12.3.5. A Covered Re-Revision Surgery.

**8.4.13. Myocardial Infarction Claims.**

8.4.13.1. **Eligibility.** QUSCs who have suffered a myocardial infarction (i) during the ASR Revision Surgery or Covered Re-Revision Surgery--Past, or (ii) during the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery—Past will receive an award under this section.

8.4.13.1.1. QUSCs who suffered and were diagnosed with a myocardial infarction in close proximity to, but following, the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery—Past may be entitled to an award under this Section, provided the ASR Revision Surgery or Covered Re-Revision Surgery--Past was a cause of the myocardial infarction and based upon a process to be determined by the Team and SOC at a later date.

8.4.13.2. An eligible QUSC under this Section will receive an award under this section based upon (a) the pre- and post- myocardial infarction change in Functional Classification (as defined by the New York Heart Association) and (b) the QUSC's age on the date of the myocardial infarction, according to the PART B Award Schedule.

8.4.13.3. Only one PART B Award may be given under this section, regardless of the number, type or location of myocardial infarctions suffered.

**8.4.14. Stroke Claims.**

8.4.14.1. **Eligibility.** If a QUSC suffers a stroke (as defined) (i) during the ASR Revision Surgery or Covered Re-Revision Surgery--Past, or (ii) during the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery--Past, the QUSC is entitled to an award under this section.

8.4.14.1.1. QUSCs who suffered and were diagnosed with a stroke in close proximity to, but following, the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery--Past may be entitled to an award under this section, provided the ASR Revision Surgery or Covered Re-Revision Surgery—Past was a cause of the stroke and based upon a process to be determined by the Team and SOC at a later date.

8.4.14.2. An award under this section shall be based upon (a) the American Heart Association Stroke Outcome Classification and (b) the age of the patient on the date of the stroke, according to the PART B Award Schedule which will be part of the Informed Consent materials.

8.4.14.2.1. A transient ischemic attack or “TIA” is not considered a stroke for purposes of this section.

8.4.14.3. Only one award may be given under this section, regardless of the number or types of strokes suffered.

**8.4.14.4. Death due to the ASR Revision Surgery or Covered Re-Revision Surgery.**

8.4.14.5. **Eligibility.** A QUSC whose Product User died (i) during the ASR Revision Surgery or Covered Re-Revision Surgery--Past, or (ii) during the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery--Past is eligible to receive an award under this section.

8.4.14.5.1. A QUSC whose Product User died in close temporal proximity to, but following, the hospitalization for the ASR Revision Surgery or Covered Re-Revision Surgery--Past may be entitled to an award under this Section, provided the ASR Revision Surgery or Covered Re-Revision Surgery--Past was a cause of the death and based upon a process to be determined by the Team and SOC at a later date.

8.4.14.6. A PART B Award for death under this section shall be calculated based upon the PART B Award Schedule using the following factors as of the date of the Product User’s death: namely, whether the Product User (i) was married, (ii) had minor or financially dependent children, (iii) had adult children, (iv) had financially dependent parents, if such claims would be recognized under applicable state law, and (v) had lost income as calculated below.

8.4.14.6.1. There will be a minimum award under this section as set forth on the PART B Award Schedule.

8.4.14.6.2. Where applicable under state law, an award pertaining to a deceased Product User’s lost income under this section will be calculated as the sum of the following: (x) the percentage of the “adjusted current annual income” equal to the number of days from the date of death to the end of the year divided by 365; and (y) the present value of the future “adjusted current annual income,” beginning the year following the death, ending the year of the Product User’s 62nd birthday, and discounted to the Date of Enrollment at a net interest rate of 1.0% (which percentage is calculated as the difference between 3.0% growth and a 4.0% discount rate), less an amount for personal consumption. If the Product User had no such income or was age 62 at the time of death, then there is no payment for lost wages under this section.

8.4.14.7. Under no circumstances shall the total award under this Section 8.4.14, prior to the application of limitations and reductions, exceed the maximum amount set forth on the PART B Award Schedule.

8.4.14.8. Where the Product User of a QUSC died and the QUSC qualifies for a PART B Award pursuant to this Section 8.4.14 for Death Claims due to the ASR Revision Surgery or Covered Re-Revision Surgery, the QUSC is not eligible for any other PART B Awards, regardless of circumstances, other than for Bilateral ASR Revision Surgery.

**8.4.15. Miscellaneous Extraordinary Injury Awards.**

8.4.15.1. **Eligibility.** A QUSC who, as a result of the ASR Revision Surgery or Covered Re-Revision Surgery, has incurred truly extraordinary injuries and/or losses that were neither anticipated nor expressly addressed by the other terms of the PART B Award Program may apply for a PART B Award under this Section 8.4.15, which awards are subject to all reductions and limitations set forth in the Agreement.

8.4.15.1.1. The categories of losses under this Section 8.4.15 can include actual extraordinary unreimbursed out-of-pocket loss of earnings, subject to criteria (including thresholds, maximum awards, and other limitations, which may, in part, be based on the percentage of annual out-of-pocket income lost) that will be within the sole discretion of the SOC, after consulting with the Team.

8.4.15.2. The Claims Administrator will exercise his/her discretion in determining the QUSC's eligibility to receive an award under this Section 8.4.15 and the amount of any such award.

8.4.15.2.1. All Miscellaneous Extraordinary Injury Awards issued pursuant to this Section shall count against, and be limited by, the applicable PART B Maximum Payment Obligation and the applicable Aggregate Maximum Payment Obligation.

8.4.15.2.2. No eligible QUSC may receive an award, singularly or in the aggregate, under this section in excess of the maximum awards as set forth on the PART B Award Schedule.

8.4.15.3. Miscellaneous Extraordinary Injury Awards are limited to items not otherwise expressly addressed in the other sections of the PART A Base Award Program and PART B Awards Program of the U.S. Program.

8.4.16. **Age.** The age of a QUSC at the time of the ASR Revision Surgery or Covered Re-Revision Surgery may be a factor in the determination and amount of PART B Awards granted pursuant to the criteria set forth in this Article 8.

8.4.17. **Severity / Duration.** The severity and duration of eligible injuries may be factors in the determination and amount of PART B Awards granted pursuant to the criteria set forth in this Article 8.

Section 8.5. Future Extraordinary Injury Fund (“EIF”) Award Categories and Benefits

8.5.1. An additional benefit of the PART B Program is that it provides eligible QUSCs with the ability to recover a PART B Award as a result of extraordinary medical conditions that occur on or after April 1, 2014, provided the condition is related to an ASR Revision Surgery or Covered Re-Revision Surgery and occurs within two (2) years of the ASR Revision Surgery (“Future EIF Benefit”).

8.5.2. For purposes of providing Future EIF Benefits to those QUSCs who demonstrate their eligibility to receive such awards, the categories of extraordinary medical conditions are the same as set forth in Section 8.4, namely: (1) Covered Re-Revision, (2) Pulmonary Embolism/Deep Vein Thrombosis, (3) Dislocation, (4) Foot Drop, (5) Infection, (6) Myocardial Infarction, (7) Stroke, (8) Death, and (9) Miscellaneous Extraordinary Injury or Damages.

8.5.3. For a QUSC to demonstrate eligibility to receive an award for a Future EIF Benefit, all such conditions must be demonstrated by contemporaneous Medical Records according to the criteria for such medical condition as set forth in Section 8.4, except that the medical condition arose on or after April 1, 2014, but within two (2) years of the ASR Revision Surgery and/or within 547 days (one and one-half year) of a Covered Re-Revision Surgery, and are subject to the following other limitations below.

8.5.4. All Future EIF Benefits are subject to the limitations and reductions set forth in the Agreement, including but not limited to the Unrepresented Claimant reduction and the Maximum PART B Payment Obligation, and the provision on Liens.

8.5.5. All Future EIF Benefits, with the exception of Covered Re-Revisions and Myocardial Infarction, shall be subject to an additional reduction of up to 75% (with the exact percentage of reduction per category to be determined by the SOC) from the awards under Section 8.4 as set forth on the PART B Award Schedule, which will be part of the Informed Consent materials.

8.5.6. **Covered Re-Revision Surgery -- Future.** QUSCs who, on or after April 1, 2014, underwent re-revision surgery to remove the cup of a hip implant device implanted in the QUSC during his/her ASR Revision Surgery on the same hip (“Re-Revision Surgery”), or during a subsequent a Re-Revision Surgery on the same hip following the ASR Revision Surgery, provided the surgery (i) occurred on a date within two (2) years of the date of the ASR Revision Surgery on that hip, (ii) occurred on a date within 547 days of another Covered Re-Revision Surgery, and (iii) is not an Excluded Trauma-Related Re-Revision Surgery (collectively a “Covered Re-Revision Surgery”), is entitled to an award under this Section, subject to the other limitations of Section 8.4.

8.5.6.1. Awards for all Covered Re-Revision Surgeries pursuant to Sections 8.4 and Section 8.5 for a qualifying QUSC in the aggregate cannot exceed the maximum amount as set forth on the PART B Award Schedule.

8.5.7. **Pulmonary Embolism and Deep Vein Thrombosis.** Any PART B Award under this Section 8.5.7 also may be reduced by up to 50% (with the exact percentage of reduction to be determined by the SOC), if the QUSC had a past history of a pulmonary embolism or deep vein thrombosis.

8.5.7.1. The aggregate total of all awards for pulmonary embolism and/or deep vein thrombosis under Sections 8.4 and 8.5 per QUSC shall not exceed the maximum amount as set forth on the PART B Award Schedule.

8.5.8. **Dislocation.** Dislocation events occurring on or after April 1, 2014 also must occur within 365 days after the date of a Covered Re-Revision Surgery on that hip and within two (2) years of the ASR Revision Surgery on that hip, in addition to the criteria in Section 8.4, for a QUSC to be eligible under this Section.

8.5.8.1. The aggregate total of all awards for dislocation under Sections 8.4 and 8.5 per QUSC shall not exceed the maximum amount as set forth on the PART B Award Schedule.

8.5.9. **Infection.** Infections occurring on or after April 1, 2014 also must develop on or before a date that is 547 days (1 ½ years) after the date of a Covered Re-Revision Surgery and within two (2) years from the date of the QUSC's ASR Revision Surgery, in addition to the other criteria in Sections 8.4 and 8.5, for a QUSC to be eligible under this Section.

8.5.10. **Myocardial Infarction Claims.** A PART B Award for a Myocardial Infarction occurring on or after April 1, 2014 that meets the criteria under Sections 8.4 and 8.5 shall be calculated in the same manner as set forth in Section 8.4, except that the award will be reduced by as much as 50% (with the exact percentage of reduction to be determined by the SOC) from the awards under Section 8.4 as set forth on the PART B Award Schedule, which will be part of the Informed Consent materials.

8.5.11. **Stroke Claims.** A PART B Award for a stroke occurring on or after April 1, 2014 that meets the criteria under Sections 8.4 and 8.5 shall be calculated in the same manner as set forth in Section 8.4, except that the award will be reduced by as much as 75% (with the exact percentage of reduction to be determined by the SOC) from the awards under Section 8.4 as set forth on the PART B Award Schedule, which will be part of the Informed Consent materials.

8.5.12. **Future Death Claims due to the ASR Revision Surgery or Covered Re-Revision Surgery.** A PART B Award for a Product User's death occurring on or after April 1, 2014 that meets the criteria under Sections 8.4 and 8.5 shall be calculated in the same manner using the same factors as set forth in Section 8.4, except that the award will be reduced by as much as 75% (with the exact percentage of reduction to be determined by the SOC) from the awards under Section 8.4 as set forth on the PART B Award Schedule, which will be part of the Informed Consent materials.

Section 8.6. Current Spouses of QUSC's Who Execute Releases

A QUSC's current spouse who executes the Release of their spouse that is submitted to the Claims Processor at the time of enrollment in the U.S. Program shall receive a one-time payment from PART B of \$1500.00 regardless of whether that QUSC qualifies for a PART B Award, provided that the current spouse was married to the QUSC at any time during the period from the date of the QUSC's ASR Index Surgery to the date of this Agreement. This payment shall be made (i) subject to the reduction for Unrepresented Claimants and the assessment under CMO-13, as amended, (ii) not subject to the reduction of other PART B EIF Awards that may be required to comply with DePuy's Maximum PART B Payment Obligation, and (iii) at the time the spouse's QUSC receives his/her PART A Base Award.

Article 9

Reductions to PART B Awards

Section 9.1. PART B Award Reductions

9.1.1. In addition to any other reductions or limitations to PART B Awards set forth herein and the Maximum PART B Payment Obligation, the PART B EIF Awards under Sections 8.4 and 8.5 shall be subject to the following reductions:

9.1.1.1. There will be an up to 10% reduction of the QUSC's applicable PART B Award if the QUSC (or Product User) was a current smoker of cigarettes or other tobacco products at the time of ASR Revision Surgery or Covered Post-ASR Re-Revision Surgery as reflected in the contemporaneous medical records (with the exact percentage to be determined by the SOC). However, the same burden of producing records and irrebutable presumption in the absence of records set forth in Section 7.2.2.1 shall apply to PART B Awards.

9.1.1.2. Being an Unrepresented Claimant shall reduce any PART B Award by 29%.

9.1.1.3. There will be an up to 10% reduction of the QUSC's applicable PART B Award if the QUSC had a BMI of 35 or greater at the time of ASR Index Surgery, a reduction of up to 25% of the QUSC's applicable PART B Award if the QUSC had a BMI of 40 or greater at the time of ASR Index Surgery (with the exact percentages to be determined by the SOC). However, the same burden of producing records and irrebutable presumption in the absence of records set forth in Section 7.2.4.2 shall apply to PART B Awards, except that in the absence of records a BMI of greater than 40 shall be presumed and a reduction of 25% shall be applied to any applicable PART B Award.

9.1.1.4. There will be an up to 25% reduction of the QUSC's applicable PART B Award if the QUSC (or Product User) died within 5 years of the ASR Revision Surgery (with the exact percentage to be determined by the SOC). This reduction is not applicable if the QUSC qualified for a PART B Award for Death.

9.1.2. The amount of any reductions to PART B Awards shall be retained as part of the funding amount for PART B Awards, including Miscellaneous Extraordinary Injury Awards, except that the reductions due to a PART B Award recipient being an Unrepresented Claimant shall **revert to/be retained by DePuy and those amounts shall reduce the Maximum PART B Payment Obligation.**

9.1.3. No PART B Award can be paid until all PART B Award Claims of all QUSCs have been issued and are final, binding and Non-Appealable. Depending on the aggregate amount of all PART B Awards, the PART B EIF Awards are subject to reduction necessary for the PART B Award Program not to exceed the applicable Maximum Part B Award Payment Obligation or the Aggregate Maximum Payment Obligation. Interim PART B Award payments are addressed in Article 10 on Award Funding.

Section 9.2. Appeals of PART B Awards

9.2.1. The appeal right in connection with PART B Awards is set forth in Section 5.2.

Article 10

Timing of DePuy's Funding Obligations

Section 10.1. Timing of PART A Base Award Payments.

10.1.1. DePuy agrees, subject to the terms and conditions hereof (including in particular Sections 6.3, 6.5, 10.3, and Article 17), to make the payments that it is required from time to time to fund the net PART A Base Award payments.

10.1.2. Promptly after the end of each calendar week, the Claims Processor shall provide to DePuy and the SOC, a report in such form and in such detail as DePuy (in consultation with the SOC) reasonably from time to time may specify, identifying those EUSCs who have qualified as QUSCs together with the amount of each QUSC's PART A BASE Award, and certifying those PART A Base Awards in accordance with the Agreement that are final, binding and Non-Appealable and not subject to audit (or having successfully completed an audit).

10.1.3. Within thirty (30) days after the expiration of DePuy's Walk Away Rights having expired, including the right under Section 17.2, without having been exercised, the Claims Processor shall provide to DePuy, the SOC and the Escrow Agent an Initial PART A Funding Report, a report in such form and in such detail as DePuy (in

consultation with the SOC) reasonably from time to time may specify, identifying those EUSCs who have qualified as QUSCs together with the amount of each QUSC's PART A BASE Award, setting forth the assessment amounts for each QUSC as per CMO-13, as amended, and certifying those PART A Base Awards in accordance with the Agreement that are final, binding and Non-Appealable and not subject to audit (or having successfully completed an audit) (a "Initial PART A Funding Report").

10.1.4. Within fifteen (15) Business Days following the receipt of the Initial PART A Funding Report, and having no objection to its accuracy, DePuy will deposit or cause to be deposited into the Escrow PART A Settlement Fund, an amount sufficient to pay the aggregate amount of the Initial PART A Funding Report (with the holdback amounts pursuant to CMO-13, as amended, being funded into an escrow account or sub-accounts for that purpose), less a credit in the amount equal to DePuy's initial start-up deposit pursuant to Section 11.2.2.

10.1.5. Beginning ten (10) Business Days following the delivery of the Initial PART A Funding Report to DePuy, the Claims Processor shall deliver to DePuy and the SOC Supplemental Funding Lists on both the 15<sup>th</sup> and last day of each month, identifying those EUSCs who, subsequent to the Initial PART A Funding List, have qualified as QUSCs together with the amount of each QUSC's PART A BASE Award, setting forth the assessment amounts for each QUSC as per CMO-13, as amended, and certifying those PART A Base Awards in accordance with the Agreement that are final, binding and Non-Appealable and not subject to audit (or having successfully completed an audit) ("Supplemental PART A Funding Report").

10.1.6. Within fifteen (15) Business Days following the receipt of each Supplemental Funding Report, and having no objection to its accuracy, DePuy will deposit or cause to be deposited into the Escrow PART A Settlement Fund, an amount sufficient to pay the aggregate amount of such Supplemental PART A Funding Report (with the holdback amounts pursuant to CMO-13, as amended, being funded into an escrow account or sub-accounts for that purpose).

10.1.7. The Initial PART A Funding Report and all Supplemental PART A Funding Reports shall identify the amount of reductions from PART A Base Awards that shall be retained by DePuy and reduce the Aggregate Maximum Payment Obligation and the amount of those reductions that will be transferred to the funding of the PART B Program.

10.1.8. Each Supplemental PART A Funding Report shall also identify the number of Enrolled U.S. Program Claimants who have not yet been qualified for a PART A Base Award and whose claim remains pending. The Claims Processor will also identify the last Supplemental PART A Funding Report as the FINAL Supplemental PART A Funding Report when no further PART A claims remain pending or subject to appeal or audit.

10.1.8.1. The Claims Processor forthwith shall provide DePuy with such further information concerning any PART A Funding Reports or any entry on any such report as DePuy reasonably shall request.

10.1.9. Within five (5) Business Days following the electronic transfer of funds into the Escrow Account in response to any PART A Funding Report, the Claims Processor shall deliver to the Escrow Agent, DePuy, and the SOC, a Disbursement List. The Disbursement List shall provide the Escrow Agent with instructions for disbursing funds recently deposited by DePuy to the QUSCs and their respective Primary Law Firm, or to the QUSC's Primary Law Firm in trust for the respective QUSCs.

10.1.10. To the extent DePuy objects to the accuracy of any PART A Funding Report or Disbursement List, DePuy must inform the Claims Administrator, Claims Processor, Escrow Agent and SOC of its objections, which will not be funded or paid as part of such Funding Report or Disbursement List. If the objections are agreed to by the Claims Administrator, Claims Processor, or the SOC, such Funding Report or Disbursement List to which objection were taken, is to be corrected and included on the next Funding Report or Disbursement List. If there is a dispute over whether the objections are well taken, the matter will be resolved by one of the Special Masters whose decision will be final, binding and Non-Appealable.

10.1.11. Promptly after the end of each week, the Escrow Agent shall submit to DePuy, the SOC and the Claims Administrator a report, in such form and in such detail as DePuy (in consultation with the SOC) reasonably from time to time may specify (an "Escrow Funds Report"), itemizing and certifying all payments or transfers out of the Escrow PART A Awards Settlement Funds during the preceding week and the balance on hand in each Escrow Fund as of the end of such week. The time of these reports may be adjusted with the agreement of DePuy and the Escrow Agent.

## Section 10.2. Timing of PART B Award Payments

10.2.1. DePuy agrees, subject to the terms and conditions hereof (including in particular Sections 6.3, 6.5, 9.1, 10.3 and Article 17), and in consultation with the Claims Processor, to make the payments that it is required from time to time to make the payments necessary to fund the net PART B Awards.

10.2.2. DePuy agrees that it will fund the amounts sufficient to pay the net PART B Bilateral ASR Revision Awards at the time the net PART A Base Awards for such Bilateral QUSCs are funded pursuant to Section 10.1, and such PART B Bilateral ASR Revision Award payments count against the Maximum PART B Payment Obligation in their entirety.

10.2.3. The Parties, in consultation with the Claims Processor, shall meet and confer and agree to the exact timing of payments to be made by DePuy from time to time into the Escrow Account established by the Escrow Agreement to make its remaining funding payments for the PART B Program, which will be made on a periodic basis by June 1, 2015, provided:

10.2.3.1. Other than the payment pursuant to Section 11.2.2, no other payments shall be made by DePuy until its Walk Away Rights, including its rights under Section 17.2, if applicable, have expired; and

10.2.3.2. No interim payments shall be made under PART B EIF Awards unless and until the Parties, in consultation with the Team, agree to the conditions and circumstances under which interim payments of PART B Awards may be made and at what amounts.

10.2.4. The Claims Administrator and Special Masters shall have no role, other than a consultative one at the request of the Parties, in determining the timing of the funding of PART B Payments and the conditions and circumstances under which interim payments may be made and at what amounts.

### Section 10.3. Limit on Award Funding and Payments

10.3.1. DePuy's maximum payment obligation under PART B of the U.S. Program is the Maximum PART B Payment Obligation as defined and determined according to the formula set forth in Section 6.5.

10.3.1.1. For the avoidance of doubt, any Net Investment Earnings (as defined in the Escrow Agreement) shall not increase or decrease the Aggregate Maximum Payment Obligation or Maximum PART B Payment Obligation.

10.3.2. The Maximum PART B Payment Obligation is part of, and counts against, the Aggregate Maximum Payment Obligation. For avoidance of doubt, the Maximum PART B Payment Obligation is not in addition to DePuy's Aggregate Maximum Payment Obligation.

10.3.3. Under no circumstances will DePuy or any Released Party in the aggregate be required to pay more than the Aggregate Maximum Payment Obligation in connection with this Agreement or the Maximum PART B Payment Obligation in connection with the PART B Award Program under this Agreement.

10.3.4. All PART B Awards, including but not limited to any PART B EIF Awards and Bilateral PART B awards, shall count against both the Maximum PART B Payment Obligation and DePuy's Aggregate Maximum Payment Obligation.

10.3.5. To the extent all PART B Awards would require funding that exceeds the Maximum PART B Payment Obligation unless reduced, all PART B EIF Awards will be reduced sufficient to permit the payment of all PART B awards and remain within the Maximum PART B Payment Obligation.

10.3.6. Individual PART A Base Awards are not subject to a proportionate reduction due to the number of Qualified U.S. Program Claimants. However, all awards including PART A Base Awards and PART B Awards, are subject to the reductions and

limitations set forth in the Agreement and to DePuy's Walk Away Rights, including but not limited to, the right set forth in Section 17.2.

10.3.7. Any term of this Agreement (or any Escrow Agreement) to the contrary notwithstanding, DePuy shall have no financial obligation under this Agreement other than its express obligations to make Funding Payments as described in Section 10.1, Section 10.2, Section 11.2.2, and Article 18. DePuy shall have no obligation to pay (or to make any Funding Payment on account of), or reimburse any Enrolled or Qualified Program Claimant or Enrolling Counsel for, any costs or expenses incurred by such Enrolled or Qualified Program Claimant or Enrolling Counsel in connection with the U.S. Program. Neither DePuy nor any of the other Released Parties shall have any responsibility for the management of any of the Escrow Funds or any Liability to any U.S. Program Claimant arising from the handling of U.S. Program Claims by the Claims Administrator, Claims Processor, Special Masters or Escrow Agent.

10.3.8. Any term of this Agreement (or any Escrow Agreement) to the contrary notwithstanding, in no event shall DePuy be required to make any Funding Payment to the extent that:

10.3.8.1. the making of such Funding Payment would result in the aggregate deposits by DePuy into Settlement Fund Escrow Accounts (including any assessment amounts pursuant to CMO-13, as amended, and the amount deposited pursuant to Section 11.2.2) exceeding the Aggregate Maximum Payment Obligation; or

10.3.8.2. the aggregate deposits made by DePuy into the Escrow PART B Settlement Fund (including any holdback amounts pursuant to CMO-13, as amended) would exceed the Maximum PART B Payment Obligation.

10.3.9. Any term of this Agreement to the contrary notwithstanding, in no event shall:

10.3.9.1. the aggregate of all PART A Awards and PART B Awards exceed the Aggregate Maximum Payment Obligation; and/or

10.3.9.2. the aggregate of all PART B Awards (without regard to transfers to the PART B Program from certain reductions to PART A Awards) exceed the Maximum PART B Payment Obligation.

#### Section 10.4. Form of Notices to Escrow Agent

10.4.1. Notices to the Escrow Agent shall be in such form as the Escrow Agent reasonably may specify from time to time.

Article 11

U.S. Program Administration Costs and Expenses

Section 11.1. Administrative Costs

11.1.1. The reasonable and necessary administrative costs and expenses for the operation of the U.S. Program, including the fees, costs, and expenses of the Claims Administrator, Claims Processor, Special Masters, any physician consultants or other administrators, and the fees of the Escrow Agent, shall be the sole responsibility of the QUSCs and their Counsel, and shall be paid from an ASR HIP Administrative Expenses Escrow Account, which account shall be established within ten (10) business days following the execution of the Agreement and the Escrow Agreement, which will be substantially in the form of Exhibit 11.1.1.

11.1.2. The Escrow Agent is JPMorgan Chase Bank, N.A., or such other Person or Persons from time to time appointed by DePuy, with the consent of SOC (not to unreasonably be withheld), to fulfill the functions of the Escrow Agent under the Escrow Agreement (so long as such Person or Persons continues to serve in such capacity).

11.1.3. The Escrow Agreement shall also establish other escrow accounts or sub-accounts to hold funds pertaining to the settlement payments for the PART A Base Awards Program and the PART B Awards Program.

Section 11.2. Funding of Administrative Expenses Escrow Account

11.2.1. The funding of the ASR HIP Administrative Expenses Escrow Account shall be as follows:

11.2.2. Within ten (10) business days following the establishment of the ASR HIP Administrative Expenses Escrow Account, DePuy will pay or caused to be paid to the Claims Processor the sum of Two Million Dollars (\$2,000,000.00) and will deposit or cause to be deposited in the ASR HIP Administrative Expenses Escrow Account the sum of Eight Million Dollars (\$8,000,000.00). This aggregate amount of Ten Million Dollars (\$10,000,000.00) is the initial start-up amount for the Administration of the U.S. Program, which amount will be applied against/credited toward DePuy's funding of the Base Awards of PART A when those awards are funded by DePuy pursuant to Section 10.1.2. This amount also shall count against DePuy's Aggregate Maximum Payment Obligation. If this Agreement is terminated and any of this amount remains uncommitted following the wind up of the U.S. Program, it will be refunded promptly to DePuy.

11.2.2.1. The SOC shall obtain a court order from the MDL Court requiring the assessment of 6% on all settlement payments for Common Benefit Fees and Expenses, which amounts shall be a holdback from PART A and PART B Awards. DePuy shall reduce its Funding Payments by 6% and shall transfer such amounts to the designated escrow accounts to receive these assessed amounts under CMO-13. However, such amounts constitute settlement payments

under this Agreement and count toward and are credited against DePuy's Aggregate Maximum Payment Obligation, and assessments in connection with PART B Awards also count toward and are credited against DePuy's Maximum PART B Payment Obligation.

11.2.2.2. To the extent any Net Investment Income is earned on any funds held in the Escrow Accounts held by the Escrow Agent, it shall be used to pay the administrative expenses of the U.S. Program, including the fees of the Escrow Agent.

Section 11.3. Payments of U.S. Program Administrative Expenses

11.3.1. The Parties, Claims Administrator, Claims Processor and the Escrow Agent shall agree to a written procedure for the invoicing of the reasonable and necessary administrative costs and expenses of the U.S. Program, the review and approval of such invoices and the payment of such invoices.

Section 11.4. Audits of Administrative Expenses and Payments

11.4.1. The Parties, Claims Administrator, Claims Processor and the Escrow Agent shall agree to a written procedure for the auditing of the reasonable and necessary administrative costs and expenses of the U.S. Program and for the receipt and review of such audit reports.

Article 12

Administrators

Section 12.1. Appointment and Replacement of Administrative Personnel

12.1.1. **This is a private agreement and not subject to court approval.**

12.1.2. The administrative personnel for the U.S. Program include the Claims Administrator, Claims Processor, Special Masters, consulting physicians, if necessary, and an Escrow Agent.

12.1.3. In the event that DePuy, on the one hand, and a majority in number of the SOC, on the other hand, at any time cannot agree on (i) the identity of any Administrator (including any replacement Administrator), (ii) whether a particular Administrator should be terminated (or any other exercise of rights under any *Administrative Agreement* that requires for such exercise joint action of DePuy and the SOC (or a majority in number of the SOC) or (iii) the terms and conditions of a proposed Administrative Agreement, DePuy or the SOC may, by notice to such effect to the other and to the Claims Administrator, refer the matter to the Claims Administrator. If the Claims Administrator, or the proposed Administrative Agreement of the Claim Administrator, is the subject of the dispute, then the references in the preceding sentence, and in Sections 12.1.4 and 12.1.5 to the "Claims Administrator" shall be to one of the

Special Masters, who is not involved and who has not rendered a decision in connection with the matter at issue, will be randomly selected.

12.1.4. In the event of a dispute described in clause (iii) of Section 12.1.3, DePuy, on the one hand, and the SOC, on the other, shall, within five (5) Business Days of referral of such matter to the Claims Administrator, submit to each other and the Claims Administrator, its proposed form of Administrative Agreement. Either DePuy or the SOC may, in its discretion, within a further five Business Days, submit to each other and the Claims Administrator a memorandum supporting its position. If two proposed forms of Administrative Agreements are submitted, the Claims Administrator shall select between the two proposed forms of agreement on the basis of which proposed agreement in its opinion more closely reflects what is customary and “market” for agreements of the nature contemplated by the relevant Administrative Agreement (entered into in the context of programs of the nature of the Program) and such other matters as the Claims Administrator shall consider appropriate under the circumstances.

12.1.5. Any decision of the Claims Administrator pursuant to this Section 12.1 shall be final and Non-Appealable and binding on the Parties and (without limitation of the foregoing) the Parties shall take all actions required in order to implement such decision.

#### **Section 12.2. Claims Administrator**

12.2.1. The Claims Administrator will oversee the U.S. Program and will work with the Claims Processor, the Special Masters, SOC and DePuy, and others to ensure that the express terms and intent of the Agreement are properly and fairly applied in the U.S. Program and that clear errors are avoided.

12.2.2. **The Claim Administrator is James J. McMonagle, Esq.**, and/or his agents, or upon his resignation or removal, any Person(s) to be appointed by the Parties to oversee the administration of claims for benefits and to make final and binding determinations under this Agreement with the authority of an **Arbitrator** under the Federal Arbitration Act.

#### **Section 12.3. Claims Processor**

12.3.1. The **Claims Processor is BrownGreer PLC**, 250 Rocketts Way, Richmond, VA 23231, Telephone: (804) 521-7202, Facsimile: (804) 521-7299, or upon its resignation or removal, any Person(s) to be appointed by the Parties to oversee the administration of claims for benefits and to make final and binding determinations under this Agreement with the authority of an Arbitrator under the Federal Arbitration Act.

12.3.2. The Claims Processor may hire paralegal or administrative assistant(s), as needed in the discretion of the Claims Processor and the consent of the Claims Administrator. Any such hires shall be compensated by the Administrative Program Fund, at a rate which shall be approved by a majority of the SOC and the Claims Administrator.

**Section 12.4. Special Masters**

12.4.1. The private Special Masters will be selected by the agreement of DePuy and the majority in number of the SOC. There will be three private Special Masters retained to perform the Special Master tasks set forth in this Agreement.

12.4.2. The three private Special Masters chosen by the Parties to fill these positions are: Catherine A. Yanni, Esq., the Hon. John K. Trotter (Ret.), and the Hon. Marina Corodemus (Ret.) or upon the resignation or removal of any one Special Master, any Person(s) to be appointed by the Parties to oversee the administration of claims for benefits and to make final and binding determinations under this Agreement with the authority of an Arbitrator under the Federal Arbitration Act.

**Section 12.5. Certain General Authority of the Claims Processor**

12.5.1. The Claims Processor shall have the authority to perform all actions, to the extent not expressly prohibited by, or otherwise inconsistent with, any provision of this Agreement, deemed by the Claims Processor to be reasonably necessary for the efficient and timely administration of this Agreement.

12.5.2. The Claims Processor may create administrative procedures, supplementary to (and not inconsistent with) those specified herein that provide further specific details about how U.S. Program Claims are administered, and/or other aspects of the U.S. Program; provided, however that such procedures comply with the terms of this Agreement.

12.5.3. Without limitation of the foregoing, the Claims Processor shall, with the concurrence of the Claims Administrator, have the authority to modify and/or supplement the form of Enrollment Form, Claims Form and/or Supplementary Claims Form provided for herein to provide for more efficient administration of the U.S. Program, provided that (i) such changes may not materially alter the substance of such form without the consent of both DePuy and a majority in number of the SOC, (ii) such changes in any event must be approved by the liaison committee described in Section 12.5.4 below and (iii) no change shall be made in the form of Release or form of Dismissal With Prejudice Stipulation without DePuy's prior written consent.

12.5.4. Each of DePuy and the SOC shall appoint one or two individuals (such number to be determined in each of their respective discretion) to act as a liaison ("Liaison") with the Claims Administrator, Claims Processor or any Special Master, including answering any questions that the Claims Administrator, Claims Processor or a Special Master may have with respect to the interpretation of any provision of this Agreement. Appointments under this Section shall be in writing in a Notice to other Party and to the Claims Administrator, Claims Processor and the Special Masters.

Section 12.6. Liability of Administrative Personnel.

Without limitation of 22.9.2, no Administrator, Liaison, or employee or agent of any Administrator or Liaison, shall be liable to any EUSC, U.S. Program Claimant, QUSC, or any Enrolling Counsel for his acts or omissions, or those of any agent or employee of any Administrator, in connection with the U.S. Program except, with respect to each Person, for such Person's own willful misconduct. Nothing in this Section 12.6 confers on any U.S. Program Claimant or Enrolling Counsel any privity of contract with, or other right to institute any action against, any Administrator or Liaison.

Article 13

Certain Litigation Matters

Section 13.1. DePuy Defenses

DePuy agrees that, except as reflected in (i) the requirements for constituting an EUSC, (ii) the Eligibility Requirements or (iii) the requirements for constituting an Enrolled U.S. Program Claimant or Qualified U.S. Program Claimant, and without limitation of, and subject to, all of the other express terms of this Agreement, any defenses of liability that DePuy might otherwise have as against the U.S. Program Claims of any particular QUSC, such as statutes of limitation and repose, jurisdiction, venue, mitigation, comparative/contributory negligence, assumption of risk, independent intervening cause and products' liability, specific defenses such as state of the art, no safe alternative design, preemption, FDA and other regulatory approval, learned intermediary, etc., shall not (for purposes of, and solely for purposes of, this Agreement) apply to such U.S. Program Claim of such QUSC. For the avoidance of doubt, it is understood and agreed that any and all such defenses (and any and all other available defenses) shall be available to DePuy with respect to any litigation outside of this Agreement with such Enrolled U.S. Program Claimant or QUSC (including in the event the Release is returned as set forth herein).

Section 13.2. Tolling

Without limitation of Section 13.1, in order to avoid the necessity of filing or pursuing an ASR Hip Implant-related claim, DePuy hereby agrees, with respect to each Enrolled U.S. Program Claimant who has an unfiled claim and his/her Release is returned because of a termination of the Agreement and U.S. Program, to toll from November 19, 2013 until 60 days following such exit, the running of any applicable statute of limitations that otherwise may apply to the ASR Hip Implant-related claim of such Enrolled U.S. Program Claimant. All other tolling agreements heretofore entered into between an Enrolled U.S. Program Claimant and DePuy, if any, are otherwise terminated and superseded by this Agreement, except as provided above.

Section 13.3. Use of Dismissal With Prejudice Stipulations and Releases  
Prior to Certain Events

The Claims Processor shall retain control of the Release and Dismissal With Prejudice Stipulation of any particular U.S. Program Claimant until such time as (a) DePuy's Walk Away Right shall have expired without DePuy exercising any such Walk Away Right, and (b) such Claimant's PART A Base Award has been funded to the appropriate Escrow Account pursuant to the Escrow Agreement, at which time such Dismissal With Prejudice Stipulation and such Enrolled Program Claimant's Release shall be delivered to DePuy (and, without limitation, DePuy shall be free to file or cause to be filed such Dismissal With Prejudice Stipulation and/or Release in any relevant action or proceeding).

Section 13.4. Pursuit of Certain Claims

13.4.1. From and after the date on which an Enrollment Form is submitted in relation to a particular U.S. Program Claimant until the earlier of (i) the date on which such U.S. Program Claimant's Dismissal With Prejudice Stipulation is delivered to DePuy pursuant hereto or (ii) if applicable, the date such Enrollment Form is rejected by the Claims Administrator or DePuy in relation to such U.S. Program Claimant pursuant to Section 17.2 or such that his Release is returned to him because this Agreement is terminated, such U.S. Program Claimant, and all related Executing Derivative Claimants, shall:

13.4.1.1. be prohibited from, and refrain from, taking any action (including any legal action) to initiate, pursue or maintain, or otherwise attempt to execute upon, collect or otherwise enforce, any actual or alleged Released Claims and Liabilities of or against DePuy or any other Released Party (other than to the extent inherent in making and pursuing a Program Claim in accordance with the terms of this Agreement);

13.4.1.2. without limitation of Section 13.4.1.1, (i) cooperate in all reasonable respects with DePuy to seek to stay, and to continue in effect any then outstanding stay with respect to, any pending legal proceedings instituted by such U.S. Program Claimant and/or Derivative Claimants against DePuy or any other Released Party Connected With ASR Hip Implants and (ii) refrain from instituting any new legal action against any Released Party Connected With ASR Hip Implants; and

13.4.1.3. without limitation of Section 13.4.1.1 or 13.4.1.2, be prohibited from, and refrain from, attempting to execute or collect on, or otherwise enforce, any judgment that may be entered against DePuy or any other Released Party in any legal action described in Section 13.4.1.2.

13.4.2. Further, if such U.S. Program Claimant is determined or deemed to be a Qualified U.S. Program Claimant, in furtherance and not in limitation of such Release, any judgment referred to in Section 13.4.1.3 automatically shall be deemed to have been Released (as such term is defined in such Release) by such U.S. Program Claimant and all

such Derivative Claimants, and such U.S. Program Claimant and Derivative Claimants shall execute such instruments, and take such other actions, as DePuy reasonably may request in order to further evidence or implement the same.

13.4.3. Without limitation of Section 13.4.1 (and in addition to and without limitation of the terms of his Release), each Enrolled U.S. Program Claimant, and all related Executing Derivative Claimants, jointly and severally, shall indemnify and hold harmless DePuy and each other Released Party from and against (i) any and all Claims made or asserted (prior to, on or after the date of such Enrolled Program Claimant's Program Claim) against DePuy or any Released Party by any other person or entity (for contribution, indemnity (contractual or non-contractual or otherwise) arising out of any Claim Connected With ASR Hip Implants made or asserted at any time by such Enrolled U.S. Program Claimant, and/or any Derivative Claimant and/or Product User with respect to such Enrolled Program Claimant, against any such Released Party and (ii) any and all damages, losses, costs, expenses (including legal fees and expenses) and/or Liabilities incurred or suffered by, or imposed on, any Released Party in connection with, arising out of or resulting from (x) any Claim described in clause (i) (including any amount paid or required to be paid in satisfaction of any such Claim), (y) any judgment suffered by any Released Party in any legal action described in Section 13.4.1.2 (including any amount paid or required to be paid in satisfaction of any such judgment) and/or (z) any violation by such Enrolled Program Claimant, and/or any related Executing Derivative Claimant, of Section 13.4.1. This Section 13.4.3 shall become null and void in the event that such Enrolled Program Claimant exits the Program under circumstances such that his Release is returned to him. DePuy may set off all or any portion of any amount payable to any Released Party pursuant to this Section 13.4.3 by an Enrolled Program Claimant against an equal amount of any Funding Payment obligation hereunder in respect of any Settlement Payment from time to time payable under this Agreement to such Enrolled Program Claimant (and such setoff shall be deemed to satisfy, to the extent of the amount of such setoff, both such Funding Payment obligation and the relevant Settlement Payment obligation to such Enrolled Program Claimant).

## Article 14

### Submission to Authority

#### Section 14.1. Submission to Authority of Claims Administrator and Special Masters

14.1.1. Each Party and, by submitting an Enrollment Form and Release, each Enrolling U.S. Program Claimant and Enrolling Counsel, agrees that authority over the process contemplated by the U.S. Program, including any Claims submitted under the U.S. Program, resides with those Persons appointed pursuant to this Agreement to exercise that authority, as such authority is specified in this Agreement and that the Claims Administrator, Claims Processor and Special Masters in making the determinations with respect to claims submitted to the U.S. Program **do so with the authority of Arbitrators**

under the Federal Arbitration Act and their decision, except as subject to review under the Agreement, are final, binding, and Non-Appealable.

14.1.2. Except as specifically provided in this Agreement, any dispute that arises under or otherwise in connection with (i) this Agreement and/or any U.S. Program Claim and/or (ii) any other Administrative Agreement under which disputes are agreed to be handled in the manner set forth in this Article 14, shall be submitted to the Claims Administrator who shall sit as a binding arbitration panel and whose decision shall be final, binding and Non-Appealable. If any such dispute is brought to the Claims Administrator, each party who has a stake shall have 15 days (or as the Claims Administrator shall otherwise order) to submit papers and supporting evidence and to be heard on oral argument if the Claims Administrator desires oral argument. In the event of a dispute among the Parties over the interpretation of this Agreement, reference may be made to the Term Sheet, which although not controlling, the express terms of the Term Sheet were intended to be consistent with this Agreement.

14.1.3. If the Claims Administrator concludes, for whatever reason, that he should not determine an issue arising under this Agreement or otherwise in connection with this Agreement and/or any U.S. Program Claim, then one of the Special Masters who has not rendered any decision with regard to the matter at issue will be randomly chosen and shall sit as a binding arbitration panel to decide the issue.

14.1.3.1. In such instances, any party may serve a demand for arbitration on the Special Master and all parties who have a stake in the issue disputed. Service shall be effected by regular and certified mail. Service shall be complete upon mailing.

14.1.3.2. The parties who have a stake in the issue disputed and who participate in the arbitration shall agree upon appropriate rules to govern the arbitration. If the parties cannot agree on appropriate rules within ten (10) Business Days of the service of the notice of demand, the applicable rules shall be the American Arbitration Association's Commercial Arbitration Rules that are effective on the date of the notice of demand, exclusive of the requirement that the American Arbitration Association administer the arbitration.

14.1.3.3. In deciding the issue disputed, prior decisions by the Claims Administrator or other Special Master on analogous matters under the U.S. Program shall bind the other Special Master. Where an analogous matter has not been decided previously, the Special Master shall apply the substantive law specified in Section 22.3, without regard to that jurisdiction's choice-of-law rules.

14.1.4. The Parties agree that if any Special Master is, under applicable law, precluded from determining an issue otherwise to be determined by a Special Master pursuant to Section 14.1.3, then another Special Master will be chosen.

14.1.5. Notwithstanding provisions to the contrary, to the extent any suit, action or proceeding by either Party or any Person with respect to such matter under this

Section 14.1 may be instituted, it must be instituted in (and only in) the MDL Court (and appellate courts for the foregoing). Each Party or person hereby:

14.1.5.1. consents and submits, for itself and its property, to the jurisdiction of the MDL Court and such appellate courts for the purpose of any suit, action or proceeding instituted against it pursuant to this Section 14.1.5, and (ii) agrees that a final judgment in any suit, action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law;

14.1.5.2. agrees that service of all writs, process and summonses in any suit, action or proceeding pursuant to this Section 14.1.5 may be effected by the mailing of copies thereof by registered or certified mail, postage prepaid, to it at its address for notices pursuant to Section 22.1, such service to become effective 30 days after such mailing, provided that nothing contained in this Section 14.1.5.2 shall affect the right of any party to serve process in any other manner permitted by law;

14.1.5.3. waives any objection which it or he may now or hereafter have to the laying of venue of any suit, action or proceeding pursuant to this Section 14.1.5 brought in any court specified above in this Section 14.1.5, waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum, and agrees not to plead or claim either of the foregoing; and

14.1.5.4. **TO THE EXTENT A LAWSUIT IS COMMENCED DESPITE THE FACT I CONSENT TO THE ADMINISTRATORS UNDER THE AGREEMENT ACTING WITH THE AUTHORITY OF ARBITRATORS UNDER THE FEDERAL ARBITRATION ACT, WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY OF ANY ACTION, SUIT OR PROCEEDING PURSUANT TO THIS SECTION 14.1.5 AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY.**

## Article 15

### Attorneys' Fees

#### Section 15.1. Individual Counsel Attorneys' Fees

Neither DePuy nor any other Released Party shall have any responsibility whatsoever for the payment of QUSC's (and/or related Executing Derivative Claimant's) attorneys' fees or costs. The Claims Processor shall endeavor to make all Settlement Payments owed in relation to any particular U.S. Program Claim pursuant to this Agreement payable in the name of the relevant QUSC, his Counsel (if any) and each related Executing Derivative

Claimant, subject to a reduction pursuant to common benefit fees and reimbursement of costs as set forth in Section 4.1.8. (For the avoidance of doubt, any such reduction nonetheless shall constitute a U.S. Program Award and Settlement Payment.) Provision however can be made for the Claims Processor to cause the settlement payments to be issued electronically to the Primary Law Firm of each QUSC in trust for such QUSCs. However, none of the Released Parties or the Claims Processor shall have any Liability for any failure to do so. No notice of representation or change in representation by any Enrolled U.S. Program Claimant (and/or any Executing Derivative Claimant with respect to such Enrolled U.S. Program Claimant), other than that which is made in such Enrolled U.S. Program Claimant's Enrollment Form, shall change the application of this Section 15.1. Any division of any Settlement Payment with respect to, and as between, any QUSC, any related Executing Derivative Claimants and/or his or their respective counsel is to be determined by such Persons and any such division, or any dispute in relation to such division, shall in no way affect the validity of this Agreement or the Release or Dismissal With Prejudice Stipulation executed by such Enrolled Program Claimant (and any related Executing Derivative Claimants) or his Counsel, as applicable. Nothing in this Section 15.1 limits or qualifies Article 17 or Article 18.

## Article 16

### Quality Control and Audit Procedures

#### Section 16.1. Prevention and Detection of Fraud - General

16.1.1. The Claims Administrator and Claims Processor shall have the authority and obligation to institute claim-auditing procedures and other procedures designed to detect and prevent the payment of fraudulent or deceitful U.S. Program Claims.

16.1.2. The submission of fraudulent or deceitful Claims will violate the criminal laws of the United States, subject those responsible to criminal prosecution in the federal courts, and render those responsible ineligible to participate in the U.S. Program or receive any awards. Notwithstanding anything to the contrary, any Enrolling U.S. Program Claimants who improperly, fraudulently or deceitfully obtained a recovery from Broadspire or other sources for claims allegedly Connected with ASR Hip Implants may not become a EUSC or QUSC under the terms of this Agreement, unless DePuy in its sole discretion permits the person to be deemed a QUSC pursuant to Section 5.1.5.

16.1.3. The Claims Processor shall notify the Claims Administrator, Special Masters, DePuy and the SOC, as well as any implicated U.S. Program Claimant and his Counsel, of any preliminary determination that deception, dishonesty or fraud may be present in connection with or relating to any U.S. Program Claim or in any way to the U.S. Program. The U.S. Program Claimant and/or his Counsel shall have the right to contest such preliminary determination to the Claims Administrator by requesting a hearing within 10 days of receiving such notice. The Claims Administrator may promulgate and revise rules for reviewing and resolving allegations of deception, dishonesty or fraud.

16.1.4. No Settlement Award may be paid in respect of a U.S. Program Claim while that Claim (i) is the subject of an audit by the Claims Processor (and to that end, the Claims Processor shall notify DePuy and the SOC from time to time of which Program Claims are then subject to audit) or (ii) is the subject of an audit by DePuy or the SOC for good cause.

16.1.5. Nothing herein prevents the Claims Processor, Claims Administrator, Special Masters, SOC, or DePuy from reporting any indicia of deception, dishonesty, or fraud to the proper law enforcement authorities.

## Section 16.2. Mandatory Periodic Audits

16.2.1. PART A Mandatory Audits: Without limitation of Section 16.1, the Claims Processor shall conduct an audit of a sampling of at least 5% of the PART A Base Claims whose enrollment forms were submitted prior to February 1, 2014. Thereafter, the Claims Administrator shall audit an additional 5% of the PART A Base Claims whose enrollment forms were submitted on or after February 1, 2014, unless the Claims Processor finds that 2% or more of the first audited claims were fraudulent or improperly processed (or the claimant fails to provide information requested to allow an audit to be conducted) in which case the Claims Processor shall conduct audits of at least an additional 10% of PART A Base Claims.

16.2.2. PART B Mandatory Audits: Without limitation of Section 16.1, the Claims Processor shall conduct an audit of 8% of PART B Claims, unless the Claims Processor finds that 2% or more of the audited PART B claims were fraudulent or improperly processed (or the claimant fails to provide information requested to allow an audit to be conducted) in which case the Claims Processor shall conduct additional audits of PART B claims in his discretion in consultation with the SOC and DePuy.

16.2.3. The Claims Processor, in its discretion, also shall conduct audits of a sampling of PART A claims, which audits shall include (i) obtaining confirmation of the authenticity of the medical and product identification evidence provided by the EUSC; and/or (ii) verifying that medical records not submitted by the EUSC are actually not available from the medical providers or other healthcare institutions involved in that EUSC's ASR Index Surgery or ASR Revision Surgery. The Claims Processor may require any EUSC whose claim is selected for an audit to provide medical and other record authorizations to permit the Claims Processor to obtain such records directly.

16.2.4. Notwithstanding anything to the contrary, the Claims Processor otherwise may audit such other U.S. Program Claims as the Claims Processor and/or Claims Administrator, in each's discretion, shall determine is warranted and shall conduct such audits as deemed warranted.

16.2.5. U.S. Program Claims shall be selected for audit on such basis as the Claims Processor and/or Claims Administrator may determine from time to time (taking into account, without limitation, any suspicions of, or past preliminary determinations of fraud, deception or dishonesty in connection with the U.S. Program). Those U.S. Program

Claims selected for audit will not be placed on any Funding Report, Disbursement List, or Settlement Awards Report or have their awards funded or paid until the audit for such U.S. Program Claim is satisfactorily completed and the award determination is confirmed by the Claims Processor and placed on the next following Funding Report and Disbursement List.

16.2.6. If following completion of its audit of a U.S. Program Claim (or upon referral of a matter to the Claims Processor by DePuy or by the SOC pursuant to Section 16.3.3), the Claims Processor determines that Section 16.1.3 is applicable, then the Claims Processor shall proceed as specified in Sections 16.1 and 16.4.

### Section 16.3. DePuy/SOC Audit Right

16.3.1. DePuy and the SOC shall each have the absolute right and discretion at any time or from time to time, but at its expense, to itself conduct, or have conducted by an independent auditor, audits to verify U.S. Program Claims submitted by U.S. Program Claimants or any aspect thereof (including and Required Submissions or medical records); such audits may include individual U.S. Program Claims or groups of U.S. Program Claims. The Claims Processor shall fully cooperate with any such audit. Section 16.2.3 shall apply to any Program Claims selected for audit by DePuy or the SOC (with all references in said Section to the “Claims Processor” being deemed to constitute references to “DePuy” or “the SOC”, respectively, for such purpose).

16.3.2. DePuy or the SOC shall notify the other (and the Claims Processor and the Claims Administrator) of any audit that it is conducting or having conducted pursuant to Section 16.3.1 and which U.S. Program Claims are to be audited.

16.3.3. If following completion of its audit of a U.S. Program Claim, DePuy or the SOC is of the view that any indicia of deception, dishonesty or fraud relating to any U.S. Program Claim or in any way to the U.S. Program exist, DePuy or the SOC, as the case may be, may bring such matter to the attention of the Claims Administrator for possible action pursuant to Section 16.4.4 and/or may proceed directly to make a motion to the MDL Court for action pursuant to Section 16.4.2.

### Section 16.4. Relief

16.4.1. Each of the Claims Processor, Claims Administrator, DePuy and the SOC shall have the right to petition to the MDL Court (or, if the MDL Court does not have jurisdiction over the relevant parties, another court that has such jurisdiction) for appropriate review and relief in the event of the detection of any indicia of deception, dishonesty or fraud relating to any U.S. Program Claim or in any way to the U.S. Program.

16.4.2. Without limitation of Section 16.4.1 and any term in this Agreement to the contrary notwithstanding, in the event that the MDL Court upon motion by the Claims Administrator, DePuy or the SOC determines that a U.S. Program Claimant (and/or any related Executing Derivative Claimant), or Counsel for such U.S. Program Claimant, has used, or that there is substantial evidence that a U.S. Program Claimant (and/or any related

Executing Derivative Claimant), or Counsel for such U.S. Program Claimant, has used, deception, dishonesty or fraud in connection with the U.S. Program Claim of such U.S. Program Claimant:

16.4.2.1. such U.S. Program Claimant's Program Claim shall be denied and such Enrolled Program Claimant immediately shall cease to have any further rights under the U.S. Program, but such Program Claimant's Dismissal With Prejudice Stipulation and Release shall be delivered to DePuy (and, without limitation, DePuy shall be free to file or cause to be filed such Dismissal With Prejudice Stipulation and/or Release in any relevant action or proceeding);

16.4.2.2. each of such U.S. Program Claimant (if the MDL Court makes such determination in respect of such U.S. Program Claimant) and such Counsel (if the MDL Court makes such determination in respect of such Counsel) shall fully be liable (i) for the costs and expenses (including legal costs and expenses) incurred by any Administrator, DePuy and/or the SOC in connection with any related audit and/or any related proceedings (including MDL Court, or other court, proceedings) under this Section 16.4 and (ii) if applicable, to repay to DePuy any Settlement Payment previously paid to or with respect to such Program Claimant (and any such repayment of such Settlement Payment in whole or in part shall be disregarded for purposes of Sections 6.3, 6.4 and 6.5); and

16.4.2.3. such U.S. Program Claimant (and/or any related Executing Derivative Claimant), such Counsel and/or such Counsel's other U.S. Program Claimants shall be subject to such further sanctions or other penalties as the Claims Administrator may impose, including (i) in the case of such Counsel (and/or such Counsel's other Program Claimants), raising the level of scrutiny of (including conducting audits, incremental to those conducted pursuant to Section 16.2, of), modifying the timing of the review of, and/or requiring such Counsel to pay the costs and expenses associated with any future audits (including any such incremental audits) of, any other U.S. Program Claim of any or all of the other U.S. Program Claimants for which it is Counsel, (ii) suspension of Settlement Award Payments to all other U.S. Program Claimants of such Counsel and/or (iii) referral of the matter to the United States Attorney or other appropriate law enforcement officials for possible criminal prosecution, provided that no such further sanctions or other penalties shall affect the status of any other QUSC or its U.S. Program Claim unless such sanction or other penalty is consented to by DePuy.

16.4.3. In the event that the Claims Processor determines that any Person (other than a U.S. Program Claimant or Counsel) has engaged or participated in, or that there is substantial evidence that such Person has engaged or participated in, deception, dishonesty or fraud in relation to any U.S. Program Claim, then, without limitation of Section 16.4.2:

16.4.3.1. the Claims Processor shall refer such matter for possible action by the MDL Court pursuant to Section 16.4.2;

16.4.3.2. pending resolution by the MDL Court of such matter pursuant to Section 16.4.2, the Claims Processor shall suspend further consideration of any documentation from such Person; and

16.4.3.3. the Claims Processor may raise the level of scrutiny of (including conducting audits, incremental to those conducted pursuant to Section 16.2, of), and/or modify the timing of the review of, any other Program Claim that includes documentation from such Person.

16.4.4. In connection with the exercise by each of the Claims Administrator, Claims Processor, DePuy and the SOC of its rights under this Article 16, each of the Claims Administrator, DePuy and the SOC, as applicable, may request a Enrolled U.S. Program Claimant whose U.S. Program Claims are subject to an audit hereunder to deliver to it: (i) such authorization(s) as may reasonably be requested by the Claims Administrator, Claims Processor, DePuy or the SOC, as applicable, in order to permit the Claims Administrator, Claims Processor, DePuy or the SOC, as applicable, to request and obtain such additional records as the Claims Administrator, Claims Processor, DePuy or the SOC, as applicable, may determine, and/or (ii) such other relevant records or other documentation (in addition to the Required Submissions and Additional Claim Information submitted as part of the U.S. Program Claim) within the Enrolled U.S. Program Claimant's custody, possession, or control as may reasonably be requested by the Claims Administrator, Claims Processor, DePuy or the SOC. Any such authorization shall be in a form prepared by the Claims Administrator, Claims Processor, DePuy or the SOC, as applicable. If the Enrolled U.S. Program Claimant fails or refuses to execute and deliver to the Claims Administrator or DePuy, as applicable, any such authorizations or refuses to provide any material records or other documentation requested, within thirty (30) days after service of such form or request, then, without limitation of the possible application of the remainder of Section 16.4, Section 16.4.2.1 and Section 16.4.2.2 shall be applied to such Enrolled U.S. Program Claimant and his U.S. Program Claim.

#### Section 16.5. Quality Control

If, at any time, the Claims Processor or Claims Administrator learns or determines that all or any part of an Award or determination of ineligibility or denial of an Award was incorrect or any Settlement Awards Report was incorrect, the Claims Processor may issue a revised Award, determination or Report to reflect the correct Award, determination or Report.

#### Section 16.6. Inaccuracy of Representations, Warranties or Certifications

Without limitation of the foregoing provisions of this Article 16, in the event that any representation, warranty, certification or covenant made in any Enrollment Form, Release or Dismissal With Prejudice Stipulation is inaccurate or breached in any material respect (and such inaccuracy or breach is not cured within ten (10) days of notice thereof by the Claims Administrator or DePuy to the relevant U.S. Program Claimant (or his Counsel, if any)), DePuy in its sole and absolute discretion (and without limitation of any other remedy that DePuy may have in respect of such matter, whether at law or in equity) at any time prior to any filing by DePuy of such Enrolled U.S. Program Claimant's Dismissal With Prejudice Stipulation, may

(any other term of this Agreement to the contrary notwithstanding) reject the Program Claims of, and (if applicable) rescind all Settlement Payments made to or with respect to, such U.S. Program Claimant. In such case, (i) the affected U.S. Program Claimant immediately shall cease to have any further rights under the U.S. Program, (ii) the affected U.S. Program Claimant's Release and Dismissal With Prejudice Stipulation shall, subject to Section 13.3, be returned to such U.S. Program Claimant (unless Section 16.4.2.1 is applicable to such U.S. Program Claimant, in which case this clause (ii) shall not apply to such U.S. Program Claimant) and (z) such affected U.S. Program Claimant, and his Counsel, shall be jointly and severally liable to repay to DePuy any Settlement Payment previously paid to or with respect to, such U.S. Program Claimant. Any repayment of such Settlement Payment in whole or in part shall be disregarded for purposes of Sections 6.3, 6.4, and 6.5.

Section 16.7. No Misrepresentation of U.S. Program

Each Enrolling Counsel hereby covenants not to make any misrepresentation with respect to the U.S. Program or the terms and conditions of this Agreement to any Person, for example by leading Persons who are not Eligible U.S. Claimants to believe that they are, or may become, eligible to receive any Settlement Payment under the U.S. Program. The Parties agree that the provisions of this Section 16.7 are an essential element of this Agreement and that a breach of any such provision shall constitute a material breach of this Agreement entitling DePuy to an immediate remedy against any Enrolling Counsel who breached such provision, including injunctive relief and attorneys' fees as determined by the MDL Court.

Article 17

Walk Away Rights and Participation Requirements

Section 17.1. Walk Away Rights and Termination of the Agreement

17.1.1. DePuy shall have the option, in its sole discretion, to terminate the U.S. Program and this Agreement under any of the following circumstances (such option, the "Walk Away Right"), if:

17.1.1.1. **if the enrollment in the U.S. Program of EUSCs who become QUSCs (without regard to the Trauma and Infection exclusions of Sections 1.2.9.3 and 1.2.9.4) is less than 94% of those persons identified (including any persons who should have been identified but were not) in response to the Registration Orders requiring the registration of all U.S. Claimants and claims Connected with ASR Hip Implants who on the basis of information provided in response to the Registration Orders are EUSCs without regard to the Trauma and Infection exclusions set forth in Sections 1.2.9.3 and 1.2.9.4 (that is, a U.S. Patient, ASR Index Surgery in U.S., and ASR Revision Surgery without regard to Trauma and Infection exclusions); or**

17.1.1.2. the MDL Court, any state court in a Coordinated Proceeding fails for any reason to enter the Registration Order by the 30th day after the Execution Date.

17.1.1.3. If any Primary Law Firm fails to file a Registration Declaration complying in all respects with the Registration Order by the deadline of such Registration Order, DePuy may seek relief from the MDL Court with respect to the Walk Away Deadline Date.

17.1.2. The formula for calculating DePuy’s right under Section 17.1.1.1 may be expressed as follows:

$$\frac{\begin{array}{c} \# \text{ of EUSCs who enroll in} \\ \text{U.S. Program and who are} \\ \text{QUSCs without regard to} \\ \text{Infection and Trauma} \\ \text{Exclusions} \end{array}}{\begin{array}{c} \# \text{ of EUSCs identified in} \\ \text{response to Registration} \\ \text{Orders without regard to} \\ \text{Infection and Trauma} \\ \text{Exclusions} \end{array}} = <94\%$$

17.1.3. A termination by DePuy shall be exercised by written notice to the SOC, the Claims Administrator, and the MDL Court served on or before the Walk Away Right Deadline.

17.1.4. The exercise by DePuy of its Walk Away Right shall terminate the U.S. Program and this Agreement and will return the Parties and U.S. Program Claimants to their respective positions prior to the settlement with all releases and dismissal stipulations being voided and returned or destroyed.

17.1.5. No dismissal stipulation will be filed until after (i) DePuy’s termination or Walk Away Rights shall have expired without being exercised, and (ii) the funding into escrow of any PART A Base Award provided to the QUSC supplying such dismissal stipulation has occurred.

**Section 17.2. Good Faith Participation**

17.2.1. The Parties to this Agreement believe that this Agreement represents a fair, just and efficient method for resolving ASR Hip Implant Revision claims.

17.2.2. All parties, including DePuy, the SOC, each Primary Law Firm, Principal Responsible Attorney, and Interested Counsel shall act in good faith in the implementation of this Agreement.

17.2.3. The Parties recognize that this is a nationwide settlement offer extended to all EUSCs. Further, the Parties recognize that DePuy’s key objective in entering into this Agreement and agreeing to establish the U.S. Program is that all EUSCs accept this Agreement and enroll in the U.S. Program in full and final resolution of their ASR Hip

Implant revision claims. The Parties also recognize that the SOC's key objective in entering into this Agreement is to fairly compensate any ASR Hip Implant revision claim which qualifies under this Agreement and to work with the Claims Processor, Special Masters and the Claims Administrator on an allocation and informed consent process that accomplishes these goals. The SOC believes that this Agreement accomplishes these objectives and upon the signature and the Parties' endorsement of the Agreement, the SOC will present the Agreement to any counsel who has ASR Hip Implant cases in either state or federal court. DePuy shall work with the SOC in good faith to attempt to identify all Counsel who represent EUCSs.

17.2.4. It is recognized and understood that the vast majority of EUSCs who have had a ASR Revision Surgery involving a Qualified Device have retained counsel and have already filed actions in either state or federal court. The Parties recognize that each EUSC has the right to make an informed decision regarding participation in the U.S. Program, whether or not they are accepted as a QUSC, and the right to retain counsel. As such, the Primary Law Firm and Principal Responsible Attorney are responsible for the presentation of the U.S. Program and this Agreement to each EUSC and potential QUSC with whom they have an Interest, including the PART B Award process that provides a means outside of the control of DePuy to award additional compensation based on the exceptional circumstances of any case, and shall give each client the opportunity to provide informed written consent regarding participation in the U.S. Program.

17.2.5. The Primary Law Firm, including the Principal Responsible Attorney, is the one primarily responsible for obtaining informed written consent regarding participation in the U.S. Program from each EUSC and potential QUSC. The Primary Law Firm is responsible for ensuring the informed consent documentation is complete. However, any Interested Counsel of a client is to ensure that the Primary Law Firm, including Principal Responsible Attorney, in good faith fulfills this informed consent responsibility and with respect to participation in the U.S. Program. The Parties recognize, however, that the decision whether to enroll in the U.S. Program rests with each individual EUSC.<sup>13</sup>

17.2.6. The Team and the SOC will be available to assist the Primary Law Firms, Principal Responsible Attorneys and Interested Counsel with the informed consent process, including answering both general and specific questions with respect to the U.S. Program. Any questions relating to the general terms of this Agreement or the informed consent documentations should be presented to the SOC and/or Special Masters. The purpose of this provision is to ensure that each EUSC has the opportunity to make an informed decision regarding participation in the U.S. Program.

---

<sup>13</sup> The Team and SOC, and their designees, are entirely responsible for the creation of the informed consent documentation about the U.S. Program to be used to assist the Primary Law Firm and Interested Counsel with their clients. Neither DePuy nor any Released Parties have any responsibility or involvement in connection with informing EUSCs about the terms of the U.S. Program or in obtaining informed consent from EUSCs to be enrolled in the U.S. Program.

17.2.7. At the time of enrollment, each Primary Law Firm will serve on the Claims Processor and DePuy a document which (a) identifies each EUSC from which the Primary Law Firm has obtained informed written consent, (b) represents that they have presented the terms of the U.S. Program to each of their respective clients for whom they are the Primary Law Firm who would be eligible to enroll in the U.S. Program, and (c) identifies each of their respective clients who has consented to be enrolled in the U.S. Program, without waiving any attorney client privileged communications.

17.2.8. With the objectives of the Agreement in mind, each Primary Law Firm, Principal Responsible Attorney, and Interested Counsel must act in good faith with respect to the informed consent process and with respect to participation in the U.S. Program by their clients with whom they have an Interest. At the time of enrollment, each Primary Law Firm and Principal Responsible Attorney shall represent and warrant that they each will use their best efforts to secure all documentation required for timely enrollment and compliance with this Agreement, including Releases and, where applicable, Stipulations of Dismissal With Prejudice, from all of their clients who elect to enroll in the U.S. Program and to otherwise effectuate the terms of this Agreement and, **subject to the exercise of their independent professional judgment as to the circumstances of individual clients, they will endorse enrollment in the U.S. Program to clients covered by this Agreement.**

17.2.9. DePuy may also seek from the Special Masters a report with respect to any Primary Law Firm, Principal Responsible Attorney, or Interested Counsel's good faith participation in the Agreement and U.S. Program. In the event there is evidence that any such law firm or counsel has not acted in good faith with respect to the informed consent process and with respect to participating in the U.S. Program, DePuy may request a meet and confer with that law firm or counsel and the Special Masters.

17.2.10. Because the settlement involves thousands of ASR patients represented by more than 1,000 law firms, the Special Masters shall in their discretion determine the procedure for the meet and confer process and whether the meet and confer needs to be in person or over the phone. However, nothing in this Agreement shall constitute a general waiver of attorney client privileged communications. The Special Masters shall work with the SOC to answer questions from any EUSC or Party or their Counsel relating to participation in the settlement including any EUSC, along with their Counsel, who may be considering whether or not to participate based upon his or her particular facts or circumstances. Upon the conclusion of the meet and confer process, the Special Masters will report to the Claims Administrator on the status.

17.2.11. Anyone who participates in a meet and confer under Section 17.2.9 may request at their sole discretion a meet and confer that further involves the Claims Administrator and all interested EUSCs, Parties and counsel. The Claims Administrator shall work with the Special Masters and the SOC to answer questions from any Party or their counsel relating to participation in the settlement including any EUSC, along with their counsel, who may be considering whether or not to participate based upon his or her particular facts or circumstances.

17.2.12. Upon the conclusion of the meet and confer process set forth in Sections 17.2.9 to 17.2.11, and after a hearing and opportunity to be heard, a Special Master may determine that any Primary Law Firm, Primary Responsible Attorney or Interested Counsel **did not act in good faith in connection** with the informed consent process and participation in the U.S. Program. If such a determination is made, and affirmed by the Claims Administrator, **then DePuy, at its sole option, may revoke the participation in the U.S. Program of all or some of the clients with whom that law firm and/or counsel has an interest.**

Section 17.3. Calculation of Claimants for Walk Away Rights

For the avoidance of doubt, for the purpose of DePuy's Walk Away Right and termination of this Agreement under this Article 17, all Legal Representatives of a decedent, which decedent and/or any of whose Legal Representatives is an "Eligible U.S. Claimant", are counted as a (single) "Registered Eligible U.S. Claimant" (so long as data for such decedent is provided in a properly completed, and submitted, Registration Declaration). (For the purpose of Settlement Payments, a Legal Representative of a decedent is entitled to no payment before a court of competent jurisdiction approves the distribution.)

Section 17.4. Time to Exercise Walk Away Right

17.4.1. DePuy may exercise its Walk Away Right in relation to Section 17.1.1.1 or Section 17.1.1.2, at any time until sixty (60) days after the Enrollment Deadline Date, unless otherwise agreed to by the Parties.

17.4.2. DePuy, in its sole and absolute discretion, may irrevocably waive its Walk Away Right, in relation to Section 17.1.1.1 or Section 17.1.1.2 by a written notice to such effect and expressly captioned "Section 17.4.2 Waiver Notice" delivered to the SOC and the Claims Administrator.

17.4.3. DePuy may exercise its right under Sections 17.2.12, at any time until ninety days (90) days after the Enrollment Deadline Date or fifteen (15) Business Days after a determination under Section 17.2.12, whichever resulting date is later.

Section 17.5. Notice of Exercise

DePuy shall exercise its Walk Away Right by giving written notice to the SOC, the Claims Administrator, Claims Processor, the Escrow Agent, and to each of the Judges overseeing the Coordinated Proceedings.

Section 17.6. Effects of Termination

17.6.1. Upon exercising its Walk Away Right, any term of this Agreement or the Escrow Agreement to the contrary notwithstanding:

17.6.1.1. this Agreement immediately shall terminate and (without limitation of the foregoing) DePuy immediately shall cease to have any further

financial obligations under this Agreement or to any U.S. Program Claimant or Counsel; and

17.6.1.2. The Administrative Expenses Escrow Fund shall continue to be used for any payment of Administrative Expenses that are authorized under the Administrative Agreements and that (i) had already accrued at the time DePuy exercised its Walk Away Right or (ii) accrued thereafter as legitimate expenses related to winding up the U.S. Program. DePuy, on SOC's request, shall execute and deliver any direction to the Escrow Agent necessary to effect the foregoing. If following the winding up of the U.S. Program, any funds remain that were part of DePuy's initial deposit into the Administrative Expenses Escrow Fund shall be returned to DePuy.

17.6.2. In the case of any exercise by DePuy of its Walk Away Right, all Releases and Dismissal With Prejudice Stipulations shall, subject to Section 13.3, be returned to the applicable Enrolled U.S. Program Claimant or destroyed.

## Article 18

### Liens

#### Section 18.1. Lien Responsibilities

18.1.1. Each QUSC shall identify, through procedures and protocols to be established by the Claims Administrator, all Qualified Lienholders that have paid for, or asserted a lien or other claim for reimbursement for medical care associated with a Qualified Device.

18.1.2. DePuy will be responsible for the negotiation and resolution of Assumed Liens asserted by Qualified Lienholders that are identified by the QUSC. All other Liens shall be the responsibility of the respective QUSCs affected by any such other Liens.

18.1.3. The Parties recognize that nothing herein is intended to create a right of reimbursement where none would otherwise exist under applicable state or federal law. Nothing herein shall prevent DePuy from asserting any and all available rights or defenses with regard to resolution of an Assumed Lien which may otherwise be available to the insured or claimant.

18.1.4. DePuy will defend, indemnify, and hold harmless all QUSCs and their respective Counsel from any Assumed Liens identified by the QUSC and will not make a claim against QUSCs or their Counsel with respect to the Assumed Liens so identified, provided that QUSCs and their respective Counsel cooperate with procedures established for resolution of Assumed Liens and provide copies of all correspondence from Qualified

Lienholders(s) addressing liens, claims and interests related to a Qualified Device or ASR Revision Surgery.

18.1.5. “Qualified Lienholders” shall be defined as the following:

18.1.5.1. government program insurers such as the Medicare and Medicaid programs, the CHAMPVA Program, the TRICARE Program and any other federal, state or local reimbursement program involving payment of governmental funds (including “Federal healthcare programs” as defined in 42 U.S.C. §1320a 7b(f)) or other payor program administered by any governmental authority;

18.1.5.2. private and commercial payors including commercial insurance carriers, managed care organizations, and self-funded health insurance plans; and

18.1.5.3. an individual or entity that has provided healthcare items and services to a QUSC to the extent the QUSC had no third party insurance to cover the items and services furnished to the QUSC.

18.1.6. “Assumed Liens” shall mean Liens or claims asserted by a Qualified Lienholder with respect to a QUSC's Settlement Payment related to reimbursement for, or payment of:

18.1.6.1. medical care directly associated with a compensable Revision Surgery; and/or

18.1.6.2. medical care directly associated with a Qualified Device that was incurred between August 24, 2010 and the date of Revision Surgery and due to the Reasons underlying the Recall.

For purposes of clarity, Assumed Liens includes the Assumed Liens asserted by the federal government on behalf of the Centers for Medicare & Medicaid Services pursuant to 42 U.S.C. §1395y(b)(2)-(3) and associated regulations. However, for any ASR Revision Surgery that takes place outside of the United States, DePuy is not responsible for the resolution of Liens pertaining to ASR Revision Surgery or treatment that occurs outside of the United States.

18.1.7. The parties recognize that any Settlement Payment, including Part A or Part B, is a settlement and compromise of asserted claims. The Parties further recognize that the award of a PART B Supplemental Award, if any, is outside the control of DePuy and accordingly not dispositive of whether such PART B category/award is related to a Qualified Device or ASR Revision Surgery and, further, shall not be controlling on the amount to be paid for any Assumed Lien for which DePuy is responsible under this Agreement.

18.1.8. Any dispute regarding interpretation of lien responsibilities with regard to a specific lien shall be resolved by a designated Special Master following review and processing of the lien by DePuy or DePuy's designee.

18.1.9. In addition to and without limitation of any of the foregoing provisions of this Article 18, each QUSC, each Derivative Claimant executing the Release with such QUSC, jointly and severally, shall indemnify and hold harmless the Released Parties from and against any and all damages, losses, costs (including, but not limited to, court costs), expenses (including legal fees and expenses), fines, penalties or Liabilities incurred or suffered by, or imposed on, any Released Party in connection with, arising out of or resulting from (i) any Claim made or asserted at any time against DePuy, or any other Released Party with respect to any U.S. Program Award payment made to such QUSC (or the right to receive any such U.S. Program Award payment), by (1) any Person at any time holding or asserting any Lien arising from or pertaining to workers' compensation benefits, disability benefits, and/or attorney liens for which such QUSC and any Derivative Claimant executing the Release with such QUSC is responsible under the Agreement, and/or (ii) the failure to properly provide the information required by Article 18 of the Agreement.

## Article 19

### No Admission of Liability or Lack of Merit

#### Section 19.1. No Admission of Liability or Lack of Merit

19.1.1. Neither this Agreement nor any exhibit, document or instrument delivered hereunder nor any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Agreement, is intended to be or shall be construed as or deemed to be evidence of an admission or concession by DePuy of any fault, Liability, wrongdoing or damages or of the truth of any allegations asserted by any plaintiff or claimant against it, or as an admission by any Enrolled U.S. Program Claimant of any lack of merit in their claims.

19.1.2. No Party, no Enrolling Counsel and no U.S. Program Claimant shall seek to introduce and/or offer the terms of this Agreement, any statement, transaction or proceeding in connection with the negotiation, execution or implementation of this Agreement, or any statements in the documents delivered in connection with this Agreement, or otherwise rely on the terms of this Agreement, in any judicial proceeding, except insofar as it is necessary to enforce the terms of this Agreement (or in connection with the determination of any income tax Liability of a party) or any instrument executed and delivered pursuant to this Agreement (including any Enrollment Form and the executed attachments thereto). If a Person seeks to introduce and/or offer any of the matters described herein in any proceeding against DePuy or any Released Party, the restrictions of this Section 19.1.2 shall not be applicable to DePuy with respect to that Person.

19.1.3. Nothing in this Article 19 applies to (i) any action to submit into evidence in any legal proceeding (past, present or future), or otherwise to file or enforce in any manner, or (ii) any other action by DePuy in relation to, any Release or any Dismissal With Prejudice Stipulation that is released or provided to DePuy in accordance with the terms of this Agreement.

## Article 20

### Reporting Obligations; DePuy and SOC Access to Data

#### Section 20.1. Reporting Obligations

The Claims Processor shall periodically report to the Claims Administrator, the SOC and DePuy as set forth in this Agreement and any Administrative Agreement with the Claims Processor.

#### Section 20.2. DePuy and the SOC Access to Data

DePuy shall be entitled to review all Enrollment Forms, all Claims Forms, all Required Submissions, and all Registration Affidavits (including all exhibits and attachments thereto), and (in each case) all related materials. The representatives of DePuy and the SOC shall, at any time or from time to time, be afforded complete access to and permitted to inspect all of the records or other documentation submitted in connection with the claims of EUSCs. Each of DePuy and the SOC and their respective representatives (including any auditing firm(s) that DePuy or the SOC may retain) shall, in connection with any exercise by it of any of its rights under Article 16, at its request and expense, and at any time or from time to time, be afforded complete access to and permitted to inspect such U.S. Program Claims of such U.S. Program Claimants as DePuy or the SOC, as the case may be, shall specify. For the avoidance of doubt and without limitation of the documents that Enrolling U.S. Program Claimants execute as part of the Enrollment Form, Claims Form and Required Submissions, by enrolling in the U.S. Program, each U.S. Program Claimant consents to all access to such U.S. Program Claimant's (and/or such Program Claimant's Product User's) personal information, including medical records and lien information, granted to DePuy, the SOC and all the Administrators, and each of their respective representatives, pursuant to this Agreement. Neither DePuy nor the SOC shall have any other right of access pursuant to the U.S. Program to such U.S. Program Claimant's (and/or such Program Claimant's Product User's) personal information except as required by law.

## Article 21

### Public Statements; Confidentiality

#### Section 21.1. Program Claimant Confidential Information

Any personal records or other personal information provided by or regarding a U.S. Program Claimant pursuant to this Agreement, **and the amount of any payments** and/or awards made to Qualified U.S. Program Claimants under this Agreement (such amount

information, “Award Information”), shall be kept confidential by the Parties and, in the case of Award Information, such U.S. Program Claimant (and his Executing Derivative Claimants) and his Counsel, and shall not be disclosed except (i) to appropriate Persons to the extent necessary to process U.S. Program Claims or provide benefits under this Agreement, including in connection with the resolution of Assumed Liens, (ii) as otherwise expressly provided in this Agreement, (iii) as may be required by law, ethical requirements, normal business reporting and insurance purposes, or listing agreements, (iv) as may be reasonably necessary in order to enforce, or exercise DePuy’s rights under or with respect to, such U.S. Program Claimant’s Enrollment Form, Claim Form, Release, or Dismissal With Prejudice Stipulation or (with respect to such Program Claimant (and/or his Executing Derivative Claimants) or his Counsel) this Agreement or (v) to the immediate family members, counsel, accountants, financial advisors, and/or Lien holders of such U.S. Program Claimant, if any (each of whom shall be instructed by such U.S. Program Claimant, upon such disclosure, to maintain and honor the confidentiality of such information). All U.S. Program Claimants shall be deemed to have consented to the disclosure of these records and other information for these purposes.

Section 21.2. Accurate Public Statement

The Parties shall cooperate in the public description of this Agreement and the U.S. Program established herein and shall agree upon the timing of distribution.

Article 22

Miscellaneous

Section 22.1. Notice by Parties

22.1.1. Any notice, request, instruction or other document to be given by DePuy to the SOC, or to be given by the SOC or other Counsel to DePuy, shall be in writing and delivered by mail, by Federal Express, by facsimile or, to the extent specified hereunder, by electronic mail, as follows, or as otherwise instructed by a notice delivered to the other Party pursuant to this subsection:

22.1.1.1. If to DePuy (to each of the following):

Susan M. Sharko, Esq.  
Drinker Biddle & Reath LLP  
500 Campus Drive  
Florham Park, New Jersey 07932  
Phone: 973-549-7350  
Facsimile: (973) 360-9831  
Email: susan.sharko@dbr.com

-and-

DePuy ASR Settlement  
c/o President,  
DePuy Orthopaedics, Inc.  
700 Orthopaedic Dr.  
Warsaw, IN 46582  
Phone: (574) 267-8143  
Facsimile: 574-269-7938

-and-

DePuy ASR Settlement  
c/o Office of General Counsel  
Johnson & Johnson Law Department  
One Johnson & Johnson Plaza  
New Brunswick, NJ 08933  
Phone: 732-524-0400  
Fax: 732-524-2788

22.1.1.2. If to the SOC (to each of the following):

Steven J. Skikos, Esq.  
Skikos Crawford Skikos & Joseph  
625 Market Street, 11<sup>th</sup> Floor  
San Francisco, CA 94105  
Phone: 415-546-7300  
Fax: 415-546-7301  
Email: sskikos@skikos Crawford.com

-and-

Michael A. Kelly, Esq.  
Walkup, Melodia, Kelly & Schoenberger  
650 California Street  
San Francisco, CA 94108  
Phone: 415-981-7210  
Fax: 415-391-6965  
Email: mkelly@walkuplawoffice.com

22.1.2. Any notice to be given by any Administrator of the U.S. Program to either DePuy and/or the SOC shall be given to the liaison committee comprised of representatives of both DePuy and SOC referred to in Section 12.5.4 by a method identified in Section 22.1.1.

22.1.3. DePuy may for all purposes of this Agreement treat the counsel specified in accordance with Section 1.2.19 as such Program Claimant's Counsel, unless and until otherwise advised by both such U.S. Program Claimant and such counsel.

22.1.4. Any notice, request, instruction or other document to be given by any Party or any Administrator to any U.S. Program Claimant or his Counsel hereunder, shall be in writing and delivered by mail, by Federal Express, by facsimile transmission, by electronic mail, or by posting on the electronic web portal created by the Claims Processor, and such Party or Administrator may rely on the mailing, facsimile transmission and/or email addresses and/or numbers that were last provided by the U.S. Program Claimant or his Counsel to the Claims Processor, and shall have no obligation to (but in its sole and absolute discretion may) take other steps to locate U.S. Program Claimants or Counsel whose mail, facsimile transmission or electronic mail has been returned as undelivered or undeliverable. Each U.S. Program Claimant and (if applicable) his Counsel shall have the responsibility to keep the Claims Processor informed of the correct mailing, facsimile transmission and email addresses and numbers for both such U.S. Program Claimant and such Counsel.

22.1.5. Any such notice, request, instruction or other document shall be deemed to have been given as of the date so transmitted by facsimile or electronic mail, the date posted on the electronic web portal created by the Claims Processor, on the next Business Day when sent by Federal Express or five Business Days after the date so mailed, provided that if any such date on which any such notice or other communication shall be deemed to have been given is not a Business Day, then such notice or other communication shall be deemed to have been given as of the next following Business Day.

Section 22.2. Receipt of Documentation

Any form or other documentation required to be served or submitted under this Agreement shall be deemed timely (i) if delivered by mail (and not required to be delivered in some other fashion), if postmarked (or, in the absence of a postmark or if such postmark is illegible, if received) on or before the date by which it is required to be submitted under this Agreement or (ii) if delivered (and expressly permitted or required to be delivered) by electronic mail, when it is capable of being accessed from such electronic mail address; or (iii) when uploaded on the electronic web portal created by the Claims Processor.

Section 22.3. Governing Law.

This Agreement shall be governed by and construed in accordance with the law of New York without regard to any choice-of-law rules that would require the application of the law of another jurisdiction.

Section 22.4. Waiver of Inconsistent Provisions of Law; Severability

22.4.1. To the fullest extent permitted by applicable law, each Party, each Enrolled U.S. Program Claimant and each Enrolling Counsel waives any provision of law (including the common law), which renders any provision of this Agreement invalid, illegal or unenforceable in any respect.

22.4.2. Any provision of this Agreement which is prohibited or unenforceable to any extent or in any particular context shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable only in or as it relates to a particular jurisdiction, such provision shall be ineffective only in or as it relates to (as the case may be) such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in or as it relates to (as the case may be) such jurisdiction shall not otherwise invalidate or render unenforceable such provision (in such or any other jurisdiction); (ii) if (without limitation of, and after giving effect to, clause (i)) such provision is prohibited or unenforceable only in a particular context (including only as to a particular Person or Persons or under any particular circumstance or circumstances), such provision shall be ineffective, but only in such particular context; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any other provision of this Agreement.

22.4.3. Without limitation of the preceding paragraph, it is further the desire, and intent and agreement, of the Parties that if any Special Master or the MDL Court determines that any provision of this Agreement is prohibited or unenforceable to any extent or in any particular context but in some modified form would be enforceable, the Claims Administrator (or, if applicable pursuant to Section 14.1.3, the Special Master) shall have the power to, and shall, (x) modify such provision for purposes of such proceeding in accordance with clauses (i), (ii) and (iii) of the preceding sentence and otherwise to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding, and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. In any event, upon any such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law. Nothing in this Section 22.4.3 is intended to, or shall, limit (1) Sections 22.4.1 or 22.4.2, or (2) the intended effect of Section 22.3.

**Section 22.5. Facsimile Signatures.**

This Agreement and any amendments thereto, to the extent signed and delivered by means of a facsimile machine or electronic scan (including in the form of an Adobe Acrobat PDF file format), shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

**Section 22.6. Construction.**

With regard to each and every term and condition of this Agreement, the parties thereto understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the parties thereto desire or are required to interpret or construe any such term or condition or any agreement or instrument subject hereto, no consideration shall be given to the issue of which party thereto actually prepared, drafted or requested any term or condition of thereof.

Section 22.7. Entire Agreement

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all previous agreements, negotiations, and commitments in writings between the Parties hereto with respect to the subject matter hereof.

Section 22.8. Headings; References.

The headings of the Table of Contents, Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. Any reference to an Exhibit, Annex, or Schedule shall be deemed to refer to the applicable Exhibit, Annex, or Schedule attached hereto. The words “include” and “including” and words of similar import when used in this Agreement or any Exhibit hereto are not limiting and shall be construed to be followed by the words “without limitation,” whether or not they are in fact followed by such words. The definitions contained in this Agreement or any Exhibit hereto are applicable to the singular as well as the plural forms of such terms. Words of any gender (masculine, feminine, neuter) mean and include correlative words of the other genders. As used herein or in any Exhibit hereto, the term “dollars” and the symbol “\$”, shall mean United States dollars. References herein to instruments or documents being submitted “by” any Person include (whether or not so specified) submission of the same on behalf of such Person by his Counsel whether or not so specified, provided that if any particular instrument or document is required herein to be executed by a particular Person, it must (unless otherwise expressly specified herein) be so executed by such Person. References herein to any particular Section (such as, for example, Section 5.2) shall be deemed to refer to all sub-Sections of such Section (such as, for example, Section 5.2.1, 5.2.2, etc.), all sub-sub-Sections of such sub-Sections, and so on; the corresponding principle applies to all references herein to any particular sub-Section, sub-sub-Section and so on.

Section 22.9. No Third Party Beneficiaries; Assignment

22.9.1. No provision of this Agreement or any Exhibit thereto is intended to create any third-party beneficiary to this Agreement. For the avoidance of doubt, nothing in this Section 22.9 limits or modifies the third-party beneficiary provisions of any Enrollment Form, Release or Dismissal With Prejudice Stipulation. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned – at any time, including but not limited to prior to the Execution Date -- by the any EUSC or Counsel, without the prior written consent of DePuy. No right to receive a Settlement Award Payment pursuant to the U.S. Program may be assigned – at any time, including but not limited to prior to the Execution Date -- by any EUSC, QUSC and/or any Enrolling Counsel without the prior written consent of DePuy. Any assignment in violation of this Section 22.9.1 shall be null and void *ab initio*, and if such assignment is not null and void *ab initio* for any reason, payment of any Settlement Awards under the U.S. Program to such QUSCs shall be precluded until such time as assignments in violation of this Section 22.9 have been nullified and voided and the Claims Administrator has been provided proof of such nullification.

22.9.2. Without limitation of Section 22.9.1 but also without limitation of the SOC's right to enforce this Agreement, no Program Claimant (including any Enrolled U.S. Program Claimant or Qualified U.S. Program Claimant) shall have any right to institute any proceeding, judicial or otherwise, against DePuy, the SOC or any Administrator to enforce, or otherwise with respect to, this Agreement.

Section 22.10. Amendments; No Implied Waiver

This Agreement may be amended by (and only by) an instrument signed by DePuy, on the one hand, and a majority in number of the SOC, on the other hand. Except where a specific period for action or inaction is provided herein, no failure on the part of a Party to exercise, and no delay on the part of either Party in exercising, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any waiver on the part of either Party of any such right, power or privilege, or any single or partial exercise of any such right, power or privilege, preclude any other or further exercise thereof or the exercise of any other right, power or privilege; nor shall any waiver on the part of a Party, on any particular occasion or in any particular instance, of any particular right, power or privilege operate as a waiver of such right, power or privilege on any other occasion or in any other instance.

Section 22.11. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all Parties hereto.

Section 22.12. Tax Matters

The Parties agree to characterize the Administration Expenses Escrow Fund, the Escrow PART A Award Settlement Fund and the Escrow PART B Award Fund for federal, state and local income tax purposes in such manner as is reasonably determined by DePuy, including without limitation as a "qualified settlement fund" within the meaning of Treasury Regulation Section 1.468B-1. The Escrow Agent, SOC, and DePuy shall timely provide each other with such material and relevant information as and to the extent reasonably requested by the other party in connection with any tax filing or the payment of any taxes or any private letter ruling regarding the tax status of these Escrow Funds. Within a reasonable time after the execution of this Agreement, the SOC will seek an order from the MDL Court indicating that such escrow accounts established pursuant to this Agreement are qualified settlement funds within the meaning of Treasury Regulation Section 1.468B-1. To the extent any settlement award constitutes a tax liability of the QUSC, it is the QUSC's responsibility to pay such tax.

Section 22.13. Further Assurances

From time to time following the Execution Date, (1) each Party shall take such reasonable actions consistent with the terms of this Agreement as may reasonably be requested by the other Party, and otherwise reasonably cooperate with the other Party in a manner consistent with the terms of this Agreement as reasonably requested by such other Party, and (ii) each U.S. Program Claimant (and his related Executing Derivative Claimants) and their Counsel

shall take such reasonable actions consistent with the terms of this Agreement as may reasonably be requested by DePuy or the SOC, and otherwise reasonably cooperate with DePuy and the SOC in a manner consistent with the terms of this Agreement as reasonably requested by DePuy or the SOC, in the case of each of (i) and (ii) as may be reasonably necessary in order further to effectuate the intent and purposes of this Agreement and to carry out the terms hereof.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the last date set forth below.

**SETTLEMENT OVERSIGHT COMMITTEE**



Steven J. Skikos  
Adriana Suarez Desmond  
Skikos, Crawford, Skikos & Joseph

Dated: 11/14/13



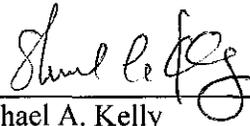
Perry Weitz  
Ellen Relkin  
Weitz & Luxenberg, P.C

Dated: 11/19/13



Christopher A. Seeger  
Dave Buchanan  
Seeger Weiss LLP

Dated: 11/15/13



Michael A. Kelly  
Khalidoun Baghdadi  
Walkup, Melodia, Kelly & Schoenberger

Dated: 11/19/13



R. Eric Kennedy  
Weisman, Kennedy &  
Berris Co., L.P.A.

Dated: 11-19-13



Peter J. Flowers  
Meyers & Flowers

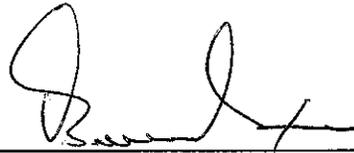
Dated: 11/19/13

ASR Hip Settlement Agreement



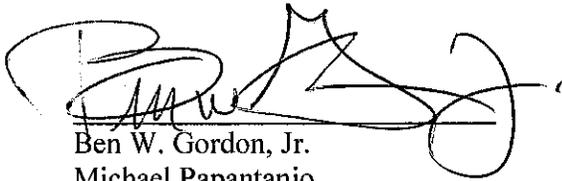
Brian Panish  
Hon. Peter J. Polos (Ret.)  
Panish Shea & Boyle

Dated: 11/19/2013



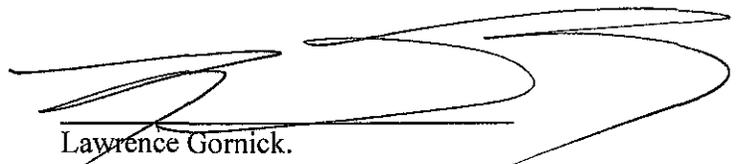
Ken Seeger  
Brian J. Devine  
Seeger Salvas LLP

Dated: 11/19/2013



Ben W. Gordon, Jr.  
Michael Papantano  
Levin, Papantano, Thomas,  
Mitchell, Rafferty & Proctor, P.A.

Dated: 19 Nov 2013



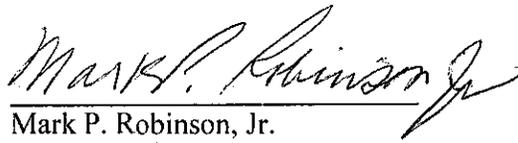
Lawrence Gornick.  
Kaiser Gornick LLP

Dated: 11/19/2013



Michelle L. Kranz  
Zoll, Kranz & Borgess LLC

Dated: 11/19/2013



Mark P. Robinson, Jr.  
Robinson, Calcagnie, Robinson  
Shapiro Davis, Inc.

Dated: 11-19-13



Daniel R. Lapinski  
Wilentz, Goldman & Spitzer, P.A.

Dated: 11/19/13

\_\_\_\_\_  
Brian Panish  
Hon. Peter J. Polos (Ret.)  
Panish Shea & Boyle

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ken Seeger  
Brian J. Devine  
Seeger Salvas LLP

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ben W. Gordon, Jr.  
Michael Papantano  
Levin, Papantano, Thomas,  
Mitchell, Rafferty & Proctor, P.A.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Lawrence Gornick.  
Kaiser Gornick LLP

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michelle L. Kranz  
Zoll, Kranz & Borgess LLC

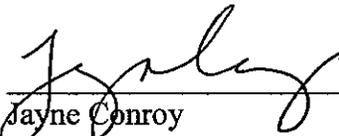
Dated: \_\_\_\_\_

\_\_\_\_\_  
Mark P. Robinson, Jr.  
Robinson, Calcagnie, Robinson  
Shapiro Davis, Inc.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Daniel R. Lapinski  
Wilentz, Goldman & Spitzer, P.A.

Dated: \_\_\_\_\_

  
\_\_\_\_\_  
Jayne Conroy  
Hanley, Conroy, Bierstein, Sheridan,  
Fisher, Hayes LLP

Dated: November 25, 2013

**DEFENDANT**

DePuy Orthopaedics, Inc.

By:   
\_\_\_\_\_  
Scott R. Ryan  
Vice President, Law  
DePuy Orthopaedics, Inc.

Dated: 11.19.13

**Exhibit 3.2**  
**Form of Registration Order**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

_____ )	
IN RE: DEPUY ORTHOPAEDICS, )	MDL Docket No. 1:10-md-2197-DAK
INC. ASR HIP IMPLANT PRODUCTS )	
LIABILITY LITIGATION )	
----- )	HONORABLE DAVID A. KATZ
)	
This Document Relates to: )	<b>ORDER REGARDING REGISTRATION</b>
ALL CASES )	<b>OF ASR RELATED CASES AND CLAIMS</b>
)	
)	
_____ )	

In order for this Court and the cooperating state court jurisdictions with coordinated proceedings pending in California (JCCP 4649), New Jersey (Master Docket No. BER-L-3971-11) and Illinois (Case No. 10 L 10506) to cooperatively manage this litigation and to assist the Parties to effectuate the provisions of the private Final Settlement Agreement entered into between the MDL Plaintiffs’ Executive Committee, Plaintiffs’ Settlement Oversight Committee (“SOC”), and DePuy Orthopaedics, Inc. and its successors (“DePuy”), it is necessary to identify all filed and unfiled ASR related claims:

**IT IS HEREBY ORDERED AND DECREED THAT:**

1. All counsel for any ASR-related case pending in this Court, signatories to the MDL Participation Agreement, and/or counsel who have any clients who have claims, filed or unfiled, Connected With ASR Hip Implants, shall (i) identify all clients with filed and unfiled ASR XL, ASR Resurfacing and/or Hemiarthroplasty claims, whether or not involving a Revision Surgery, and regardless of the client’s ultimate decision regarding enrollment in the U.S. Program, (ii) provide the information for such clients as set forth on Exhibit A, including

identifying all Interested Counsel in each filed case or unfiled claim and (iii) designate the Primary Law Firm and contacts as set forth below. The Registration Declaration, the form of Registration Lists, and the *Pro Se* Affidavit will be made available through the Claims Processor in a form materially similar to Exhibit A to this Order.

2. Obligations of Counsel:

A. *Service Of Registration List:* Counsel representing clients with claims Connected With ASR Hip Implants must prepare a Registration Declaration and Registration List, identifying all such clients as set out below in 2.B. and 2.C. To obtain a copy of the Registration Declaration and Registration List, go to the Claims Processor website, [www.USASRHipsettlement.com](http://www.USASRHipsettlement.com), click on the “Registration Button” and follow the instructions. The completed Registration Declaration and Registration List shall be submitted to the Claims Processor (as formatted, for the accurate and efficient transfer of the required information) no later than January 6, 2014. To submit these materials, go to [www.USASRHipsettlement.com](http://www.USASRHipsettlement.com), click the “Registration Button” and follow the upload instructions. **UPLOADING THE REGISTRATION DECLARATION AND REGISTRATION LIST ON THE USASRHIPSETTLEMENT WEBSITE IN NO WAY SIGNIFIES A CLAIMANT’S COMMITMENT OR INTENT TO ENROLL IN THE U.S. PROGRAM. NOR DOES IT AFFECT A CLAIMANT’S ELIGIBILITY TO ENROLL AND RECEIVE BENEFITS IN THE U.S. PROGRAM.**

B. *Information to be Provided Regarding Filed Cases:* For each filed case, Counsel shall identify on the Registration List all cases that are filed in these proceedings or in any other federal or state court or tribunal in the United States in which they serve

as the Primary Law Firm as of the date of this Order, the identity of the Principal Responsible Attorney for each filed case and all Interested Counsel for each filed case, and the case and claim related information on the form Registration List.

C. *Information to be Provided Regarding Unfiled Claims.* Counsel shall identify on the Registration List all unfiled ASR XL, ASR Resurfacing and/or Hemiarthroplasty claims, whether or not involving a Revision Surgery, in which counsel has any Interest, and which will include basic information about each claim as set forth on the form established by the Claims Processor and shall identify the Primary Law Firm, Principal Responsible Attorney and all Interested Counsel for such unfiled claims.

D. The Primary Law Firm shall declare on the Registration Declaration under oath that (i) all filed cases and unfiled claims in which they are the Primary Law Firm are identified on the Registration List, (ii) all Interested Counsel are identified, and (iii) that the claim-related information is accurate and complete. Counsel shall further certify under oath that they have verified that all cases in which they have an Interest are, or will be, identified on other Registration Lists submitted by another Primary Law Firm. If there is any claim Connected With ASR Hip Implants for any Plaintiff or Claimant, whether filed or unfiled, whether or not involving a Revision Surgery, in which an attorney bound by this Order has an Interest and believes is not, or will not be, listed on any Registration List submitted by any other Primary Law Firm, then such attorney shall include the Plaintiff or Unfiled Claimant on his or her Registration List with the information specified in paragraphs 2.B. and 2.C. above, and shall state “No Primary Law Firm Designated.”

E. *Due Date For Service Of Registration List:* The Registration Declaration and Registration List shall be served on the Claims Processor as specified above on or before January 6, 2014.

F. *Updates Regarding Change in Status:* The Primary Law Firm shall serve an updated Report regarding any change in status of any Plaintiff or Unfiled Claimant identified on their Registration List. The updated Report shall be in the form set by the Claims Processor, and shall include changes in status to both unrevised Plaintiffs and Unfiled Claimants and Plaintiffs and Unfiled Claimants with subsequent additional revision surgeries. The Report shall be updated on June 1 and November 1 of each calendar year following the service of the initial Registration List, and shall be served on the Claims Processor who will promptly distribute to DePuy and the SOC. The updating requirement shall cease upon June 1, 2015.

3. *Pro Se Plaintiffs And Unrepresented Claimants:* All persons who represent themselves *pro se* in these proceedings and all Unrepresented Claimants with unfiled ASR related claims who wish to participate in the U.S. Program voluntarily (collectively “*Pro Se Plaintiffs and Claimants*”), shall complete the *Pro Se* Registration form which can be obtained by going to the Claims Processor website, [www.USASRHipsettlement.com](http://www.USASRHipsettlement.com), clicking on the “Registration Button” and following the instructions. The completed *Pro Se* Registration form shall be submitted to the Claims Processor (as formatted, for the accurate and efficient transfer of the required information) no later than January 6, 2014. To submit these materials, go to [www.USASRHipsettlement.com](http://www.USASRHipsettlement.com), click the “Registration Button” and follow the upload instructions. **UPLOADING THE *PRO SE* REGISTRATION FORM ON THE USASRHIPSETTLEMENT WEBSITE IN NO WAY SIGNIFIES A CLAIMANT’S**

**COMMITMENT OR INTENT TO ENROLL IN THE U.S. PROGRAM. NOR DOES IT AFFECT A CLAIMANT'S ELIGIBILITY TO ENROLL AND RECEIVE BENEFITS IN THE U.S. PROGRAM.**

If the *Pro Se* Plaintiff or Unfiled Claimant is not able to submit the forms electronically, the *Pro Se* Plaintiff or Claimant shall send the Registration Affidavit via U.S. mail postmarked no later than January 6, 2014:

Claims Processor  
U.S. ASR Hip Settlement  
P.O. Box 26078  
Richmond, VA 23260

A. *Updates Regarding Change in Status:* All *Pro Se* Plaintiffs and Claimants shall serve an updated Report regarding any change in status of their ASR-related claim, and shall include changes in status to both unrevised *Pro Se* Plaintiff and Claimants and information concerning subsequent additional revision surgeries. The updated Report shall be in the form set by the Claims Processor, and shall be served on, June 1 and November 1 of each calendar year following the service of the initial Registration List. The updated Report shall be served on the Claims Processor in the manner previously described. The update requirement shall cease upon June 1, 2015.

B. *Assistance:* The Settlement Oversight Committee will be available to provide assistance with registration to *Pro Se* Plaintiffs and Claimants. The assistance provided by the SOC does not create an attorney-client relationship and any *Pro Se* Plaintiffs and Claimants who obtain this assistance remain *pro se*.

4. Definitions:

A. *“Primary Law Firm” Defined:* “Primary Law Firm” as used herein shall mean a single designated law firm primarily responsible for obligations relating to the Final Settlement Agreement and compliance with any of the Court Orders entered in the jurisdiction in which the case is pending. Such designation shall be included on the Registration Declaration and the Registration List. The Registration Declaration shall also include the law firm telephone number, business address, and names and emails of the Principal Responsible Attorney and an administrative contact at the law firm who will be handling the case.

B. *“Principal Responsible Attorney” Defined:* The Principal Responsible Attorney is the single attorney jointly identified by the Primary Law Firm and Interested Counsel by name, state bar number, business address, telephone number, and email address, who will be primarily responsible to provide notice to the Court and for day to day communications and activities related to the obligations of those cases identified on the Registration List submitted with each Registration Declaration of the Primary Law Firm relating to the Final Settlement Agreement and compliance with any of the Court Orders entered in the jurisdiction in which the case is pending.<sup>1</sup>

C. *“Interested Counsel” Defined:* “Interested Counsel” means any Counsel (as defined) with an Interest (as defined) in a Person, or in a claim or case of a Person

---

<sup>1</sup> The designation of a Principal Responsible Attorney is not intended to impact in any way the rights or obligations of all counsel who represent a client, including all counsel who have any financial interest in the client’s claim. (“Interested Counsel”), nor shall such designation alter the relationship among counsel. For any filed case or unfiled claim in which multiple firms have been designated as the Primary Law Firm, any dispute over representation that cannot be resolved by the law firms may be submitted to the Special Masters under the settlement and affected claims will be stayed pending review and resolution .

who has a Claim, filed or unfiled, Connected With ASR Hip Implants (as defined). Interested Counsel and the Primary Law Firm shall jointly be responsible for compliance with any Court Orders.

D. *“Interest” Defined:* “Interest” as used herein shall mean any interest in any ASR XL, ASR Resurfacing and/or Hemiarthroplasty claims, whether revised or unrevised, in which counsel: (a) has an engagement or retainer agreement with such claimant; (b) is listed as the counsel of record for a Plaintiff in any filed pleadings related to the ASR XL, ASR Resurfacing and/or Hemiarthroplasty claims, (c) has entered an appearance for such Plaintiff, or (d) would benefit directly or indirectly from any payment to settle any claim of such Plaintiff or Claimant in connection with ASR XL, ASR Resurfacing and/or Hemiarthroplasty claims; or (e) otherwise has any financial interest of any kind whatsoever in any ASR XL, ASR Resurfacing and/or Hemiarthroplasty claim.

E. *“Counsel”* means, with respect to any particular Person, a lawyer and/or law firm who represents such Person pursuant to a written agreement, or who has an Interest in such Person’s Claim Connected with ASR Hip Implants.

F. *“Person”* means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, Governmental Authority, custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

G. “ASR Revision Surgery.” for purposes of Registration, means a surgery subsequent to the ASR Index Surgery to remove the cup of an ASR™ XL Acetabular Hip System (“ASR XL”) or ASR™ Hip Resurfacing System (“ASR Resurfacing”).

H. “Connected With ASR Hip Implants” means to any extent, or in any way, arising out of, relating to, resulting from and/or connected with the implantation, use and/or removal of the ASR™ XL Acetabular Hip System or ASR™ Hip Resurfacing System, and/or Component and Ancillary Parts (collectively “ASR Hip Implants”) and/or any injury, losses, or damages caused or claimed to have been caused, in whole or in part, by any such ASR Hip Implants and/or revision to remove all or part of such ASR Hip Implants.

5. Changes In Information:

A. Attorney Obligations. The Primary Law Firm shall serve written notice of any changes to the information provided on the Registration List, including but not limited to the acquisition or loss of Primary Law Firm status for the case, any change in information for the Primary Law Firm, the Principal Responsible Attorney, or administrative contact for the case, any change in designation of Primary Law Firm status for any case previously listed as “No Primary Law Firm Designated,” and any other change of any information verified under oath. If the change is a loss of Primary Law Firm status or loss of an Interest in the case, the notice shall also identify name of the attorney and/or law firm, telephone number, email, business address of the new representative for the Plaintiff or Unfiled Claimant or, if none, an affirmation of the Plaintiff or Unfiled Claimant’s *pro se* status and the telephone number, email and address for the Plaintiff or

Unfiled Claimant. Such written notice must specify the changed circumstances and be served within 30 days of such change upon the Claims Processor. This obligation shall terminate on June 1, 2015.

B. *Pro Se* Plaintiffs And Unrepresented Claimants. All *Pro Se* Plaintiffs and Unrepresented Claimants shall serve written notice of any changes to the information provided on the Registration List, including but not limited to any change regarding contact information or the subsequent retention of counsel. If the change of information is the retention of counsel, the *Pro Se* Plaintiff or Claimant shall provide the attorney name, address, telephone number and email address for counsel. Such written notice must specify the changed circumstances and be served with 30 days of such change upon the Claims Processor. This obligation shall terminate on June 1, 2015.

6. Enforcement: All Counsel and *Pro Se* Plaintiffs and Unrepresented Claimants are required to comply with this Order. Failure to meet the requirements of this Order will subject non-compliant parties and counsel to a show cause hearing as to the reason for such failure and may subject such party or counsel to penalties at the Court's discretion.

7. Compliance With Court Orders: Pursuant to the Agreement of the Parties, all Plaintiffs and Unfiled Claimants, whether represented or unrepresented by counsel, who elect to participate in the U.S. Program agree to abide by any Orders of the court in which the case is filed or, if unfiled, by this Court in these federal MDL proceedings in furtherance of the Final Settlement Agreement, including MDL Case Management Order 13 and any amendments thereto ("CMO 13"). Also pursuant to the terms of the Final Settlement Agreement, **all Interested Counsel agree to abide by CMO 13, and permit the holdback of a percentage of fees and a**

percentage of costs from any final award/gross, gross monetary recovery as approved by the Court.

8. Joint Database: The Claims Processor shall maintain a database of all cases and claims identified pursuant to this Order which will be available to DePuy, the Settlement Oversight Committee and the Court, if requested.

9. Cooperation With Other Jurisdictions: This Order is entered in conjunction with cooperating state court jurisdictions with coordinated proceedings pending in California (JCCP 4649), New Jersey (Master Docket No. BER-L-3971-11) and Illinois (Case No. 10 L 10506). It is the intention of this Court to work in cooperation with these courts in a manner that promotes judicial economy and that secures as complete registration of all claims and potential claims as possible, and to share all information obtained in the registration process amongst the cooperating courts and their leadership counsel. It is also the intention of this Court to work in cooperation with any other state court or tribunal in which ASR-related claims are pending. If there is any dispute concerning the implementation of this Order, this Court will coordinate conferral among the Courts for resolution of the issue, consistent with the law of the various jurisdictions.

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Hon. David A. Katz  
United States District Court Judge

# EXHIBIT A TO ORDER REGARDING REGISTRATION OF ASR RELATED CASES AND CLAIMS

## A. Introduction

Welcome to the U.S. ASR Hip Registration Process. This Excel file is required for the submission of information in compliance with the Order on Registration of Claimants ("Registration Order"). You must complete both the "Designation & Certification" and "Claimant List" worksheets. The "Designation & Certification" worksheet is for the entry of information about your law firm, Primary Responsible Attorney, and Secondary Administrative Contact. This worksheet also includes the certifications required by the Registration Order. The "Claimant List" worksheet is for you to list information about all ASR Recipients for which you are an Interested Counsel. The "Instructions" worksheet contains instructions for how to complete the "Claimant List" worksheet. To access these worksheets, click on the tabs containing the title of the worksheet, which are located at the bottom of this screen.

If you have any questions or encounter any problems, you may contact the Settlement Oversight Committee ("SOC") by telephone at (877) 391-3169. You may also contact the Claims Processor by email at [claimsprocessor@usasrhipsettlement.com](mailto:claimsprocessor@usasrhipsettlement.com).

## B. Instructions on Using the Spreadsheet

1.	To ensure consistency, the Claims Processor has limited the responses to certain questions. For these questions, the Claims Processor has identified the permitted responses in a drop-down menu. To view and select the permitted responses, click on the button on the right of the cell with a down-arrow symbol. A button with a down-arrow symbol will appear to the right of the data entry cell when your cursor is located within the cell. If you enter a response that is not in the drop-down menu, you will receive an error message.
2.	Some data entry cells require data to be entered in a pre-defined format. For instance, you must enter dates as MM/DD/YYYY. You must enter Social Security Numbers without dashes and non-numeric characters. If you enter a response that is not in the correct format, you will receive an error message which prompts you to enter a valid response.
3.	You can access the "Instructions" worksheet by clicking on the column header for each individual column of the "Claimant List" worksheet. This will link to the specific instruction on the "Instructions" worksheet, where you can link back to that column to complete the data entry.

## U.S. ASR HIP REGISTRATION CERTIFICATION AND DESIGNATION OF PRIMARY LAW FIRM WITH CONTACT INFORMATION

### A. Primary Law Firm Designation

<b>1. Law Firm Name</b>		
<b>2. Business Address</b>	<b>(a) Street</b>	
	<b>(b) City</b>	
	<b>(c) State</b>	
	<b>(d) Zip Code</b>	
<b>3. Telephone Number</b>		
<b>4. Fax Number</b>		

### B. Principal Responsible Attorney Contact Information

<b>5. First Name</b>	
<b>6. Last Name</b>	
<b>7. Position at Firm</b>	
<b>8. State Bar Number</b>	
<b>9. Email Address</b>	
<b>10. Direct Telephone Number</b>	

### C. Secondary Administrative Contact Information

<b>11. First Name</b>	
<b>12. Last Name</b>	
<b>13. Position at Firm</b>	
<b>14. Email Address</b>	
<b>15. Direct Telephone Number</b>	

### D. Certification

I make this certification pursuant to the following order(s), and any amendments thereto (check all that apply where your clients have cases pending):

	Case Management Order No. X entered on X, 2013 by the United States District Court for the Northern District of Ohio in Master Docket No. 10-md-02197
	Order entered on X, 2013 by the Superior Court of New Jersey Law Division: Bergen County, Master Docket No. BER-L-3971-11
	Order entered on X, 2013 by the Superior Court of California, San Francisco County in JCCP No. 4649
	Case Management Order No. X entered on X, 2013 by Circuit Court of Cook County, Illinois in Case No. 10 L 10506

\*\* For any claimant with a case pending in a state court that is not one of the Coordinated Proceedings in California, New Jersey or Illinois, or for any claimant who does not have a case pending in any court, check that you are making this Certification pursuant to the Federal MDL Order.

I hereby certify under penalty of perjury pursuant to 28 U.S.C. §1746 that the Registration List served with this certification identifies all filed cases and unfiled claims in which my firm is the Primary Law Firm, identifies all Interested Counsel for each filed case or unfiled claim, and provides accurate and complete claim-related information, in compliance with the Order Regarding Registration of ASR Related Cases and Claims.

<b>16. Principal Responsible Attorney Signature<sup>1</sup></b>	s/
<b>17. Date Signed</b>	

An electronic signature denoted by "s/" is considered as binding as an original signature pursuant to FRCP 5(d)(3) and L.R.5.1(b).



B. LEGAL REPRESENTATIVE INFORMATION					
	If you answer No to this question, do not answer Questions 11 - 14.	If you answered Yes to Question 10, enter the information requested regarding the Legal Representative of the claimant. (These cells will turn black to indicate when you should not enter information.)			
	10. Does the Claimant have a Legal Representative? (Yes/No)	11. Legal Representative's Last Name	12. Legal Representative's First Name	13. Legal Representative's Middle Name or Initial	14. Reason for Legal Representative (Deceased Claimant/Claimant is Incompetent)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					

C. LAWSUIT INFORMATION				
If you answer Unfiled Claim to this question, do not answer Questions 16 - 19.	If you entered Filed Case for Question 15, enter the information requested regarding the current lawsuit related to the ASR product. (These cells will turn black to indicate when you should not enter information.)			
15. Is There a Filed Case, or is the Claim Unfiled? (Filed Case/ Unfiled Claim)	16. Case Caption	17. Case Number	18. Current Venue of Court Case (See Drop-down list for options)	19. Other State Court
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				

D. SPOUSAL INFORMATION				
	If you answer No to this question, do not answer Questions 21 - 23.	If you answered Yes to Question 20, enter the name of the claimant's spouse in these columns. (These cells will turn black to indicate when you should not enter information.)		
	20. Is the Claimant Married? (Yes/No)	21. Spouse's Last Name	22. Spouse's First Name	23. Spouse's Middle Name or Initial
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				





G. LAW FIRM INFORMATION		H. INTERESTED COUNSEL INFORMATION			
If you answer No to this question, do not answer Questions 43.	If you answered Yes to Question 42, enter the information about the claimant's law firm. (This cell will turn black to indicate when you should not enter information.)	If you answer No to this question, do not answer Questions 45 - 47	If you answered Yes to Question 44, enter information regarding the First Interested Counsel other than the Primary Law Firm. (These cells will turn black to indicate when you should not enter information.)		
	<b>42. Is the Claimant Represented by an Attorney?</b>		<b>43. Is the Law Firm Identified on the Designation &amp; Certification Worksheet Acting as the Primary Law Firm for this Claimant? (Yes/No)</b>	<b>44. Is There Interested Counsel Other than the Primary Law Firm? (Yes/No)</b>	<b>45. First Interested Counsel's Name or Law Firm Name</b>
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					
11.					
12.					
13.					
14.					
15.					
16.					
17.					
18.					
19.					
20.					

I. SECOND INTERESTED COUNSEL INFORMATION				
	<p>If you answer No to this question, do not answer Questions 49-51.</p>	<p>If you answered Yes to Question 48, enter information regarding the Second Interested Counsel other than the Primary Law Firm or Interested Counsel Listed in Question 45. If there are more than two Interested Counsel, create a separate list and submit it along with this spreadsheet. (These cells will turn black to indicate when you should not enter information.)</p>		
	<p><b>48. Is There a Second Interested Counsel Other than the Primary Law Firm and Interested Counsel Listed in Question 45? (Yes/No)</b></p>	<p><b>49. Second Interested Counsel's Name or Law Firm Name</b></p>	<p><b>50. Second Interested Counsel's City</b></p>	<p><b>51. Second Interested Counsel's State</b></p>
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				

## U.S. ASR HIP REGISTRATION SPREADSHEET INSTRUCTIONS

Question	Column Header	Drop-Down Choices	Instructions	
<b>A. Demographic Information For Claimants</b>				
1.	<b>Unique ID Assigned by Law Firm</b>		If you use a unique identifier for your clients, the Claims Processor can track these identifiers to facilitate exchanging data with your firm. This field is optional.	<a href="#">Return to Claimant List</a>
2.	<b>Last Name</b>		Enter the claimant's last name.	<a href="#">Return to Claimant List</a>
3.	<b>First Name</b>		Enter the claimant's first name.	<a href="#">Return to Claimant List</a>
4.	<b>Middle Name or Initial</b>		Enter the claimant's middle name or initial.	<a href="#">Return to Claimant List</a>
5.	<b>Social Security Number</b>		Enter the claimant's nine-digit Social Security Number. The full SSN is necessary to register the claimant and will remain confidential and secure. Do not enter any dashes.	<a href="#">Return to Claimant List</a>
6.	<b>Date of Birth</b>		Enter the claimant's Date of Birth using the MM/DD/YYYY format.	<a href="#">Return to Claimant List</a>
7.	<b>U.S. Citizen or U.S. Legal Resident</b>	Yes No	Enter Yes if the claimant is a United States Citizen or United States Legal Resident.	<a href="#">Return to Claimant List</a>
8.	<b>City</b>		Enter the claimant's current city of residence.	<a href="#">Return to Claimant List</a>
9.	<b>State</b>	List of US states and territories	Enter the claimant's current state of residence.	<a href="#">Return to Claimant List</a>
<b>B. Legal Representative Information</b>				
10.	<b>Does the Claimant have a Legal Representative?</b>	Yes No	Enter Yes if the claimant has a Legal Representative and answer Questions 11-14.	<a href="#">Return to Claimant List</a>
11.	<b>Legal Representative's Last Name</b>		If the answer to Question 10 is Yes, enter the Legal Representative's last name.	<a href="#">Return to Claimant List</a>
12.	<b>Legal Representative's First Name</b>		If the answer to Question 10 is Yes, enter the Legal Representative's first name.	<a href="#">Return to Claimant List</a>

## U.S. ASR HIP REGISTRATION SPREADSHEET INSTRUCTIONS

Question	Column Header	Drop-Down Choices	Instructions	
13.	<b>Legal Representative's Middle Name or Initial</b>		If the answer to Question 10 is Yes, enter the Legal Representative's middle name or initial.	<a href="#">Return to Claimant List</a>
14.	<b>Reason for Legal Representative</b>	Claimant Deceased Claimant is Incompetent	If the answer to Question 10 is Yes, enter the reason that the claimant has a Legal Representative.	<a href="#">Return to Claimant List</a>
<b>C. Lawsuit Information</b>				
15.	<b>Is There a Filed Case, or is the Claim Unfiled?</b>	Filed Case Unfiled Claim	Enter Filed Case if the claimant or the claimant's Legal Representative has filed a lawsuit to recover injuries related to an ASR product and answer Questions 16-19. Enter Unfiled Claim if the claimant or the claimant's Legal Representative did not file a lawsuit to recover injuries related to an ASR product and do not answer Questions 16-19.	<a href="#">Return to Claimant List</a>
16.	<b>Case Caption</b>		If the answer to Question 15 is Filed Case, enter the caption (Plaintiff vs. Defendant) of the case filed by the claimant.	<a href="#">Return to Claimant List</a>
17.	<b>Case Number</b>		If the answer to Question 15 is Filed Case, enter the case number of the case filed by the claimant or the claimant's Legal Representative.	<a href="#">Return to Claimant List</a>
18.	<b>Current Venue of Court Case</b>	MDL 2197 (OHND) CAJCCP 4649 NJ BER-L-3971-11 IL 10-L-10506 Other State	If the answer to Question 15 is Filed Case, enter the venue of the Court where the case is pending. If the venue is not one of the choices in the drop-down menu, enter Other State and answer Question 19.	<a href="#">Return to Claimant List</a>
19.	<b>Other State Court</b>	List of US states and territories	If the answer to Question 15 is Filed Case and the answer to Question 18 is Other State, enter the state where the case is pending using the drop down list.	<a href="#">Return to Claimant List</a>
<b>D. Spousal Information</b>				
20.	<b>Is the Claimant Married?</b>	Yes No	Enter Yes if the claimant is married and answer Questions 21-23.	<a href="#">Return to Claimant List</a>
21.	<b>Spouse's Last Name</b>		If the answer to Question 20 is Yes, enter the spouse's last name.	<a href="#">Return to Claimant List</a>
22.	<b>Spouse's First Name</b>		If the answer to Question 20 is Yes, enter the spouse's first name.	<a href="#">Return to Claimant List</a>

## U.S. ASR HIP REGISTRATION SPREADSHEET INSTRUCTIONS

Question	Column Header	Drop-Down Choices	Instructions	
23.	<b>Spouse's Middle Name or Initial</b>		If the answer to Question 20 is Yes, enter the spouse's middle name or initial.	<a href="#">Return to Claimant List</a>
<b>E. Left Hip Implant Surgery Information</b>				
24.	<b>Did the Claimant Have an ASR Product Implanted in His/Her Left Hip?</b>	Yes No	Enter Yes if the claimant underwent a surgery to implant an ASR Product in his/her left hip and answer Questions 25-32 as applicable.	<a href="#">Return to Claimant List</a>
25.	<b>Date of Left ASR Implant Surgery</b>		If the answer to Question 24 is Yes, enter the date of the claimant's surgery to implant an ASR Product in his/her left hip.	<a href="#">Return to Claimant List</a>
26.	<b>Place of Left ASR Implant Surgery</b>		If the answer to Question 24 is Yes, enter the location of the hospital where the claimant underwent a surgery to implant an ASR Product in his/her left hip.	<a href="#">Return to Claimant List</a>
27.	<b>Left Hip ASR Product</b>	ASR XL ASR Resurfacing	If the answer to Question 24 is Yes, enter the type of ASR Product that the claimant received in his/her left hip. The two options are the ASR™ XL Acetabular Hip System ("ASR XL") or the ASR™ Hip Resurfacing System ("ASR Resurfacing").	<a href="#">Return to Claimant List</a>
28.	<b>Did the Claimant Undergo a Revision Surgery Involving the Left ASR Implant?</b>	Yes No	If the answer to Question 24 is Yes, enter Yes or No depending on whether the claimant underwent a revision surgery on his/her left hip subsequent to the ASR Index Surgery to remove the ASR XL or ASR Resurfacing. If the answer is Yes, answer Questions 28-31 as applicable.	<a href="#">Return to Claimant List</a>
29.	<b>Date of Left Revision #1</b>		If the answer to Questions 24 and 27 are Yes, enter the date of the claimant's revision surgery related to the left hip. If the claimant underwent more than one surgery related to the left hip, enter the first date in this column and use the other columns to enter the subsequent surgery dates.	<a href="#">Return to Claimant List</a>
30.	<b>Date of Left Revision #2</b>		If the answer to Questions 24 and 27 are Yes and the claimant underwent a second revision surgery related to the left hip, enter the second date in this column. Leave this field blank if the claimant did not undergo a second revision surgery.	<a href="#">Return to Claimant List</a>
31.	<b>Date of Left Revision #3</b>		If the answer to Questions 24 and 27 are Yes and the claimant underwent a third revision surgery related to the left hip, enter the third date in this column. Leave this field blank if the claimant did not undergo a third revision surgery.	<a href="#">Return to Claimant List</a>

## U.S. ASR HIP REGISTRATION SPREADSHEET INSTRUCTIONS

Question	Column Header	Drop-Down Choices	Instructions	
32.	<b>Date of Left Revision #4</b>		If the answer to Questions 24 and 27 are Yes and the claimant underwent a fourth revision surgery related to the left hip, enter the fourth date in this column. Leave this field blank if the claimant did not undergo a fourth revision surgery.	<a href="#">Return to Claimant List</a>
<b>F. Right Hip Implant Surgery Information</b>				
33.	<b>Did the Claimant have an ASR Product Implanted in His/Her Right Hip?</b>	Yes No	Enter Yes if the claimant underwent a surgery to implant an ASR Product in his/her right hip and answer Questions 34-41 as applicable.	<a href="#">Return to Claimant List</a>
34.	<b>Date of Right ASR Implant Surgery</b>		If the answer to Question 33 is Yes, enter the date of the claimant's surgery to implant an ASR Product in his/her left hip.	<a href="#">Return to Claimant List</a>
35.	<b>Place of Right ASR Implant Surgery</b>		If the answer to Question 33 is Yes, enter the location of the hospital where the claimant underwent a surgery to implant an ASR Product in his/her right hip.	<a href="#">Return to Claimant List</a>
36.	<b>Right Hip ASR Product</b>	ASR XL ASR Resurfacing	If the answer to Question 33 is Yes, enter the type of ASR Product that the claimant received in his/her right hip. The two options are the ASR™ XL Acetabular Hip System ("ASR XL") or the ASR™ Hip Resurfacing System ("ASR Resurfacing").	<a href="#">Return to Claimant List</a>
37.	<b>Did the Claimant Undergo a Revision Surgery Involving the Right ASR Implant?</b>	Yes No	If the answer to Question 33 is Yes, enter Yes or No depending on whether the claimant underwent a revision surgery on his/her right hip subsequent to the ASR Index Surgery to remove the ASR XL or ASR Resurfacing. If the answer is Yes, answer Questions 38-41 as applicable.	<a href="#">Return to Claimant List</a>
38.	<b>Date of Right Revision #1</b>		If the answer to Questions 33 and 37 are Yes, enter the date of the claimant's revision surgery related to the right hip. If the claimant underwent more than one surgery related to the right hip, enter the first date in this column and use the other columns to enter the subsequent surgery dates.	<a href="#">Return to Claimant List</a>
39.	<b>Date of Right Revision #2</b>		If the answer to Questions 33 and 37 are Yes and the claimant underwent a second revision surgery related to the right hip, enter the second date in this column. Leave this field blank if the claimant did not undergo a second revision surgery.	<a href="#">Return to Claimant List</a>
40.	<b>Date of Right Revision #3</b>		If the answer to Questions 33 and 37 are Yes and the claimant underwent a third revision surgery related to the right hip, enter the third date in this column. Leave this field blank if the claimant did not undergo a third revision surgery.	<a href="#">Return to Claimant List</a>

## U.S. ASR HIP REGISTRATION SPREADSHEET INSTRUCTIONS

Question	Column Header	Drop-Down Choices	Instructions	
41.	<b>Date of Right Revision #4</b>		If the answer to Questions 33 and 37 are Yes and the claimant underwent a fourth revision surgery related to the right hip, enter the fourth date in this column. Leave this field blank if the claimant did not undergo a fourth revision surgery.	<a href="#">Return to Claimant List</a>
<b>G. Law Firm Information</b>				
42.	<b>Is the Claimant Represented by an Attorney?</b>	Yes No	Enter Yes if the claimant is represented by an attorney and answer Questions 43.	<a href="#">Return to Claimant List</a>
43.	<b>Is the Law Firm Identified on the Designation &amp; Certification Worksheet Acting as the Primary Law Firm for this Claimant?</b>	Yes No	If the answer to Question 42 is Yes, enter whether the law firm completing this spreadsheet, identified as the Primary Law Firm on the Designation and Certification worksheet in this spreadsheet, is acting as the Primary Law Firm for the particular claimant.	<a href="#">Return to Claimant List</a>
<b>H. Interested Counsel Information</b>				
44.	<b>Is There Interested Counsel Other than the Primary Law Firm?</b>	Yes No	Enter Yes if there is an attorney or firm other than the Primary Law Firm with an interest in the claimant's case and answer Questions 45-48.	<a href="#">Return to Claimant List</a>
45.	<b>First Interested Counsel's Name or Law Firm Name</b>		If the answer to Question 44 is Yes, enter the name of Interested Counsel, or the name of Interested Counsel's firm.	<a href="#">Return to Claimant List</a>
46.	<b>First Interested Counsel's City</b>		If the answer to Question 44 is Yes, enter the city where Interested Counsel is located.	<a href="#">Return to Claimant List</a>
47.	<b>First Interested Counsel's State</b>	List of US states and territories	If the answer to Question 44 is Yes, enter the state where Interested Counsel is located.	<a href="#">Return to Claimant List</a>
<b>I. Second Interested Counsel Information</b>				
48.	<b>Is There a Second Interested Counsel Other than the Primary Law Firm and Interested Counsel Listed in Question 45?</b>	Yes No	Enter Yes if there is an attorney or firm other than the Primary Law Firm or the First Interested Counsel with an interest in the claimant's case and answer Questions 49-51. If there are more than two Interested Counsel, create a separate list and submit it along with a completed spreadsheet..	<a href="#">Return to Claimant List</a>
49.	<b>Second Interested Counsel's Name or Law Firm Name</b>		If the answer to Question 48 is Yes, enter the name of Interested Counsel, or the name of Interested Counsel's firm.	<a href="#">Return to Claimant List</a>

## U.S. ASR HIP REGISTRATION SPREADSHEET INSTRUCTIONS

Question	Column Header	Drop-Down Choices	Instructions	
50.	Second Interested Counsel's City		If the answer to Question 48 is Yes, enter the city where Interested Counsel is located.	<a href="#">Return to Claimant List</a>
51.	Second Interested Counsel's State	List of US states and territories	If the answer to Question 48 is Yes, enter the state where Interested Counsel is located.	<a href="#">Return to Claimant List</a>

# Exhibit 4.1.3.1 Enrollment Form

**Exhibit 4.1.3.1**

**ASR ENROLLMENT FORM BY COUNSEL<sup>1</sup>**

**Enrollment Deadline Date is April 1, 2014**

This Enrollment Form pertains to the Settlement Agreement ("the Agreement") dated November 19, 2013, incorporated herein by reference, including but not limited to the program for resolution of claims relating to the implantation, use, and/or removal of the ASR XL Acetabular Hip System ("ASR XL") or ASR Hip Resurfacing System ("ASR Resurfacing") and any and all Component and Ancillary Parts (collectively referred to as "ASR Hip Implants") where the surgery to implant the ASR Hip Implants occurred in the United States ("Index Surgery") and the subsequent surgery to remove the cup of an ASR XL or ASR Resurfacing occurred prior to August 31, 2013 and more than 180 days following the ASR Index Surgery, ("ASR Revision Surgery") described therein (generally and collectively referred to herein as the "U.S. Program").

I hereby represent and certify that I, or another attorney in my office, have communicated with and explained the contents of the Agreement and Release to the individuals on whose behalf I am submitting this Enrollment Form, and that I have full authority to submit this Enrollment Form and related materials on their behalf. I further represent that I have explained to those individuals that by their enrolling into the U.S. Program under the terms of the Agreement: (1) participation in the U.S. Program subjects them to the authority of those persons specified in the Agreement, including, but not limited to, the Claims Administrator, Claims Processor, and any Special Master, and other administrators; (2) in connection with their qualifying in the U.S. Program, they are releasing their claims against the entities and individuals identified in the attached Release (Attachment C), and that their Release may not be returned other than under the limited circumstances provided in Article 17 of the Agreement; (3) enrollment stays and, if later one is qualified under the U.S. Program, eventually terminates any lawsuits which they have brought or could have been brought, other than as provided by in the Agreement, and no claim may be advanced other than as permitted under the Agreement; (4) the U.S. Program provides their sole and exclusive remedy for their claims under the settlement with the authority of a binding arbitration, and that they will be bound by its results for whatever they may be without the ability to seek judicial review; and (5) the potential benefits and risks to them if they enter the U.S. Program.

I hereby agree to the terms of the Agreement. In addition, in submitting this Enrollment Form for the persons so identified, I consent and agree on their behalf, and with their full authorization, to the terms of the Agreement, including consent to the jurisdiction of the MDL Court and the application of the Order authorizing an assessment from any U.S. Program Awards

---

<sup>1</sup> This Enrollment Form and its statements shall be submitted/uploaded/certified to in connection with each Enrolling EUSC (i) individually as part of the claim materials uploaded to the Claims Processor, and (ii) collectively by the Primary Law Firm upon the completion of all enrollments to the U.S. Program by that Primary Law Firm with a report from the Claims Processor of all claimants enrolled by that Primary Law Firm (See Attachment A).

for common benefit fees and costs, which amounts, *inter alia*, will fund the administration of the U.S. Program.

As required by the Agreement, I am submitting [or have uploaded to the Claims Processor contemporaneous with completion of this Form] the other Required Submissions for those individuals covered by this Form, including (i) Stipulations of Dismissal with Prejudice (Attachment B) for those Eligible U.S Claimants with pending lawsuits, (ii) the Release (Attachment C), each signed by the Eligible U.S. Claimant (or their respective, duly and lawfully appointed representative), (iii) the completed Claims Form (Attachment D), and the other Required Submissions (Attachment E), pursuant to the Agreement.

I have advised the Eligible U.S. Claimant (or their respective, duly and lawfully appointed representative) that he or she may be asked to submit additional claim information and or sign other authorizations for records that may be required by the Claims Administrator, Claims Processor, Special Masters or other administrators in connection with the evaluation of their claim or the audit of the U. S. Program and claims submitted to it. The Enrolling Eligible U.S. Claimant and I agree to cooperate fully in promptly providing any additional claim information or authorizations upon request. The Enrolling Eligible U.S. Claimant and I agree to cooperate fully and promptly in providing any such other or corrected form of Release, Stipulation of Dismissal with Prejudice, or other Required Submission, if the submitted form is in any way deficient, if requested.

I further acknowledge that under the terms of the Agreement, no Eligible U.S. Claimant for whom I have submitted an Enrollment Form will be deemed to have been Enrolled or Qualified until such time as the applicable requirements of Articles 4 and 5 of the Agreement, respectively, have been met.

**ACCEPTED AND AGREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiffs'/Claimants' Attorney Name]  
[Primary Law Firm Name]  
[Address]  
[City/Town, State, Zip Code]  
[Area Code/Phone Number]  
[Area Code/Fax Number]  
[Email address]

**ENROLLMENT FORM INSTRUCTIONS**

These instructions pertain to the Enrollment Form referenced in the Settlement Agreement ("the Agreement") dated November 19, 2013, pertaining to the program for resolution of claims relating to the implantation, use and/or removal of ASR Hip Implants occurring in the United States and ASR Revision Surgeries occurring on or before August 31, 2013, described therein (generally and collectively referred to herein as the "the U.S. Program").

1. In connection with this Enrollment Form, Primary Law Firm, as defined by the Registration Order, by Counsel, shall be designated to complete the form on behalf of each Eligible U.S. Claimant (unless the Eligible U.S. Claimant is *pro se*), and regardless of whether each such Eligible U.S. Claimant has a pending lawsuit or an unfiled claim.
2. To enroll in the U.S. Program, the following documents must be prepared, dated, signed and submitted to the Claims Processor (collectively referred to herein as the "Enrollment Materials"). Execution copies of such documents shall be obtained from the Claims Processor by such means as the Claims Processor shall provide, including the requirement that such materials be submitted/uploaded electronically.
  - a. Completed Enrollment Form;
  - b. Stipulation of Dismissal with Prejudice (Attachment B to this Enrollment Form) for each case, properly captioned for filing with the Court where the matter is currently pending, signed by counsel for plaintiff(s);
  - c. Release (Attachment C to this Enrollment Form) signed by each Eligible Claimant (or his/her respective, duly and lawfully appointed representative) that is enrolling in the U.S. Program. If and when the Release is signed by a duly and lawfully appointed representative of an Eligible Claimant, said representative must indicate on each document his or her relationship to the Eligible Claimant and the authority upon which he or she is permitted to sign the document on their behalf (e.g., guardian, executor or administrator of the Estate of Eligible Claimant, etc.) and attach proper documentation (e.g., power of attorney, letters of administration) authorizing him or her to act in this representative capacity;
  - d. Claims Form (Attachment D to this Enrollment Form) signed by each Eligible U.S. Claimant (or his/her respective, duly and lawfully appointed representative) who is enrolling in the U.S. Program and their Enrolling Counsel; and
  - e. All other Required Submissions (Attachment E to this Enrollment Form), including for those U. S. Claimants making a claim for a Miscellaneous Extraordinary Injury Award.
3. The Enrollment Forms and Required Submissions will be submitted/uploaded to the Claims Processor by such means as permitted by the Claims Processor.

Exhibit 4.1.3.1 to ASR Hip Settlement Agreement

ATTACHMENT A – LIST OF ENROLLED CLAIMANTS—To Be Compiled by the Claims Processor at the end of the Enrollment Period, or upon notification by Counsel that Counsel has completed the Enrollment process on behalf of all Eligible Claimants that Counsel is enrolling in the U.S. Program.

ATTACHMENT B TO ENROLLMENT FORM – DISMISSAL STIPULATION

**TO BE COMPLETED WITH THE APPROPRIATE CAPTION FOR THE COURT  
WHERE PLAINTIFF'S CLAIM IS PENDING<sup>2</sup>**

XXXXX,  <p style="text-align: center;">Plaintiff(s),</p> v.  DEPUY ORTHROPAEDICS, INC.,  <p style="text-align: center;">Defendant(s).</p>	[COURT] [DIVISION OF VENUE]  DOCKET NO. XXX  <p style="text-align: center;"><b>STIPULATION OF DISMISSAL WITH PREJUDICE AS TO ALL DEFENDANTS</b></p>
--	--

Pursuant to [applicable Rule], the undersigned counsel hereby stipulate that all claims of plaintiffs, \_\_\_\_\_, individually and as representative of \_\_\_\_\_, against defendant DePuy Orthopaedics, Inc. and all other named defendants be dismissed in their entirety with prejudice, each party to bear its own costs.

\_\_\_\_\_  
[Attorney for Plaintiff]  
[firm name, Address and Telephone]

\_\_\_\_\_  
[Attorney for DePuy Orthopaedics, Inc.]  
[Firm Name, Address and Telephone]

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

<sup>2</sup> The Parties will agree on any necessary variations in the form in individual cases to accomplish the dismissal required by the terms of the Agreement in accordance with the terms of the Agreement.

Exhibit 4.1.3.1 to ASR Hip Settlement Agreement

**ATTACHMENT C TO ENROLLMENT FORM -- RELEASE**

**See EXHIBIT 4.1.3.2**

**ATTACHMENT D TO ENROLLMENT FORM**

OTHER REQUIRED SUBMISSIONS PURSUANT TO SECTION 4.1 OF THE AGREEMENT

INCLUDING COMPLETED CLAIM FORM/LIEN CHECKLIST, EXHIBIT 4.1.3.4.

**Exhibit 4.1.3.2**  
**Form of Release**

**EXHIBIT 4.1.3.2**

**RELEASE OF ALL CLAIMS**

**Recitals**

1. I, \_\_\_\_\_ the undersigned Releasing Party (“Releasing Party”), am either (A) a plaintiff in a lawsuit in either federal or state court in the DePuy Orthopaedics, Inc. (“DePuy”) ASR Hip Implant Products Litigation, or (B) I have a claim involving DePuy ASR Hip Implants that has not yet been filed as a lawsuit. I have enrolled to participate in the private settlement resolution program (the “U.S. Program”) set forth in the Settlement Agreement (the “Agreement”) dated as of \_\_\_\_\_, 2013. I understand that the terms of the Agreement govern the resolution of my claim. I acknowledge that I have been given the opportunity to review the Agreement prior to my execution of this Release.
2. I further understand that, in order to enroll and submit my claim into the U.S. Program under the Agreement, I am required to submit, among other things, a release of any and all claims for injury, damages and/or losses of any kind, or wrongful death that I and the other Releasing Parties (as defined under “Releases” below) have, or may have in the future, against the Released Parties (as defined under “Releases” below) arising from, related to, or in any way connected with (1) the implantation, use and removal or revision of the ASR™ XL Acetabular Hip System, or the ASR™ Hip Resurfacing System, and any and all Component and Ancillary Parts (as defined in Paragraph 50 below) (all of (1) collectively referred to as “ASR Hip Implants”), and/or (2) any injury, losses, or damages of any kind claimed, or may at any time in the future could claim, to have been caused, in whole or in part, by any such ASR Hip Implants and/or Revision Surgery.
3. Accordingly, in consideration for DePuy’s agreement to establish the U.S. Program, the significant expenses being incurred by DePuy in connection with the U.S. Program, DePuy’s waiver of defenses (except as reflected in the U.S. Program criteria themselves) solely in the context of the application of the U.S. Program, and the opportunity to submit my claim and recover from the U.S. Program according to the terms of the Agreement, I hereby give and make the following releases, waivers, acknowledgements and agreements for the benefit of the Released Parties (this “Release”).
4. This Release is also entered into by any Derivative Claimant (as defined in Paragraph 52) who executes a signature page hereto. Any such Derivative Claimant will not be entitled to a separate payment under the U.S. Program. However, for any current spouse of an Eligible U.S. Claimant (“EUSC”) enrolling in the U.S. Program who also executes the Release and that EUSC later qualifies for compensation under the U.S. Program, the current spouse will be entitled to a separate award of \$1,500.00 from the PART B Program as additional consideration.
5. By signing this Release, both I and any such Derivative Claimant irrevocably agree to be bound by the Agreement and the U.S. Program and the decisions of the Claims Administrator, Claims Processor, Special Master, or other administrators under the U.S.

Program and understand and acknowledge that there is no assurance as to the amount of payment, if any, to be made to me or to any claimant under the U.S. Program, and this fact shall in no way affect the validity or effect of this Release or any Stipulation of Dismissal With Prejudice provided by me or on my behalf. However, I understand that under the terms of the Agreement, this Release will be rescinded and have no effect if I do not qualify for compensation as a Qualified U.S. Claimant under the U.S. Program.

**Release**

6. The term “Released Party” or “Released Parties” means (i) DePuy Orthopaedics, Inc., (ii) Johnson & Johnson, (iii) any other defendants currently or formerly named in any litigation I have brought as a result of a ASR Hip Implant, (iv) any past or present distributors, distributor representatives, sales representatives, manufacturers, suppliers, suppliers of materials or components, distributors, wholesalers, or other persons or entities involved in the design, research, development, manufacture, testing, sale, marketing, labeling, promotion, advertising, or distribution of the ASR Hip Implants implanted at any time, including but not limited to designers and design surgeons, including but not limited to Dr. Thomas Schmalzried, Thomas P Schmalzried, A Professional Corporation, Dr. Thomas Vail, and Vail Consulting LLC, as well as any physicians, healthcare professionals, or hospitals connected with the prescription, implantation, use, or removal of the ASR Hip Implants that I (or the Product User of my claim) allegedly used or use, including but not limited to the individuals and entities named on Exhibit 1 and Broadspire Services, Inc., (v) for each person or entity referred to in clauses (i), (ii),(iii) and (iv) of this paragraph, its respective past, present, and/or future parents, subsidiaries, divisions, affiliates, joint venturers, predecessors, successors, assigns, and transferees and its respective past, present and/or future shareholders (or the equivalent thereto), directors (or the equivalent thereto), officers (or the equivalent thereto), owners, managers, principals, employees, consultants, advisors, attorneys, agents, servants, representatives, heirs, trustees, executors, estate administrators, and the personal representatives (or the equivalent thereto), and (vi) the respective insurers of all such entities or persons referred to in clauses (i), (ii), (iii), (vi), and (v) to the extent of their capacity as the insurer of such entities or persons.
7. The term “Releasing Party” or “Releasing Parties” means (i) me, (ii) any current spouse executing the release, and (iii) any and all persons who independently, derivatively or otherwise, by reason of their relationship with or to me have sued or could have sued one or more Defendants or any other Released Party, including but not limited to, any and all of my respective heirs, beneficiaries, next of kin, executors, administrators, successors, and assigns.
8. In return for good and valuable consideration, including the establishment and funding of the U.S. Program under the Agreement in which I am allowed to enroll and the potential for a monetary payment under the U.S. Program, the sufficiency of which is acknowledged, subject to the provisions of Paragraphs 12, 13 and 20 below, if applicable, I do hereby on my own behalf and on behalf of each other Releasing Party, knowingly and voluntarily RELEASE, REMISE, ACQUIT and FOREVER DISCHARGE the Released Parties and each of them from:

- a.** any and all rights, remedies, actions, claims, demands, causes of action, suits at law or in equity, verdicts, suits of judgments, judgments and/or Liens (including any of the foregoing) for wrongful death, personal injury and/or bodily injury, sickness, disease, emotional distress and/or injury, mental or physical pain and/or suffering, emotional and/or mental harm, fear of disease or injury, fear of future surgery, loss of enjoyment of life, loss of society, loss of companionship, loss of income, loss of wages, loss of consortium, past or future medical expenses, reimbursement, future cost of insured services, past cost of insured services or any other form of injury, and including any of the foregoing for direct damages, indirect damages, consequential damages, incidental damages, or any other form of damages whatsoever, whether past, present or future, and whether based upon contract, breach of contract, warranty or covenant, breach of warranty or covenant, tort, negligence, strict liability, gross negligence, recklessness, willful or wanton conduct, malice, oppression, conscious disregard, joint and several liability, guarantee, contribution, reimbursement, subrogation, indemnity, defect, failure to warn, fault, misrepresentation, common law fraud, statutory consumer fraud, quantum meruit, breach of fiduciary duty, violation of statutes or administrative regulations and/or any other legal (including common law), statutory, equitable or other theory or right of action, whether presently known or unknown, developed or undeveloped, discovered or undiscovered, foreseen or unforeseen, matured or unmatured, accrued or not accrued, past, present or future, or now recognized by law or that may be created or recognized in the future by statute, regulation, judicial decision or in any other manner that in any way arise from, relate to, or be in any way connected with (1) the implantation, use, and/or surgical removal of the ASR™ XL Acetabular Hip System, ASR™ Hip Resurfacing System, and/or any and all Component and Ancillary Parts (collectively “ASR Hip Implants”), and/or any injury, losses, or damages of any kind ever claimed, or may at any time in the future be claimed, to have been caused, in whole or in part, by any such ASR Hip Implants and/or ASR Revision Surgery; (2) claims relating to the availability of future Medicare-covered expenses, and any private cause of action I or any other Releasing Party may have under 42 U.S.C. 1395y(b)(3)(A); and (3) claims arising from or related to the U.S. Program and the decisions of the Claims Administrator, Claims Processor, Special Masters, and other administrators of the U.S. Program (collectively subpart (a) are “Claims”), which I or any other Releasing Party may have ever had, may now have or at any time hereafter may have against any Released Party; and/or
- b.** any and all debts, liabilities, covenants, promises, contracts, agreements and/or obligations of whatever kind, nature, description or basis, whether fixed, contingent or otherwise, whether presently known or unknown, developed or undeveloped, discovered or undiscovered, foreseen or unforeseen, matured or unmatured, or accrued or not accrued, which are, or may be, in any way connected with the implantation, use and/or removal any ASR Hip Implants and ASR Revision Surgery, and/or with any injury, losses, or damages ever claimed, or may at any time in the future claim, to have been caused, in whole or in part, by any such ASR Hip Implants and/or ASR Revision Surgery (collectively subpart

(b) are “Liabilities”), which any Released Party may have ever had, may now have or at any time hereafter may have to me or any other Releasing Party, as may be modified below.

These Claims and Liabilities are the “Released Claims and Liabilities.” This Release is irrevocable by me upon my execution as of the date set forth beneath my name and my submission to the U.S. Program, but shall be subject to return or being void as set forth in Article 17 of the Agreement.

9. Without in any manner limiting the foregoing and subject to the provisions of Paragraphs 12, 13, and 20, if applicable, I, the Releasing Party, by signing this Release, specifically release and give up any and all right to and claim of pecuniary loss, injury or damage as those terms are defined in the New Jersey Wrongful Death Act, N.J.S.A. 2A:31-1, et seq., and as interpreted by the Courts of New Jersey, which might accrue to Releasor, his or her estate and others by virtue of the death of any Releasing Party, whether such claims are pursued directly or indirectly or by some person or persons in a representative capacity, if such claims arise in any way from or are in any way connected or related to Releasing Party’s ASR Hip Implants and/or ASR Revision Surgery. It is expressly understood and agreed by Releasing Parties and Released Parties that a substantial reason and consideration of Released Parties in forbearing from any further steps in defending this claim and in agreeing to fund the U.S. Program as set forth in this Release and in the Agreement is the settlement, release and elimination at this time of any and all claims that Releasing Parties or others have now or in the future might have, absent this Release, for the wrongful death of any Releasing Party in relation to Releasing Party's ASR Hip Implants and/or ASR Revision Surgery.
10. Releasing Parties further understand and agree that under the present state of the law in New Jersey that absent this Release and regardless of the entry of any judgment which might result in litigation by Releasing Parties against Released Parties, certain of Releasing Party’s relatives, dependents or others might have claims for the death of Releasing Party against some or all Released Parties, *see Alfone v. Sarno*, 87 N.J. 99 (1981); and Releasing Parties further understand and agree that by executing this Release and enrolling in the U.S. Program and accepting any settlement awards issued, and subject to the provisions of Paragraphs 12, 13, and 20, if applicable, Releasing Parties acknowledge that they have received fair, just and adequate consideration for any claims for the wrongful death of Releasing Party which may arise in relation to Releasing Party’s ASR Hip Implants and/or ASR Revision Surgery. Releasing Parties further understand and agree that by executing this Release and enrolling in the U.S. Program, and subject to the provisions of Paragraphs 12, 13, and 20, if applicable, Releasing Parties have forever remised, released, discharged and given up any and all Claims and Liabilities that Releasing Parties or others might have against the Released Parties for any actual or alleged wrongful death of a Releasing Party arising from or alleged to arise from Releasing Party’s ASR Hip Implants and/or ASR Revision Surgery.
11. Subject to the provisions of Paragraphs 12, 13 and 20, this Release is expressly intended to include and does include any and all Claims and Liabilities arising out of or by reason of or in any manner connected with Releasing Party’s ASR Hip Implants and/or ASR

Revision Surgery, which Releasing Parties, may now or hereafter have, acquire or assert against Released Parties arising by virtue of any common law and/or statutory claim for wrongful death, or any amendments thereto or interpretations thereof. Releasing Parties specifically agree and undertake to indemnify and save Released Parties harmless from and against any such claim arising out of or by reason of or in any manner connected with Releasing Party's ASR Hip Implants and/or ASR Revision Surgery that may be brought by any beneficiary or next of kin of Releasing Party, and such indemnification and hold harmless agreement includes the payment of all reasonable costs and expenses of investigation, defense, settlement, attorneys' fees, judgments, court costs and all other costs and expenses of defending any such claim or other Claim or Liability for wrongful death.

12. Notwithstanding any provision to the contrary above, to the extent that I (and/or other Releasing Party) received bilateral ASR Hip Implants in the United States and only one of those bilateral ASR Hip Implants was the subject of an ASR Revision Surgery, this release applies only to that ASR Hip Implant and ASR Revision Surgery, including fear of any future injury or future surgery; all rights being reserved with respect to the unrevised ASR Hip Implant still implanted in me (and/or other Releasing Party). Likewise, to the extent that I have undergone an ASR Revision Surgery on one Qualified Device but have another Qualified Device that has not been revised, any claims to the unrevised Qualified Device are preserved and not released, if any.
13. Notwithstanding any provision to the contrary above, to the extent that I (and/or other Releasing Party) had received a Pinnacle hip implant or components of a Pinnacle hip implant system during the revision of any ASR Hip Implants and that Pinnacle hip or components of a Pinnacle hip was subsequently revised ("Subsequent Revised Pinnacle Hip Implant") and I would be eligible for compensation for that re-revision under the terms of the Agreement (whether or not applied for by me), I (and/or other Releasing Party) hereby release Released Parties from all Claims and Liabilities arising from, related to, or in any way connected with the Subsequent Revised Pinnacle Hip Implant and any re-revision surgery to the same full extent that Released Parties are released from Claims and Liabilities arising from, related to, or in any way connected with ASR Hip Implants and ASR Revision Surgery pursuant to this Release and such Claims and Liabilities will be incorporated into the term Released Claims and Liabilities.<sup>1</sup>
14. I acknowledge that I (and/or any other Releasing Party) may in the future learn of additional or different facts as they relate to the Claims or Liabilities, the Released Parties' activities, and/or any injury I (and/or any other Releasing Party) have ever claimed, or may at any time in the future claim, was caused, in whole or in part, by the implantation, use, and/or removal of ASR Hip Implants and the Revision Surgery. I understand and acknowledge the significance and consequences of releasing all of the

---

<sup>1</sup> Where a QUSC had a Pinnacle Hip Implant that was revised and replaced by an ASR Hip Implant, that QUSC reserves all legal rights relating to the Pinnacle Hip Implant, if any. Where the QUSC had an ASR Hip Implant that was revised and replaced by a Pinnacle Hip Implant that remains in situ, that QUSC reserves all legal rights relating to the Pinnacle Hip Implant, if any.

Released Claims and Liabilities and hereby (on my own behalf and on behalf of each other Releasing Party) assume full risk and responsibility for any and all such additional and/or different facts and any and all Released Claims and Liabilities that I (and/or any other Releasing Party) may hereinafter incur or discover. To the extent that any law, statute, ordinance, rule, regulation, case, court order, judicial process or other legal provision or authority (each a "Law"), including, but not limited to, the provisions of Section 1542 of the California Civil Code, may at any time purport to preserve my and/or any other Releasing Party's right to hereinafter assert any such unknown and/or unanticipated Claims and/or Liabilities, I hereby (on my own behalf and on behalf of each other Releasing Party) specifically and expressly waive (to the fullest extent permitted by applicable Law) each Releasing Party's rights under such Law. I further acknowledge having had an opportunity to obtain advice of counsel of my choosing regarding this waiver, and having discussed it with such counsel, if any, to my satisfaction.

15. On my own behalf and on behalf of each other Releasing Party, I acknowledge and agree that the releases set forth in this Release are irrevocable and unconditional, inure to the benefit of each Released Party, and are intended to be as broad as can possibly be created so that Defendants and other Released Parties shall never be called upon to pay any further sums or expenses, including but not limited to compensatory or other damages of any kind whatsoever, or be liable, directly or indirectly, to Releasing Parties, or any of them, or to any person, firm or entity claiming by, through, under, the Releasing Parties, or any of them, for the Released Claims and Liabilities, or to any person or entity seeking contribution and/or indemnity from the Released Parties, or any of them, by reason of any legal actions brought against them by me or other Releasing Parties pertaining in any way to, or arising from, the Released Claims and Liabilities.
16. **WITHOUT LIMITING THE FOREGOING, THIS RELEASE IS SPECIFICALLY INTENDED TO OPERATE AND BE APPLICABLE EVEN IF IT IS ALLEGED, CHARGED OR PROVED THAT SOME OR ALL OF THE RELEASED CLAIMS AND LIABILITIES ARE CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE, NEGLIGENCE PER SE, STRICT LIABILITY, GROSS NEGLIGENCE, BREACH OF WARRANTY, VIOLATION OF LAW, DEFECTIVE PRODUCT, CONSCIOUS DISREGARD, FRAUD, OPPRESSION, MISREPRESENTATION, MALICE, AND/OR CONDUCT OF ANY TYPE (INCLUDING, BUT NOT LIMITED TO, WILLFUL, WANTON, OR INTENTIONAL CONDUCT) BY ONE OR MORE RELEASED PARTY AND/OR ANY OTHER PERSON. THIS RELEASE IS SPECIFICALLY INTENDED TO AND DOES INCLUDE, BUT IS NOT LIMITED TO, A RELEASE OF, AND COVENANT NOT TO SUE FOR, DAMAGES OF ANY KIND, OR FOR A WRONGFUL DEATH CLAIM THAT MAY BE BROUGHT AT ANY TIME BY OR ON BEHALF OF ANY OF THE RELEASING PARTIES IN CONNECTION WITH ANY OF THE FACTS, EVENTS AND/OR INCIDENTS, THAT GAVE RISE TO ANY OF THE RELEASED CLAIMS AND LIABILITIES.**

**Attorneys' Fees; Division of Any Program Award Payment**

17. I understand that the Released Parties are not responsible for any attorneys' fees, costs (including, but not limited to, court costs), ad litem fees, or expenses that I or my Counsel have incurred or may at any time incur, including, but not limited to, in connection with

the entering into this Release and having my pending lawsuit dismissed. I understand that, with respect to any payment that may be made to me under the Program (a “U.S. Program Award Payment”), any division of such U.S. Program Award Payment between me, any Derivative Claimant executing this Release and our respective Counsel (if any) executing a Certification of Counsel attached to this Release shall be determined by me and such other person(s), and such division, or any dispute in relation to such division, shall in no way affect the validity of this Release or any Stipulation of Dismissal With Prejudice provided to dismiss my pending lawsuit, if applicable.

**Covenant Not To Pursue Certain Claims**

18. I hereby agree and covenant that I will never (i) take any legal, or other action to initiate, pursue or maintain, or otherwise attempt to execute upon, collect or otherwise enforce, any of the Released Claims and Liabilities of or against any Released Party, (ii) institute any new legal action against any Released Party relating to any injury I (and/or any other Releasing Party) have ever claimed, or may at any time hereafter claim, were caused in whole or in part by ASR Hip Implants or ASR Revision Surgery, or (iii) attempt to execute or collect on, or otherwise enforce, any judgment that may be entered against any Released Party in any legal action described in clause (ii) or my pending legal action against one or more Defendants. I further agree and covenant that I will not take any legal or other action to initiate, pursue or maintain a claim against the Claims Administrator, nor any employee, agent or representative of the Claims Administrator, in connection with the Program, except, with respect to each such Person, or such Person’s own willful misconduct.

**Dismissal of Pending Action**

19. **It is further agreed and understood that, to the extent applicable, the pending claim or cause of action brought by me or on my behalf as described above shall be stayed upon my enrollment in the U.S. Program and concluded by entry of a dismissal with prejudice with my consent and the consent of all Releasing Parties in accordance with the terms of the Agreement. However, under the terms of the Agreement, no dismissal with prejudice will be entered in court if I do not qualify for compensation as a Qualified U.S. Claimant under the U.S. Program.**

**Liens and Other Third-Party Payor Claims**

20. I understand that pursuant to the Agreement, if I become a Qualified U.S. Claimant (“QUSC”) under the U.S. Program entitling me to a settlement award, DePuy will be responsible for the negotiation and resolution of Assumed Liens asserted by Qualified Lienholders that are identified by me as set forth in Article 18 of the Agreement. Nothing herein releases DePuy from this contractual obligation under the Agreement. I also understand that DePuy will defend, indemnify, and hold harmless all QUSCs and their respective Counsel from any Assumed Liens and will not make a claim against QUSCs or their Counsel with respect to the Assumed Liens, provided that QUSCs and their respective Counsel cooperate with procedures established for resolution of Assumed

Liens and provide copies to DePuy of all correspondence from Qualified Lienholders(s) addressing liens, claims, and interests related to a Qualified Device or Revision Surgery.

- 21.** I agree that before any U.S. Program Award Payment is made to me, I shall identify to DePuy, my Counsel, and to the Claims Processor for the U.S. Program all Assumed Liens (as defined below) that are known to me and asserted by Qualified Lienholders (as defined below) that have paid for, or asserted a Lien or other claim for reimbursement for, medical care associated with a Qualified Device or ASR Revision Surgery, as well as other Lien holders who hold or assert any lien, pledge, charge, security interest, assignment, encumbrance, subrogation right, third-party interest or other adverse claim of any nature whatsoever (“Lien”) pursuant to any applicable statute or otherwise with respect to any U.S. Program Award payment (and/or the right to receive such U.S. Program Award payment), through procedures and protocols to be established by the Claims Processor for the U.S. Program. I also agree that before any U.S. Program Award payment is made to me, I shall provide the information required under Article 18 of the Agreement, if applicable.
- 22.** I understand that, to the extent that I intentionally withhold required information regarding Liens, including but not limited to Assumed Liens, it would constitute a breach of the Agreement for which a Special Master or Claims Administrator could impose a remedy, which remedy could include excusing DePuy from its obligation to resolve Assumed Liens pertaining to my settlement award.
- 23.** Releasing Parties agree to provide the Claims Processor and DePuy with their full name, gender, date of birth, address, Social Security Number and Health Insurance Claim Number, if applicable, for the purpose of Medicare Secondary Payer compliance. Releasing Parties also agree to indicate on this Release if they are, or ever were enrolled in Medicare as well as any payment related documents as may be requested by the Claims Processor and/or Escrow Agent. Releasing Parties also agree that Released Parties may use any personal or protected information (e.g., social security number, date of birth, protected health or medical information, etc.) to meet any reporting requirements that might be owed to CMS or its contractors arising out of this claim, and Releasing Parties agree to cooperate with DePuy, the Claims Processor, and other Released Parties to provide such information or to perform other activities reasonably necessary to meet any Medicare requirements and for DePuy to fulfill lien resolution obligations as specified in Article 18 of the Agreement, including but not limited to completion of an accurate Lien Resolution Checklist in the form and format to be provided by the Claims Processor. Nothing in this paragraph releases DePuy from its obligations under Article 18 of the Agreement.
- 24.** I understand and acknowledge that Liens that are not Assumed Liens for which DePuy is responsible as defined herein (e.g., non-healthcare workers compensation benefits that are not Assumed Liens and disability benefit Liens), are the sole responsibility of me and any Derivative Claimant executing this Release. I represent, warrant and agree that my counsel shall hold in escrow from any settlement award under the U.S. Program and not disburse to me or any other Releasing Party, funds sufficient to pay any Liens arising from or pertaining to non-healthcare workers’ compensation benefits that are not

Assumed Liens, disability benefits, and/or attorney liens for which I and any Derivative Claimant executing this Release is responsible to resolve under the Agreement until such time that my counsel has negotiated and resolved such Liens with those lien holders, including by payment of those Liens with the escrowed funds from my settlement award if necessary. Furthermore, I agree that I or my Counsel shall provide to DePuy confirmation of the satisfaction and discharge of any or all such Liens for which I or any Derivative Claimant executing this Release am/are responsible for their resolution in a form to be agreed by the Parties. I also understand and acknowledge that any payment of a settlement award under the U.S. Program will be done, in part, in reliance upon the terms of this paragraph.

25. In addition to and without limitation of the foregoing, I hereby agree, jointly and severally with any Derivative Claimant executing this Release to indemnify and hold harmless the Released Parties from and against any and all damages, losses, costs (including, but not limited to, court costs), expenses (including legal fees and expenses), fines, penalties or Liabilities incurred or suffered by, or imposed on, any Released Party in connection with, arising out of or resulting from (i) any Claim made or asserted at any time against DePuy, or any other Released Party with respect to any U.S. Program Award payment made to me (or the right to receive any such U.S. Program Award payment), by (1) any Person at any time holding or asserting any Lien arising from or pertaining to workers' compensation benefits, disability benefits, and/or attorney liens for which I and any Derivative Claimant executing this Release is responsible under the Agreement, and/or (ii) the failure to properly provide the information required by Article 18 of the Agreement.
26. I, on behalf of myself and all Releasing Parties and our Counsel, agree to cooperate fully with DePuy, other Released Parties, and the Claims Processor, and their Counsel and agents, by executing any and all documents and providing such additional information as may be requested by DePuy for purposes of resolution of Assumed Liens whose resolution is the responsibility of DePuy under the Agreement; and/or required by or on behalf of the Released Parties to comply with the Medicare reporting or compliance requirements, such as Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, if any.

#### **Nature of Settlement Award Payments**

27. I also hereby state and acknowledge, as set forth in the Agreement and agreed to by Released Parties, that all settlement awards paid pursuant to the U.S. Program constitute damages on account of personal injuries or physical injuries or physical sickness within the meaning of Section 104 of the Internal Revenue Code of 1986, as amended, arising from the physical injuries alleged to have resulted from the implantation, use, and/or removal of ASR Hip Implants and/or ASR Revision Surgery, and no portion of the proceeds paid under the U.S. Program represents punitive or exemplary damages, nor prejudgment or post judgment interest, nor non-physical injuries. I hereby waive and dismiss with prejudice any and all present claims for punitive or exemplary damages and waive any and all future claims for punitive or exemplary damages.

**Indemnification for Released Claims and Liabilities; Contribution and Indemnity Claims Extinguished**

28. I hereby agree, jointly and severally with any Derivative Claimant executing this Release, to INDEMNIFY and HOLD HARMLESS each Released Party from and against the following: (i) any and all Claims that may be asserted, made or maintained at any time by, on behalf of, or for the benefit of, any Releasing Party, or someone claiming by, through or under any Releasing Party, against any Released Party, with respect to any of the Released Claims and Liabilities; (ii) any and all damages, losses, costs (including, but not limited to, court costs), expenses (including, but not limited to, legal fees and expenses) and/or Liabilities incurred or suffered by, or imposed on, any Released Party in connection with, arising out of or resulting from any Claim described in clause (i) of this sentence (including, but not limited to, any amount paid or to be paid in satisfaction of any such Claim) and/or, without limitation of the foregoing, any breach by me, my representatives or Counsel (or any Derivative Claimant, her representatives or Counsel executing this Release) of any of the terms of this Release; and (iii) any and all Claims made or asserted (prior to, on or after the date of this Release), including claims for contribution and/or indemnity, by any other person or entity against any Released Party in any way, arising out of, relating to, resulting from, in whole or in part, by the implantation and use of ASR Hip Implants and/or any ASR Revision Surgery.
29. Further, to the extent necessary under law to give effect to the preceding Paragraph 28 above and/or to extinguish claims for contribution and/or indemnity against any Released Party for the Released Claims and Liabilities, or to satisfy such indemnity obligation that arises due to a contribution or indemnity claim by a third party, I further agree, jointly and severally with any Derivative Claimant executing this Release, (i) to reduce any judgment Releasing Parties might recover against any persons or entity other than a Released Party by release and discharge in an amount, fraction, portion, or percentage necessary under applicable state or federal law to bar, eliminate, or satisfy claims against the Released Parties for contribution and/or indemnity to the fullest extent permitted by applicable state or federal law arising from any Claims or Liabilities hereby released, including any amount re-allocated by applicable state or federal statute or common law to Released Parties resulting from uncollectibility and/or insolvency of other persons or entities determined to be at fault, as well as (ii) to indemnify and hold harmless any Released Parties in accordance with the preceding Paragraph 28 above as may still be necessary after having performed clause (i) above of this Paragraph 29. Releasing Parties shall execute any additional documentation that may be required under applicable state or federal law in order to give effect to this provision.

**Confidentiality**

30. Releasing and Released Parties recognize that all parties have an interest in maintaining the confidentiality of the amount of any individual U.S. Program Award Payment. Neither party wishes to publicize the amount of individual U.S. Program Award Payments. All parties therefore agree not to publicize, or cause to be publicized, the amount of U.S. Program Award Payment except as is necessary for disclosure to

family members, tax and estate planning, insurance coverage, lien resolution, and/or normal reporting business purposes, or as may be required in connection with court proceedings or as otherwise required by law or judicial process. This agreement of confidentiality extends to all parties, their heirs, agents and representatives and, specifically, bars, but is not limited to, publication in any form of radio, television, newspaper, magazines, or internet. Released and Releasing Parties expressly have agreed that each other's reciprocal confidentiality covenant is the sole consideration given in exchange for that of the other, and that the parties specifically have in mind that no part of the settlement consideration is paid for this reciprocal agreement to keep the amount of individual U.S. Program Award Payments confidential. If this covenant of confidentiality is breached, the party in breach will be legally liable for any harm and loss which is proximately caused by the breach. Nothing herein confers confidentiality to the otherwise public nature of the gross settlement amounts and settlement terms of this national settlement program and instead, the confidentiality herein applies to any award specifically conferred to me. I further agree that to the extent information covered by this confidentiality provision is subpoenaed or disclosure is required by court order, I will immediately inform DePuy.

**Acknowledgement of Comprehension; No Guarantee of Amount of Payment**

- 31. I AM ENTERING INTO THIS RELEASE FREELY AND VOLUNTARILY, WITHOUT BEING INDUCED, PRESSURED OR INFLUENCED BY, AND WITHOUT RELYING ON ANY REPRESENTATION OR OTHER STATEMENT MADE BY OR ON BEHALF OF, DEFENDANTS OR ANY OTHER PERSON. I UNDERSTAND, ACKNOWLEDGE AND ACCEPT THE NATURE, VALUE AND SUFFICIENCY OF THE CONSIDERATION DESCRIBED IN THIS RELEASE, INCLUDING THE POSSIBILITY, BUT NO GUARANTEE, OF A MONETARY AWARD FROM THE U.S. PROGRAM PURSUANT TO THE AGREEMENT. I ACKNOWLEDGE THAT I HAVE BEEN PROVIDED THE OPPORTUNITY TO REVIEW THE AGREEMENT AND HAVE READ THIS RELEASE, AND I HAVE HAD AN OPPORTUNITY TO OBTAIN ADVICE FROM, AND ASK QUESTIONS OF, COUNSEL OF MY CHOOSING REGARDING THE TERMS AND LEGAL EFFECT OF THE AGREEMENT AND THIS RELEASE AND MY DECISION TO PARTICIPATE IN THE U.S. PROGRAM FUNDED BY THE AGREEMENT.**
- 32. FURTHER TO THE EXTENT THAT I AM REPRESENTED BY COUNSEL, I ACKNOWLEDGE THAT I HAVE BEEN INFORMED OF ALL THESE MATTERS BY MY COUNSEL WHO IS EXECUTING A "CERTIFICATION OF COUNSEL" ATTACHED TO THIS RELEASE, AND SUCH COUNSEL HAS ANSWERED ALL MY QUESTIONS (IF ANY) TO MY SATISFACTION. I FURTHER ACKNOWLEDGE THAT I UNDERSTAND THIS RELEASE AND THE AGREEMENT AND THAT THERE IS NO GUARANTEE THAT I WILL RECEIVE ANY SPECIFIC AMOUNT OF MONETARY PAYMENT FROM THE U.S. PROGRAM. I FURTHER UNDERSTAND THAT ANY AMOUNTS PAID TO ME WILL BE PAID SUBJECT TO THE PROVISIONS OF THE AGREEMENT AND THIS RELEASE.**
- 33. I ALSO ACKNOWLEDGE THAT THE U.S. PROGRAM AND THE AGREEMENT ARE TO RESOLVE THE CLAIMS OF NUMEROUS CLAIMANTS AND THAT THE AWARD TO ME MAY BE FOR A SUM DIFFERENT THAN AWARDS TO OTHER CLAIMANTS BASED ON THE TERMS OF**

**THE AGREEMENT AND THAT ALL PART B AWARDS MAY BE REDUCED PROPORTIONATELY DEPENDING ON THE NUMBER OF CLAIMANTS AND THE AMOUNT OF PART B AWARDS ISSUED UNDER THE U.S. PROGRAM AND I ACCEPT AND AGREE TO THOSE TERMS.**

**Waiver of Certain Provisions Regarding Timing of Any Payments**

34. If I have any civil action pending in any jurisdiction that has enacted, promulgated or otherwise adopted any Law containing provisions that establish specific time periods within which funds, if any, must be paid to me in connection with the release of such civil action (including, but not limited to, Pennsylvania Rule of Civil Procedure 229.1), I hereby (i) specifically and expressly waive (to the fullest extent permitted by applicable Law) my rights under any such provisions and (ii) agree that any decision of any U.S. Program Award and the payment of any U.S. Program Award shall be made solely in accordance with the terms and conditions of the U.S. Program set forth in the Agreement.

**Common Benefit Deduction**

35. I acknowledge and agree that any settlement award payment under the U.S. Program to which I become entitled will be reduced by six percent (6%) as follows: one percent (1%) for common benefit costs, which will be subtracted from my share of the settlement payment, and five percent (5%) for common benefit attorneys' fees, which will be subtracted from my attorneys' fees. The 1% reduction is to be deposited in the ASR HIP Administrative Expense Fund, which is required to be withheld and paid directly by the U.S. Program or Released Parties as a credit against the settlement, pursuant to Case Management Order No. 13, as amended, entered in MDL No. 2197, *In Re: DePuy Orthopaedics, Inc. ASR Hip Implant Products Liability Litigation*, United States District Court, Northern District of Ohio, Case No. 1:10-md-2197.

**Informed Consent and Submission to Authority of U.S. Program**

36. I understand that I have the right to make an informed decision regarding participation in the U.S. Program. As such, my Counsel has carefully reviewed with me terms of the Agreement and this Release, including the PART B Program that provides a means outside of the control of DePuy to award additional compensation based on the exceptional circumstances of any case. I also acknowledge that the Claims Administrator, Claims Processor, and Special Masters under the U.S. Program and the SOC have been available to assist me in the informed consent process and to answer any questions that I might have had about the Agreement, this Release, and the U.S. Program.
37. I also understand and agree that by enrolling in the U.S. Program and submitting this Release, I am submitting my U.S. Program claim to the authority and decisions of those persons specified in the Agreement, including but not limited to the Claims Administrator, Claims Processor, and any privately appointed Special Masters, to whose authority under the Agreement I voluntarily submit and agree. I consent and agree that the Claims Administrator, Claims Processor, and Special Masters making decisions regarding my claim to the U.S. Program shall each the authority of an Arbitrator under the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, and each of their decisions are binding,

final and Non-Appealable, and subject only to review by a Special Master or Claims Administrator, sitting as a binding arbitration panel, as provided under the Agreement and all other rights to judicial or appellate review are waived by me. I further agree and consent that, to the extent this Release is later rescinded because the Claims Processor and/or Special Master decides that my claim is ineligible under the U.S. Program or the Claims Administrator and/or Special Master decide that DePuy is able to reject my claim under the provisions of Section 17.2 of the Agreement, any such decisions remain the decisions of an Arbitrator and are final, binding and Non-Appealable, even if as a result of those decisions, this Release is no longer effective, except for the Confidentiality provision.

### **No Admission of Fault**

38. I understand and agree that DePuy has entered into the Agreement solely by way of compromise and resolution. The Agreement, and this Release, are not, and shall not be construed at any time to be, an admission of liability, responsibility or fault of or by DePuy or any other Released Party.

### **Representations and Warranties**

39. I hereby represent and warrant that: I have full power, authority and capacity to enter into this Release, which is enforceable in accordance with its terms. Except as set forth in the second sentence under “Attorneys’ Fees; Division of Any Program Award Payment” above and the provisions with respect to Liens and common benefit assessments, I have the sole right to receive any and all U.S. Program Award Payments with respect to my claim under the U.S. Program. Neither I nor any other Releasing Party has sold, assigned, transferred or otherwise disposed of, or pledged or otherwise encumbered, any of the Released Claims and Liabilities in whole or in part.
40. I and any Derivative Claimants executing this Release further specifically warrant and represent that to the extent any bankruptcy action is pending, I and other Releasing Parties will take all necessary actions to notify the Bankruptcy Court of this settlement and will fulfill all obligations to said Bankruptcy Court. I further agree, jointly and severally with any Derivative Claimant executing this Release, to indemnify, defend, and hold harmless, up to the amount of the U.S. Program award issued to me, the Released Parties from any loss, claim, expense, demand, or cause of action of any kind or character, including costs and attorney’s fees that result from the failure, if any, of any or all Releasing Parties to fulfill their obligations to said Bankruptcy Court. Bankruptcy proceedings will be sought in compliance with the confidentiality provisions of this Agreement. Upon request, Releasing Parties further agree that they will provide written confirmation that they fulfilled said Bankruptcy Court obligations. I and any Derivative Claimants executing this Release acknowledge that DePuy entered into the Agreement in reliance upon the representations and warranties made in this Release.

**Governing Law**

- 41. THIS RELEASE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAW OF THE STATE OF NEW JERSEY, WITHOUT REGARD TO ANY CHOICE-OF-LAW RULES THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANOTHER JURISDICTION.**

**Severability**

42. I agree that if any provision of this Release is adjudicated to be invalid, illegal or unenforceable in any jurisdiction, the relevant provision shall be deemed modified to the extent necessary to make it enforceable in such jurisdiction and, if it cannot be so modified, this Release shall be deemed amended to delete herefrom the invalid or unenforceable provision, and this Release shall be in full force and effect as so modified. Any such modification or amendment shall apply only to the operation of this Release in the particular jurisdiction in which such adjudication was made and shall not affect such provision in any other jurisdiction. To the fullest extent permitted by applicable Law, I hereby (on my own behalf and on behalf of each other Releasing Party) specifically and expressly waive any provision of Law that renders any provision of this Release invalid, illegal or unenforceable in any respect.

**Legal Representatives**

43. If I am signing this Release as a legal representative of a person or an estate of such person who was injured or suffered death allegedly caused by the implantation and/or use of ASR Hip Implants and/or Revision Surgery (“allegedly injured person or alleged decedent”), then (i) all references in this Release to my injury from the implantation and/or use of ASR Hip Implants and/or Revision Surgery shall also mean the injury from the implantation and/or use of ASR Hip Implants and/or Revision Surgery of such allegedly injured person or decedent, all references in this Release to any person claiming by, through or under, or in relation to, me shall also mean any person claiming by, through or under, or in relation to such allegedly injured person or decedent, and all references to me in the definition of Derivative Claimant shall also mean such allegedly injured person or decedent, (ii) if such allegedly injured person or alleged decedent is not deceased, he or she shall also be a Releasing Party, (iii) if such allegedly injured person or decedent is deceased, I am executing this Release both individually and on behalf of the estate of such allegedly injured person or decedent, and (iv) prior to the submission of this Release to Defendants, I have or will obtain judicial approval of this Release at my own expense, to the extent required under applicable Law.

**Definitions**

44. Unless otherwise defined in the body of this Release or below, all defined terms in this Release have the definitions set forth in the Agreement.
45. “ASR Hip Implants” means the ASR™ XL Acetabular Hip System, or the ASR™ Hip Resurfacing System, and any and all Component and Ancillary Parts.
46. “ASR Index Surgery” means the surgical implantation of the ASR XL or ASR Hip Resurfacing System (each a “Qualified Device”) in a surgery occurring in the United States.
47. “ASR Revision Surgery” means a surgery subsequent to the ASR Index Surgery to remove the cup of an ASR XL Acetabular Hip System or ASR Hip Resurfacing System implant. The revision surgery must have taken place prior to August 31, 2013 and more than 180 days following the ASR Index Surgery to be an ASR Revision Surgery.
48. “Assumed Liens” shall mean Liens or claims asserted by a Qualified Lienholder with respect to a QUSC's Settlement Payment related to reimbursement for, or payment of:
- (i) medical care directly associated with a compensable ASR Revision Surgery; and/or
  - (ii) medical care directly associated with a Qualified Device that was incurred between August 24, 2010 and the date of the ASR Revision Surgery and due to the Reasons underlying the Recall.
- For purposes of clarity, Assumed Liens includes but is not limited to the Assumed Liens asserted by the federal government on behalf of the Centers for Medicare & Medicaid Services pursuant to 42 U.S.C. §1395y(b)(2)-(3) and associated regulations. However, for any ASR Revision Surgery that takes place outside of the United States, foreign liens pertaining to such Revision Surgery are not Assumed Liens for which DePuy is responsible for resolving.
49. “Claims” has the meaning set forth in Paragraph 8 of this Release.
50. “Component and Ancillary Parts” means any and all components or ancillary parts implanted contemporaneously with and/or intended to function as part of the prosthetic construct that includes the ASR or ASR XL cup, including but not limited to the femoral stem.
51. “Counsel” means, with respect to any particular Person, a lawyer or law firm who represents such Person pursuant to a written agreement, provided that, for all purposes of this Agreement, the “Counsel” of any particular Plaintiff shall be the lawyer or law firm named as such in such Plaintiff's Release and Stipulation of Dismissal With Prejudice.

**52.** Derivative Claimant” means, in relation to any particular Eligible U.S. Claimant, any Person having or asserting the right, either statutory or under applicable common law (including the laws of descent and distribution) or otherwise, to sue DePuy or any other Released Party, independently, derivatively or otherwise:

(i) by reason of their personal relationship with such Eligible U.S. Claimant or U.S. Program Claimant (or the Product User with respect to such Eligible U.S. Claimant or U.S. Program Claimant); and/or

(ii) otherwise by, through or under, or otherwise in relation to, such Eligible U.S. Claimant or U.S. Program Claimant (or the Product User with respect to such Eligible U.S. Claimant or U.S. Program Claimant);

including the heirs, beneficiaries, surviving spouse (including a putative or common law spouse), surviving domestic partner and next of kin of such Eligible U.S. Claimant or U.S. Program Claimant (or the Product User with respect to such Eligible Claimant or Program Claimant).

**53.** Governmental Authority” means any government or political subdivision, department, commission, board, bureau, agency, or other governmental authority, whether United States federal, state, District of Columbia, city, county, municipal, territorial, or foreign, or any agency or instrumentality whether domestic or foreign, or any United States federal, state, District of Columbia, city, county, municipal, territorial or foreign court.

**54.** Liabilities” has the meaning set forth in Paragraph 8 of this Release.

**55.** Lien” means any mortgage, lien, pledge, charge, security interest, encumbrance, assignment, subrogation right, third-party interest or adverse claim of any nature whatsoever, in each case whether statutory or otherwise.

**56.** Person” means a natural person, partnership (whether general or limited), limited liability company, trust, estate, association (including any group, organization, co-tenancy, plan, board, council or committee), corporation, Governmental Authority, custodian, nominee or any other individual or entity (or series thereof) in its own or any representative capacity, in each case, whether domestic or foreign.

**57.** Product User” means, in relation to any particular Releasing Party, the natural person (including the deceased natural person) referred to in the definition of the term “Eligible U.S. Claimant” in the Agreement (as opposed to any Legal Representative in respect of such natural person).

**58.** Qualified Device” means the ASR™ XL Acetabular Hip System and/or ASR™ Hip Resurfacing System, and any or all Component and Ancillary Parts.

**59.** Qualified Lienholders” means:

(i) government program insurers such as the Medicare and Medicaid programs, the CHAMPVA Program, the TRICARE Program and any other

federal, state or local reimbursement program involving payment of governmental funds (including “Federal healthcare programs” as defined in 42 U.S.C. § 1320a 7b(f)) or other payor program administered by any governmental authority;

(ii) private and commercial payors including commercial insurance carriers, managed care organizations, and self-funded health insurance plans; and/or

(iii) an individual or entity that has provided healthcare items and services to a QUSC to the extent the QUSC had no third party insurance to cover the items and services furnished to the QUSC.

60. “Released Claims and Liabilities” has the meaning provided in Paragraph 8 of this Release, and if applicable, Paragraph 12 of this Release.
61. “Released Party” or “Released Parties” has the meaning provided in Paragraph 6 of this Release.
62. “Releasing Party” or “Releasing Parties” has the meaning provided in Paragraph 7 of this Release.
63. “Unfiled Claims” means a claim in any way related to the implantation, use and/or removal of the ASR XL Acetabular Hip System, or the ASR Hip Resurfacing System, and any and all Component and Ancillary Parts (collectively “ASR Hip Implants”) and/or for any injury, losses, or damages allegedly caused, in whole or in part, by any such ASR Hip Implants and/or Revision Surgery, but for which a lawsuit had not yet been instituted as of the date of the Agreement.
64. “United States” means the United States of America, its 50 states, the District of Columbia, any Commonwealth or Territory of the United States, and any United States Military Hospital wherever located.

**Miscellaneous**

65. Where the context so requires, terms used in the singular in this Release shall be deemed to include the plural and vice versa.
66. This Release may be executed in counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument.

**Certification of Medicare Status**

67. Have you ever been enrolled in Medicare, now or in the past? [Check one]

Yes:\_\_\_ No:\_\_\_

**IN WITNESS WHEREOF**, I have executed this Release effective as of the date set forth under my name below:

SIGNATURE BY RELEASING PARTY AND NOTARIZATION <sup>2</sup>	
<b>Signature of Releasing Party:</b>	
<b>Printed Named:</b>	
<b>Social Security No.</b>	
<b>Date of Birth:</b>	
<b>Date of Signature:</b>	____/____/____ (month) (day) (year)

Exemplar Only - Do Not Use

<sup>2</sup> [INSTRUCTION: The Release must be executed with the Personal Signature of the Enrolling EUSC/Releasing Party. If executed on behalf of an enrolling EUSC by a Legal Representative (e.g., legal guardian), evidence of such authority must be attached and submitted with the Release executed with the Personal Signature of the Legal Representative and notarized.]

<b>NOTARIZATION</b>			
<p>BEFORE ME, the undersigned authority, the Person known to be the Releasing Party/Claimant named above personally appeared on the Signature Date shown and acknowledged under oath to my satisfaction that he/she has signed, sealed and delivered this document as his or her act and deed for the purposes therein expressed and in the capacity therein expressed.</p>			
<b>Signature by Notary:</b>			
<b>Notary Public in and for the State or Jurisdiction of:</b>			
<b>Date Notary Commission Expires:</b>	<table border="1" style="width: 100%;"> <tr> <td style="width: 33%; text-align: center;">                     _____ / _____ / _____                      (month) (day) (year)                 </td> <td style="width: 67%;">                     Notary: Check here if your Notary Commission has no expiration date under the law of your jurisdiction.                 </td> </tr> </table>	_____ / _____ / _____ (month) (day) (year)	Notary: Check here if your Notary Commission has no expiration date under the law of your jurisdiction.
_____ / _____ / _____ (month) (day) (year)	Notary: Check here if your Notary Commission has no expiration date under the law of your jurisdiction.		
<b>Place Notary Seal or Stamp in this Space:</b>			
	Notary: Check here if your jurisdiction does not require a seal or stamp.		

Exemplar Only - Do Not Use

**SPOUSE/DERIVATIVE CLAIMANT—RELEASING PARTY<sup>3</sup>**

**Certification of Medicare Status**

68. Have you ever been enrolled in Medicare, now or in the past? [Check one]

Yes: \_\_\_ No: \_\_\_

SIGNATURE BY SPOUSE/DERIVATIVE CLAIMANT/ RELEASING PARTY	
<b>Signature of Spouse/Derivative Claimant:</b>	
<b>Printed Named:</b>	
<b>Social Security No.</b>	
<b>Date of Birth:</b>	
<b>Relationship to Claimant:</b>	
<b>Date of Signature:</b>	<div style="text-align: center;">           ____ / ____ / ____  <small>(month) (day) (year)</small> </div>

<sup>3</sup> [INSTRUCTION: The Release must be executed with the Personal Signature of any current spouse of the enrolling EUSC/Releasing Party and notarized. In connection with any divorced, separated, or estranged spouses who were spouses at any time from the ASR Index Surgery to the date of the Agreement, an indemnity agreement in the form agreed to by the Parties shall be executed and supplied by the Enrolling EUSC/Releasing Party together with this executed and notarized Release in lieu of signature by such divorced, separated or estranged spouse.]

<b>NOTARIZATION</b>			
<p>BEFORE ME, the undersigned authority, the Person known to be the Spouse/Releasing Party/Claimant named above personally appeared on the Signature Date shown and acknowledged under oath to my satisfaction that he/she has signed, sealed and delivered this document as his or her act and deed for the purposes therein expressed and in the capacity therein expressed.</p>			
<b>Signature by Notary:</b>			
<b>Notary Public in and for the State or Jurisdiction of:</b>			
<b>Date Notary Commission Expires:</b>	<table border="1" style="width: 100%;"> <tr> <td style="width: 33%; text-align: center;">                     _____ / _____ / _____                      (month) (day) (year)                 </td> <td style="width: 67%;">                     Notary: Check here if your Notary Commission has no expiration date under the law of your jurisdiction.                 </td> </tr> </table>	_____ / _____ / _____ (month) (day) (year)	Notary: Check here if your Notary Commission has no expiration date under the law of your jurisdiction.
_____ / _____ / _____ (month) (day) (year)	Notary: Check here if your Notary Commission has no expiration date under the law of your jurisdiction.		
<b>Place Notary Seal or Stamp in this Space:</b>			
	Notary: Check here if your jurisdiction does not require a seal or stamp.		

Exemplar Only - Do Not Use

**CERTIFICATION OF COUNSEL**

**(COUNSEL FOR RELEASING PARTY)**

I, \_\_\_\_\_, hereby represent and declare that \_\_\_\_\_ ("Releasing Party") is currently represented by the undersigned counsel. I have provided Releasing Party with a copy of the Release to which this Certification of Counsel is attached and have made available to Releasing Party a copy of the Settlement Agreement referred to in the Release (which copies include all attachments). I informed Releasing Party of the terms and legal effect of all of the foregoing documents and Releasing Party's decision to enroll in the U.S. Program (as defined in the Release), and I answered any and all questions Releasing Party may have had. I hereby certify that Releasing Party, having had a full opportunity to read, understand, and inquire of counsel about the terms and conditions of the foregoing documents, does not have, and I do not have, any objection to the terms of this Release or any of the other foregoing documents. I further agree to be bound by the "Confidentiality" section and my obligations as Counsel in the "Lien and Other Third Party-Payor" section in this Release.

**BY COUNSEL FOR RELEASING  
PARTY:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

Exemplar Only - DRAFT

**CERTIFICATION OF COUNSEL**

**(COUNSEL FOR SPOUSE/DERIVATIVE CLAIMANT/RELEASING PARTY)**

I, \_\_\_\_\_, hereby represent and declare that \_\_\_\_\_ ("Derivative Claimant") is currently represented by the undersigned counsel. I have provided Derivative Claimant with a copy of the Release to which this Certification of Counsel is attached and have made available to Derivative Claimant a copy of the Settlement Agreement referred to in the Release (which copies include all attachments). I informed Derivative Claimant of the terms and legal effect of all of the foregoing documents, and I answered any and all questions Derivative Claimant may have had. I hereby certify that Derivative Claimant, having had a full opportunity to read, understand, and inquire of counsel about the terms and conditions of the foregoing documents, does not have, and I do not have, any objection to the terms of this Release or any of the other foregoing documents. I further agree to be bound by the "Confidentiality" section and my obligations as Counsel in the "Lien and Other Third Party-Payor" section in this Release.

**BY COUNSEL FOR DERIVATIVE CLAIMANT:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

Exemplar Only - DO NOT SIGN

## Exhibit 1 to Release

<b>SURGEONS/HOSPITALS</b>
Anaheim Medical Center
Bozeman Deaconess Health Services
Bozeman Deaconess Health Services dba Bozeman Deaconess Hospital
Bozeman Deaconess Hospital
Brian Ching, M.D
Carondelet Orthopaedic Surgeons, P.A., dba Carondelet Orthopaedic Surgeons, P.C.
Chippenham & Johnson Willis Hospitals Inc.
Christian Luessenhop, MD
Coastal Orthopaedic Institute, P.C.
David H. Allmacher, M.D.
David J. Clymer, M.D.
Dhiren S. Shashikant, M.D.
Fondren Orthopedic Group L.L.P.
George H. Brouillet, M.D.
Gulf Health Hospitals, Inc.
Hospital Service District No. 1 of the Parish of Terrebonne, State of Louisiana
Humana Health Plan of Ohio, Inc.
Huntsville Hospital
Illinois Bone & Joint Institute L.L.C.
James Kudrna, M.D.
Jason B. Sanders, M.D.
Jefferson Parish Hospital District No. 1
Kaiser Foundation Health Plan, Inc.
Kaiser Foundation Hospitals, a California Corporation dba Kaiser Permanente
Kaiser Foundation Hospitals Permanente Medical Group, Inc. California
Kaiser Permanente Corporation
Kentucky Orthopaedic and Hand Surgeons, P.S.C. (THIRD PARTY PLAINTIFF)
Kevin Spohr
Leavitt Medical Associates of Florida, Inc. dba Advanced Dermatology & Cosmetic Surgery
Lovelace Health System, Inc.
Lowell General Hospital
Lowell Nickel, M.D.
Matt Dywer, M.D
Melissa Gorman, M.D.
Michael A. Tranovich, M.D.
Michael L. Reyes, M.D.
Milford Hospital Incorporated
MK Orthopaedics Surgery & Rehabilitation, S.C.

## Exhibit 1 to Release

Mukund Komanduri, M.D.
Nevada Orthopedic and Spine Center LLP
Northside Hospital, Inc.
Ochsner Baptist Medical Center
Ochsner Clinic Foundation
Ochsner Medical Center - Westbank, LLC
Orthopedic Associates of Dutchess County, P.C.
OU Medical Center
Our Lady of the Lake Hospital, Inc.
Paul Enker
Paul Nicholls, MD (THIRD PARTY PLAINTIFF)
Pittsburgh Bone & Joint Surgeons, P.C.
Queens-Long Island Medical Group, PC
R. Nevins M.D., LTD
Reeli Reinu, PA-C
Robert Gilbert, M.D.
Robert L. Burke, M.D.
Russell T. Nevins, M.D.
Russell Tigges
Russellville Hospital, LLC dba Russellville Hospital
Saratoga Care, Inc.
Saratoga Hospital
Southcoast Hospitals Group, Inc. d/b/a Charlton Memorial Hospital
St. Joseph Hospital of Orange
St. Peter's Hospital
Stewart Kaufman, M.D.
Suburban Hospital
Thomas McEnnerney, M.D.
Thomas P. Schmalzried, M.D.
Thomas P. Schmalzried, M.D., a Professional Corporation
Thomas Vail, M.D.
Touro Infirmary
Tulane Educational Fund d/b/a Tulane University Medical Center and/or Tulane University Health Sciences Center
Tulane University Hospital and Clinic
Vail Consulting, L.L.C.
Westside Orthopaedic Clinic
William Kinard, M.D.
<b>DISTRIBUTERS/REPS</b>
1st Choice Surgical Products, Inc.
A1A, Inc.
Andrew J. Auth
Andy Seaman

## Exhibit 1 to Release

Bayside Orthopaedics, Inc.
Brent Hardcastle
B.T.G. Medical, Inc.
Carrie L. Griner
Ceramtec AG
Cesar Palomo
Chesapeake Surgical, Ltd.
Clint Spears
Commonwealth Surgical Solutions
Corey T. Woodham
C.J. George
Daniel Davenport
David Larocca
Dax Thieler
DC Medical, LLC
DJD Medical, Inc.
Douglas B. Thatcher
Douglas B. Thatcher, Inc.
Gary Sarbourin
Griner Innovations, LLC
Gethip, Inc.
Golden State Orthopaedics, Inc.
Howington & Co., Inc.
Innotek Medical Products, Inc.
Inter-Tech Orthopaedics, Inc.
Jacob Rule
Jeremy Hall
Jewett Perkins
Joaquin J. Diaz
John Mauerman
Jonathon McDaniel
JP Grifco, Inc.
Kelly Orthopaedic Sales, LP
Kevin Kinnersley
Kos Management Company, LLC
Larocca Ortho, LLC
L.L.J. Orthopaedics, Inc.
M. Chad Alberson, LLC
Macari Medical, Inc.
Mark Debiase, Incorporated
Mark Debiase, Incorporated d/b/a Joint Venture
Mark Starring and Associates, Inc
Mark Starring
Mark Stein
Marvin Glen Bassett, Jr.
Medical Ventures, Inc.

## Exhibit 1 to Release

Michael Chad Alberson
Michael J. Wright
Michael T. Kimberl
MJW Orthopaedics, LLC
Nathan Shotts
Niagara Frontier Orthopaedic Supplies
OrthoLA, Inc
Orthopaedic Partners, LLC
Orthopaedic Sales of New York LLC
Pacific Orthopaedics, Inc.
Pat OLeary
Patrick Williams
Peter Griffen
Precision Instruments, Inc.
Premier Orthopaedics Sales, Inc.
QMO Inc.
R. Reeg
Randy Mellerine
Rebekah Culp Daniel
Richard Lee
S.C. Phippen Medical, LLC
San Joaquin Orthopaedics, Inc.
Scott Allen Leedy
SGF Medical, Inc.
Shane Stalcup
Simpson and Associates, Inc.
Simpson and Associates Minnesota, Inc.
Steven C. Phippen dba S.C. Phippen Medical, LLC
Synthes Inc.
Synthes USA
Ted Fox
Texas Joint Products, Inc.
Tim Hughes
Todd Casberg
Tom Lacy
Tomczak & Associates
Tri-State Orthopaedic Sales, LLC
TRP & Associates, LLC
William M. Macari
Yancey and Associates
<b>OTHER</b>
OK Dept. of Corr.

**TO COME**

**Exhibit 4.1.3.4  
Claims Form and  
Lien Checklist**

**Exhibit 11.1**  
**Form of Escrow Agreement**

---

**ESCROW AGREEMENT**

**Among**

**DePuy Orthopaedics, Inc.,**

**The Counsel Listed on the Signature Pages Hereto,**

**And**

**[ ], as the Escrow Agent**

**Dated as of [\_\_\_\_], 2013**

---

Table of Contents

	<u>Page</u>
ARTICLE I Establishment of ASR Settlement Escrow Fund .....	1
1.1 Establishment of an ASR Settlement Escrow Fund; Sub-Funds .....	1
1.2 Purposes of the ASR Settlement Escrow Fund.....	2
1.3 Agreement of the SOC.....	2
ARTICLE II Escrow Agent .....	2
2.1 Qualification to Serve .....	2
2.2 Term of Service.....	2
2.3 Appointment of Successor Escrow Agent .....	3
2.4 Compensation and Expenses of Escrow Agent .....	3
2.5 Merger, Conversion, Consolidation or Succession to Business of Escrow Agent.....	3
2.6 Indemnification/Liability of Escrow Agent .....	4
2.7 Reliance By Escrow Agent; Duties And Rights .....	4
2.8 Escrow Agent May Consult Advisors.....	5
ARTICLE III Funding of the ASR Settlement Escrow Fund .....	5
3.1 Funding of the ASR Settlement Escrow Fund.....	5
ARTICLE IV Investments, Payments and Administration of the ASR Settlement Escrow Fund .....	7
4.1 Investments and Distributions.....	7
4.2 Payments .....	8
4.3 Accounting and Reporting .....	9
4.4 Termination of Escrow Provisions and ASR Settlement Escrow Fund.....	9
ARTICLE V Tax Matters .....	10
5.1 Characterization .....	10
5.2 Information .....	10
ARTICLE VI General Provisions.....	10
6.1 Notice by Parties .....	10
6.2 Force Majeure .....	11
6.3 Governing Law .....	11
6.4 Dispute Resolution.....	12
6.5 Waiver of Inconsistent Provisions of Law; Severability .....	12
6.6 Facsimile Signatures .....	12
6.7 Construction.....	13
6.8 Entire Agreement .....	13
6.9 Headings; References.....	13
6.10 No Third Party Beneficiaries; Assignment .....	13
6.11 Amendments .....	14
6.12 Counterparts.....	14
6.13 Certain Payments .....	14
6.14 Amendments to the Settlement Agreement; Claims Processor .....	14
6.15 No Claims .....	14

EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

6.16 Patriot Act Requirements .....14  
6.17 Customer Identification and TIN Certification.....15  
6.18 Further Assurances.....15  
ARTICLE VII Definitions .....15  
7.1 Definitions.....15

## ESCROW AGREEMENT

ESCROW AGREEMENT, dated as of [\_\_\_\_\_], 2013, among (i) DePuy Orthopaedics, Inc., an Indiana corporation (together with its successors and assigns, "DePuy"), (ii) the counsel listed in the signature pages hereto under the heading "Settlement Oversight Committee" (collectively, the "SOC"), and (iii) the Escrow Agent named on the signature pages hereto (the "Escrow Agent"; DePuy, the SOC and the Escrow Agent, each a "Party" and collectively the "Parties").

All capitalized terms used in this Agreement and not otherwise defined herein, including in Article VII, shall have the meanings assigned to them in the Settlement Agreement (as defined below).

### Recitals

**A.** DePuy and the SOC entered into that certain Settlement Agreement, dated as of November 19, 2013 (as the same may be amended or modified from time to time, the "Settlement Agreement").

**B.** The Settlement Agreement provides, among other things, that DePuy shall make certain payments into an escrow account established pursuant to this Agreement and maintained by the Escrow Agent and for the Escrow Agent to make certain payments out of such escrow account pursuant to the terms of the Settlement Agreement and this Agreement.

DePuy, the SOC and the Escrow Agent hereby agree as follows:

## ARTICLE I

### ESTABLISHMENT OF ASR SETTLEMENT ESCROW FUND

#### 1.1 Establishment of an ASR Settlement Escrow Fund; Sub-Funds

1.1.1 The Escrow Agent hereby establishes a segregated escrow account in connection with this Agreement (the "ASR Settlement Escrow Fund"). In no event shall any funds in the ASR Settlement Escrow Fund lie commingled with any other funds or monies held by the Escrow Agent or any of its affiliates. The ASR Settlement Escrow Fund shall be maintained and administered by the Escrow Agent in accordance with this Agreement.

1.1.2 The Escrow Agent hereby establishes (i) the ASR Hip Administrative Expenses Fund, (ii) the Escrow PART A Settlement Fund, (iii) the Escrow PART B Settlement Fund and (iv) Common Benefit Fees and Expenses Fund. Any reference herein to the ASR Settlement Escrow Fund shall include the Sub-Funds.

1.1.3 The Settlement Parties hereby appoint the Escrow Agent to act as escrow agent with respect to the ASR Settlement Escrow Fund and the Escrow Agent hereby accepts such appointment and agrees to accept and hold in escrow all assets transferred to the ASR Settlement Escrow Fund under this Agreement.

## EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

1.1.4 The Escrow Agent hereby accepts the payment, contribution, transfer and assignment of all assets, whether heretofore or hereafter received from DePuy, the SOC, or the Claims Processor, as assets of the ASR Settlement Escrow Fund and agrees to receive, hold, settle, invest, liquidate and distribute such assets, in accordance with the provisions of this Agreement and the Settlement Agreement.

### 1.2 Purposes of the ASR Settlement Escrow Fund

The sole purposes of the ASR Settlement Escrow Fund are to:

1.2.1 receive, hold in escrow, safe-keep and invest amounts deposited under this Agreement; and

1.2.2 make payments, distributions and transfers among and from the Sub-Funds in accordance with this Agreement.

### 1.3 Agreement of the SOC

Any provision of this Agreement requiring the agreement, consent or notice of the SOC with respect to any matter shall be deemed satisfied if a majority in number of the SOC agree, consent or notify as to such matter. Any such agreement, consent or notice shall include a certification by its SOC signatories that such SOC signatories constitute a majority in number of the SOC.

## ARTICLE II

### ESCROW AGENT

#### 2.1 Qualification to Serve

There shall be one Escrow Agent maintaining the ASR Settlement Escrow Fund. The Escrow Agent shall be a major money center bank organized and doing business under the laws of the United States of America, any state thereof or the District of Columbia, authorized under such laws to maintain escrow accounts, having a combined capital and surplus of at least \$50,000,000,000, and subject to supervision and examination by a federal or state authority.

#### 2.2 Term of Service

The Escrow Agent shall serve until termination of this Agreement in accordance with Section 4.4, subject to its resignation or removal as set forth herein. The Escrow Agent may (i) resign at any time on at least sixty (60) days prior written notice of resignation to the Settlement Parties or (ii) be removed and replaced at any time on at least thirty (30) days prior written notice to the Escrow Agent by DePuy, provided, however, that, in each case, the resignation shall not become effective until a successor Escrow Agent has been appointed hereunder.

2.3 Appointment of Successor Escrow Agent

2.3.1 In the event of a resignation or removal of the Escrow Agent, the SOC shall appoint a successor Escrow Agent with the consent of DePuy (such consent not to be unreasonably withheld). If, upon resignation of the Escrow Agent, a successor Escrow Agent has not been appointed within sixty (60) days after written notice of the resignation of the Escrow Agent, the Escrow Agent may apply to any court of competent jurisdiction for appointment of a successor Escrow Agent. A successor Escrow Agent must meet the qualifications set forth in Section 2.1.

2.3.2 Any successor Escrow Agent, whether appointed by a court or by the SOC, shall execute and deliver to the predecessor Escrow Agent an instrument accepting such appointment, and thereupon such successor Escrow Agent, without further act, shall become vested with all the estates, properties, rights, powers, duties and trusts of the predecessor Escrow Agent hereunder with like effect as if originally named as the "Escrow Agent" herein. Notwithstanding the foregoing, upon the written request of the successor Escrow Agent, DePuy or the SOC, the predecessor Escrow Agent shall execute and deliver an instrument transferring to such successor Escrow Agent, all the estates, properties, rights, powers and trusts of such predecessor Escrow Agent, and such predecessor Escrow Agent shall duly assign, transfer, deliver and pay over to such successor Escrow Agent any property or moneys then held by such predecessor Escrow Agent.

2.3.3 In the event any successor Escrow Agent is appointed hereunder, the fees theretofore paid to the predecessor Escrow Agent shall be prorated between the predecessor Escrow Agent and the successor Escrow Agent for any unexpired portion of the period to which such fees relate.

2.4 Compensation and Expenses of Escrow Agent

2.4.1 The Escrow Agent shall be compensated for performing its services under this Agreement in the manner and in the amount agreed between it, the SOC and DePuy from time to time. The Escrow Agent shall also be reimbursed as agreed between it, the SOC and DePuy from time to time for any reasonable and documented out-of-pocket expenses related to performing such services and for the reasonable costs of any agents or attorneys retained by the Escrow Agent in accordance with this Agreement.

2.4.2 Such compensation and expenses shall be the sole responsibility of the QUSCs and their Counsel, and shall be paid from the ASR Hip Administrative Expenses Fund, which Sub-Fund shall be established within ten (10) business days following the execution of the Settlement Agreement and this Agreement.

2.5 Merger, Conversion, Consolidation or Succession to Business of Escrow Agent

Any corporation into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Escrow Agent shall be a party, or any corporation succeeding to the corporate escrow business of the Escrow Agent, shall be the successor of the

## EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

Escrow Agent hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto, provided, however, that such corporation shall be eligible under the provisions of Section 2.1 hereof. Such successor Escrow Agent shall be bound to the fees and expenses agreed between the Escrow Agent, the SOC and DePuy.

### 2.6 Indemnification/Liability of Escrow Agent

2.6.1 So long as the Escrow Agent acts in accordance with this Agreement, the Escrow Agent and its officers, directors, employees and agents (each an "Indemnified Party") shall be indemnified by the SOC and DePuy against any expenses, costs and fees (including reasonable attorneys' fees and expenses), judgments, awards, costs, amounts paid in settlement, and liabilities of all kinds (collectively, "Losses") incurred by the Indemnified Party resulting from any threatened, pending, or completed action, suit or proceeding of any kind, whether civil, administrative or arbitral, brought by or against the Indemnified Party (i) with respect to the Escrow Agent, by reason of the Escrow Agent serving or having served as Escrow Agent, or (ii) with respect to any other Indemnified Party, by reason of such Indemnified Party serving or having served in any capacity at the request of and on behalf of the Escrow Agent in connection with this Agreement (a "Proceeding"), provided, in each case, that such Indemnified Party acted in good faith, without negligence or willful misconduct.

2.6.2 Any term of Section 2.6.1 to the contrary notwithstanding, the SOC and DePuy shall not have any liability or obligation to any particular Indemnified Party under Section 2.6.1 with respect to any Losses which may be imposed on or incurred by such Indemnified Party in connection with the settlement of any Proceeding entered into by such Indemnified Party, or as the result of such Indemnified Party ceasing to diligently defend against any Proceeding, in each case without the prior written consent of DePuy and the SOC. DePuy and the SOC shall not unreasonably withhold or delay its consent to the settlement of any Proceeding.

### 2.7 Reliance By Escrow Agent; Duties And Rights

2.7.1 If at any time the Escrow Agent shall need clarification about an action to be taken or omitted in connection with a notice it receives hereunder, the Escrow Agent shall be entitled to request clarification from the Person(s) providing such notice and shall, as between itself and such Person, be entitled to rely on such clarification.

2.7.2 No provision of this Agreement shall be construed to relieve the Escrow Agent from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct except that:

2.7.2.1 neither the Escrow Agent nor any of its affiliates shall have authority or duty to manage or select the investment securities or other assets of the ASR Settlement Escrow Fund;

2.7.2.2 neither the Escrow Agent nor any of its affiliates shall be required to diversify the assets of the ASR Settlement Escrow Fund and shall not incur personal liability whatsoever, in tort, contract, or otherwise,

## EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

due to any such lack of diversification of the assets of the ASR Settlement Escrow Fund;

2.7.2.3 no successor Escrow Agent shall be in any way responsible for the acts or omissions of any predecessor Escrow Agent in office prior to the date on which such successor becomes the Escrow Agent; and

2.7.2.4 no Escrow Agent shall be liable except for the performance of such duties and obligations as are specifically set forth herein and such duties and obligations as are reasonably incidental thereto and no implied covenants or obligations shall be read into this Agreement against the Escrow Agent.

2.7.3 The Escrow Agent may conclusively rely, as to the truth of statements and correctness of the opinions or statements expressed therein, upon, and shall be protected in acting (in accordance with, and subject to, the terms hereof) upon, any certificate, notice or report furnished to the Escrow Agent hereunder and believed by it to be genuine and to have been signed or presented by the proper Person or Persons, but the Escrow Agent shall be under a duty to examine the same to determine whether, to the extent applicable, they conform to this Agreement. Without limitation, the Escrow Agent may require DePuy and the SOC to provide to it from time to time such certifications of authorized signatories of DePuy, the SOC and/or the Claims Processor as the Escrow Agent reasonably may request. For the avoidance of doubt, nothing in this Section qualifies Section 3.1.3.2.

### 2.8 Escrow Agent May Consult Advisors

The Escrow Agent may consult with and is entitled to retain its own counsel, professionals or other agents to advise it in connection with its duties hereunder. The Escrow Agent shall be entitled to rely on the advice or opinion of such counsel, professionals and agents and such advice or opinion shall be complete protection in respect of any action taken or suffered by the Escrow Agent in good faith and in reliance on and in accordance with such advice or opinion.

## ARTICLE III

### **FUNDING OF THE ASR SETTLEMENT ESCROW FUND**

#### 3.1 Funding of the ASR Settlement Escrow Fund

3.1.1 Within ten (10) business days following the establishment of the ASR Hip Administrative Expenses Fund, DePuy shall deposit or cause to be deposited Eight Million Dollars (\$8,000,000.00) as an initial start-up amount for the administration of the U.S. Program, which amount will be applied against/credited as set forth in Section 11.2.2 of the Settlement Agreement.

3.1.2 Within fifteen (15) Business Days following the receipt of the Initial PART A Funding Report, and having no objection to its accuracy, DePuy will deposit or cause to be deposited into the ASR Settlement Escrow Fund, an amount sufficient to pay the aggregate

EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

amount of the Initial PART A Funding Report (with the holdback amounts pursuant to CMO-13, as amended, being funded into an escrow account or sub-accounts for that purpose), less a credit in the amount equal to DePuy's initial start-up deposit pursuant to Section 11.2.2 of the Settlement Agreement dated November 19, 2013.

3.1.3 Beginning ten (10) Business Days following the delivery of the Initial PART A Funding Report to DePuy, the Claims Processor shall deliver to DePuy and the SOC Supplemental Funding Lists on both the 15<sup>th</sup> and last day of each month, identifying those EUSCs who, subsequent to the Initial PART A Funding List, have qualified as QUSCs together with the amount of each QUSC's PART A BASE Award, setting forth the assessment amounts for each QUSC as per CMO-13, as amended, **and certifying those PART A Base Awards in accordance with the Agreement that are final, binding and Non-Appealable and not subject to audit (or having successfully completed an audit) ("Supplemental PART A Funding Report")**.

3.1.4 Within fifteen (15) Business Days following the receipt of each Supplemental Funding Report, and having no objection to its accuracy, DePuy will deposit or cause to be deposited into the ASR Settlement Escrow Fund, an amount sufficient to pay the aggregate amount of such Supplemental PART A Funding Report (with the holdback amounts pursuant to CMO-13, as amended, being funded into an escrow account or sub-accounts for that purpose).

3.1.4.1 Concurrently with the making of any such deposit into the ASR Settlement Escrow Fund, DePuy shall notify the Escrow Agent and the SOC of such deposit and such notice shall specify the Sub-Fund into which the Escrow Agent must transfer such deposited funds (or the allocation of such deposited funds among the Sub-Funds).

3.1.5 Within five (5) Business Days following the electronic transfer of funds into the Escrow Account in response to any PART A Funding Report, the Claims Processor shall deliver to the Escrow Agent, DePuy, and the SOC, a Disbursement List. The Disbursement List shall provide the Escrow Agent with instructions for disbursing funds recently deposited by DePuy to the QUSCs and their respective Primary Law Firm, or to the QUSC's Primary Law Firm in trust for the respective QUSCs.

3.1.5.1 To the extent DePuy objects to the accuracy of any PART A Funding Report or Disbursement List, DePuy must inform the Claims Administrator, Claims Processor, Escrow Agent and SOC of its objections, which will not be funded or paid as part of such Funding Report or Disbursement List. If the objections are agreed to by the Claims Administrator, Claims Processor, or the SOC, such Funding Report or Disbursement List to which objection were taken, is to be corrected and included on the next Funding Report or Disbursement List. If there is a dispute over whether the objections are well taken, the matter will be resolved by one of the Special Masters whose decision will be final, binding and Non-Appealable.

3.1.6 Promptly after the end of each week (or other time period agreed upon by the parties to this Escrow Agreement), the Escrow Agent shall submit to DePuy, the SOC and the Claims Administrator a report, in such form and in such detail as DePuy (in

consultation with the SOC) reasonably from time to time may specify (an “Escrow Funds Report”), itemizing and certifying all payments or transfers out of the Escrow PART A Awards Settlement Funds during the preceding week and the balance on hand in each Escrow Fund as of the end of such week. The time of these reports may be adjusted with the agreement of DePuy and the Escrow Agent.

3.1.7 The SOC shall obtain a court order from the MDL Court requiring the assessment of 6% on all settlement payments for Common Benefit Fees and Expenses, which amounts shall be a holdback from PART A and PART B Awards. DePuy shall reduce its Funding Payments by 6% and shall transfer 5% of such amounts to the Common Benefit Fees and Expenses Fund and 1% of such amounts to the ASR Hip Administrative Expenses Fund to receive these assessed amounts under Amended Case Management Order No. 13, *In re DePuy Orthopaedics, Inc. ASR Hip Implant Products Liability Litigation*, MDL Docket No. 1:10-md-2197.

3.1.8 The timing of payments into the ASR Settlement Escrow Funds for the payment of DePuy’s PART B payment obligations and the disbursement of PART B Awards will be agreed among the parties.

#### ARTICLE IV

#### **INVESTMENTS, PAYMENTS AND ADMINISTRATION OF THE ASR SETTLEMENT ESCROW FUND**

##### 4.1 Investments and Distributions

4.1.1 The Escrow Agent shall invest any cash held in the ASR Settlement Escrow Fund solely in Permitted Investments in accordance with a notice delivered, from time to time, by DePuy to the Escrow Agent (an “Investment Direction”). Any Investment Direction shall constitute a standing instruction and shall remain in effect unless and until, and to the extent, it is revoked by DePuy in a subsequent Investment Direction. In the absence of any Investment Direction, the Escrow Agent shall invest any cash deposits it receives hereunder in direct obligations of, or obligations fully guaranteed by, the United States of America or any agency thereof, with a maturity of not more than thirty (30) days, until it receives a contrary Investment Direction.

4.1.2 The Escrow Agent shall be responsible for tracking any interest or other income earned on funds deposited into the ASR Settlement Escrow Fund (the “Earnings”), for each Sub-Fund. The Escrow Agent shall not be responsible for any loss of principal or interest resulting from making or disposing of any investments made in accordance with an Investment Direction (the “Losses”), except any such investment where the Escrow Agent, in its individual capacity, is the obligor.

4.1.3 Any investment securities, in book-entry form, purchased by the Escrow Agent pursuant to this Agreement shall be delivered to the Escrow Agent’s book-entry account at a Federal Reserve Bank or at a Depository Trust Company. In connection with each investment made by the Escrow Agent in book-entry securities, the Escrow Agent shall take such

## EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

actions as are contemplated by Article 8 of the applicable state's Uniform Commercial Code, to maintain control over such investment securities sufficient to make the Escrow Agent's interest therein senior to any adverse claim, to the full extent such senior interest can be legally established and enforced pursuant to the said Article 8.

4.1.4 On the last Business Day of each calendar month, the Escrow Agent shall transfer (i) an amount equal to the Net Investment Earnings with respect to the Escrow PART A Settlement Fund for such calendar month from such Sub-Fund to the ASR Hip Administrative Expenses Fund and (ii) an amount equal to the Net Investment Earnings with respect to the Escrow PART B Settlement Fund for such calendar month from such Sub-Fund to the ASR Hip Administrative Expenses Fund.

4.1.5 The Escrow Agent will (i) transfer funds from the ASR Hip Administrative Expenses Fund to the Escrow PART A Settlement Fund and/or the Escrow PART B Settlement Fund and/or (ii) pay over to DePuy funds contained in the ASR Hip Administrative Expenses Fund, in each case as may be directed in any joint direction of DePuy and the SOC from time to time. After the receipt by the Escrow Agent of any such direction, the Escrow Agent will cease making the transfers set forth in Section 4.1.4.

### 4.2 Payments

4.2.1 The Escrow Agent shall promptly (and in any event within one (1) Business Day following receipt) provide to DePuy by electronic mail a pdf copy of any Awards Report that the Escrow Agent receives.

4.2.2 The SOC, from time to time, shall direct the Escrow Agent to issue payments in response to invoices for reasonable and necessary administrative costs and expenses for the operation of the U.S. Program, following the concurrence of the SOC and DePuy, which concurrence shall not be unreasonably withheld. Subject to having sufficient funds on hand in the ASR Hip Administrative Expenses Fund, the Escrow Agent shall thereafter pay out of the ASR Hip Administrative Expenses Fund the various specific payments specified by the SOC as "Administrative Expenses Payables." If the Escrow Agent does not have sufficient funds on hand in the ASR Hip Administrative Expenses Fund to make all of the payments to be made out of such Sub-Fund pursuant to the preceding sentence, the Escrow Agent will pay the Administrative Expenses Payables pro rata according to the respective amounts thereof to the extent of the funds available in the ASR Hip Administrative Expenses Fund. Payments pursuant to this Section 4.2.2 shall be made in such manner, and to such accounts and/or in such names, as shall be specified by the SOC.

4.2.3 The Escrow Agent, upon receiving notice by DePuy, shall release funds deposited in the Escrow PART A Settlement Fund to a check writing account against which the Claims Processor may issue checks enabling the Claims Processor to issue payments of the specific PART A Settlement Awards in a particular Weekly PART A Settlement Awards Report. Payments pursuant to this Section 4.2.3 shall be made in such manner, and to such accounts and/or in such names, as shall be specified in the Weekly PART A Settlement Awards Report.

## EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

4.2.4 Except as provided by Section 4.2.4.1, following the satisfaction of all of the conditions of Section 10.2.7 of the Settlement Agreement, the Escrow Agent shall pay out of the Escrow PART B Settlement Fund the various specific payments specified in the applicable Monthly PART B Awards Report as “PART B Awards.” Payments pursuant to this Section 4.2.4 shall be made in such manner, and to such accounts and/or in such names, as shall be specified in the Monthly PART B Awards Report and written directions provided by DePuy pursuant to Section 10.2.8 of the Settlement Agreement.

4.2.4.1 The Escrow Agent, upon receipt notice of an interim payment authorized pursuant to Section 10.2.5.1 of the Settlement Agreement, shall pay out of the Escrow PART B Settlement Fund the authorized payments.

4.2.5 Following a court order by the MDL Court directing the payment of Common Benefit Fees and Expenses, the Escrow Agent shall pay out of the Common Benefit Fees and Expenses Fund the various payments specified in such court order.

4.2.6 The Escrow Agent shall have the right to liquidate, at any time, any investment made pursuant to this Agreement in order to make required payments pursuant to this Agreement.

### 4.3 Accounting and Reporting

4.3.1 Promptly after the end of each week (with respect to PART A Settlement Awards) or each calendar month (with respect to PART B Awards), the Escrow Agent shall submit to DePuy, the SOC and the Claims Processor a report, in such form and in such detail as DePuy (in consultation with the SOC) reasonably from time to time may specify (an “Escrow Funds Report”), itemizing and certifying all payments or transfers out of the ASR Settlement Escrow Fund during the preceding week or calendar month (as the case may be), the Net Investment Earnings transferred to the ASR Hip Administrative Expenses Fund during the preceding week or calendar month (as the case may be), and the balance on hand in each Sub-Fund as of the end of such week or calendar month (as the case may be).

4.3.2 Without limitation of Section 4.3.1, promptly upon any request therefor from DePuy, the Escrow Agent shall inform DePuy of the balance on hand in each Sub-Fund as of the most recent practicable date.

### 4.4 Termination of Escrow Provisions and ASR Settlement Escrow Fund

4.4.1 This Agreement shall terminate:

4.4.1.1 upon disbursement of all the funds in the ASR Settlement Escrow Fund at any time after receipt of a notice pursuant to Section 4.1.5;

4.4.1.2 by mutual consent of DePuy and the SOC; or

4.4.1.3 upon payment of all funds in the ASR Settlement Escrow Fund to a successor to the Escrow Agent in accordance with and subject to

## EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

Section 2.3 (but in the case of this Section 4.4.1.3, such termination shall apply only to the Escrow Agent being replaced).

4.4.2 Prior to the termination of this Agreement, any outstanding funds remaining in the ASR Hip Administrative Expenses Fund shall be transferred to the Common Benefit Fees and Expenses Fund, which Sub-Fund shall remain active until a court order is issued by the MDL Court terminating such Sub-Fund.

4.4.3 Within thirty (30) days after termination of this Agreement, the Escrow Agent shall render a final accounting of the assets received, paid by and held in the ASR Settlement Escrow Fund and their disposition to each of DePuy and the SOC.

### ARTICLE V

#### TAX MATTERS

##### 5.1 Characterization

5.1.1 DePuy and the SOC agree to characterize the ASR Settlement Escrow Fund for federal, state and local income tax purposes in such manner as is reasonably determined by DePuy, including as a “qualified settlement fund” within the meaning of Treasury Regulation Section 1.468B-1 or as a grantor trust pursuant to an election under Treasury Regulation Section 1.468B-1(k) or otherwise. Any Taxes payable by the Escrow Agent as a result of treatment of the ASR Settlement Escrow Fund as a taxable entity under the “qualified settlement fund” rules or otherwise shall be treated as Administrative Expenses.

5.1.2 The SOC will seek an order from the MDL Court designating the ASR Settlement Escrow Fund and all sub-funds as qualified settlement funds within the meaning of Treasury Regulation Section 1.468B-1 or as a grantor trust pursuant to an election under Treasury Regulation Section 1.468B-1(k) or otherwise.

##### 5.2 Information

The Escrow Agent and DePuy shall timely provide the other with such material and relevant information as and to the extent reasonably requested by the other party in connection with any tax filing or the payment of any taxes or any private letter ruling regarding the tax status of the ASR Settlement Escrow Fund.

### ARTICLE VI

#### GENERAL PROVISIONS

##### 6.1 Notice by Parties

All notices or other communications required or permitted hereunder shall be given in writing and given (i) by certified or registered mail, return receipt requested, nationally recognized overnight delivery service, such as Federal Express, or facsimile (or like transmission) with confirmation of transmission by the transmitting equipment or personal

EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

delivery against receipt to the party to whom it is given, in each case, at such party's address or facsimile number set forth below or such other address or facsimile number as such party may hereafter specify by notice to the other parties hereto given in accordance herewith, or (ii) to the extent specified hereunder, by electronic mail to the electronic mail address specified below or such other electronic mail address as such party may hereafter specify by notice to the other parties hereto given in accordance herewith. Any such notice or other communication shall be deemed to have been given as of the date so personally delivered or transmitted by facsimile or like transmission, on the next Business Day when sent by overnight delivery service, five (5) Business Days after the date so mailed if by certified or registered mail, or when capable of being accessed at the electronic mail address specified below when so delivered by electronic mail, provided that if any such date on which any such notice or other communication shall be deemed to have been given is not a Business Day, then such notice or other communication shall be deemed to have been given as of the next following Business Day:

6.1.1

If to DePuy:

[to come]

6.1.2

If to the SOC:

[to come]

6.1.3

If to the Escrow Agent: JP Morgan Chase Bank, N.A.

[to come]

If to the Claims Processor: BrownGreer

[to come]

6.2 Force Majeure

Neither the Escrow Agent nor any Party shall be liable to any other Party for losses due to, or if it is unable to perform its obligations under the terms of this Agreement because of, acts of God, fire, war, terrorism, electrical outages, equipment or transmission failure, or other causes reasonably beyond its control.

6.3 Governing Law

This Agreement shall be governed by and construed in accordance with the law of New York without regard to any choice-of-law rules that would require the application of the law of another jurisdiction.

6.4 Dispute Resolution

The Parties irrevocably and unconditionally submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or if such courts lacks subject matter jurisdiction, the Supreme Court for the State and County of New York (the “Escrow Court”) for purposes of any suit, action or proceeding seeking to interpret or enforce any provision of, or based on any rights arising out of, this Agreement, and the Parties agree not to commence any such suit, action or proceeding except in the Escrow Court. The Parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding in the Escrow Court and hereby further irrevocably waive and agree not to plead or claim in the Escrow Court that any such suit, action or proceeding has been brought in an inconvenient forum.

6.5 Waiver of Inconsistent Provisions of Law; Severability

6.5.1 To the fullest extent permitted by applicable law, each Party waives any provision of law (including the common law), which renders any provision of this Agreement invalid, illegal or unenforceable in any respect.

6.5.2 Any provision of this Agreement which is prohibited or unenforceable to any extent or in any particular context shall be ineffective, but such ineffectiveness shall be limited as follows: (i) if such provision is prohibited or unenforceable only in or as it relates to a particular jurisdiction, such provision shall be ineffective only in or as it relates to (as the case may be) such jurisdiction and only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability in or as it relates to (as the case may be) such jurisdiction shall not otherwise invalidate or render unenforceable such provision (in such or any other jurisdiction); (ii) if (without limitation of, and after giving effect to, clause (i)) such provision is prohibited or unenforceable only in a particular context (including only as to a particular Person or Persons or under any particular circumstance or circumstances), such provision shall be ineffective, but only in such particular context; and (iii) without limitation of clauses (i) or (ii), such ineffectiveness shall not invalidate any other provision of this Agreement. Without limitation of the preceding sentence, it is further the desire, and intent and agreement, of the Parties that if the Claims Administrator (or, if applicable pursuant to Section 6.4.2, the Special Master) determines that any provision of this Agreement is prohibited or unenforceable to any extent or in any particular context but in some modified form would be enforceable, the Claims Administrator (or, if applicable pursuant to Section 6.4.2, the Special Master) shall have the power to, and shall, (x) modify such provision for purposes of such proceeding in accordance with clauses (i), (ii) and (iii) of the preceding sentence and otherwise to the minimum extent necessary so that such provision, as so modified, may then be enforced in such proceeding, and (y) enforce such provision, as so modified pursuant to clause (x), in such proceeding. In any event, upon any such determination that any term or other provision is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible to the fullest extent permitted by applicable law. Nothing in this Section 6.5.2 intended to, or shall, limit (1) Section 6.5.1 or (2) the intended effect of Section 6.3.

6.6 Facsimile Signatures

## EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

This Agreement and any amendments thereto, to the extent signed and delivered by means of a facsimile machine or electronic scan (including in the form of an Adobe Acrobat PDF file format), shall be treated in all manner and respects as an original agreement and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

### 6.7 Construction

With regard to each and every term and condition of this Agreement, the Parties understand and agree that the same have or has been mutually negotiated, prepared and drafted, and if at any time the Parties desire or are required to interpret or construe any such term or condition or any agreement or instrument subject hereto, no consideration shall be given to the issue of which party thereto actually prepared, drafted or requested any term or condition of thereof.

### 6.8 Entire Agreement

This Agreement (together with the Settlement Agreement, with respect to DePuy and the SOC) contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes and cancels all previous agreements, negotiations, and commitments in writings between the Parties hereto with respect to the subject matter hereof.

### 6.9 Headings; References

The headings of the Table of Contents, Articles and Sections herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. The words “include” and “including” and words of similar import when used in this Agreement are not limiting and shall be construed to be followed by the words “without limitation,” whether or not they are in fact followed by such words. The definitions contained in, or incorporated into, this Agreement are applicable to the singular as well as the plural forms of such terms. Words of any gender (masculine, feminine, neuter) mean and include correlative words of the other genders. As used herein, the term “dollars” and the symbol “\$”, shall mean United States dollars.

### 6.10 No Third Party Beneficiaries; Assignment

6.10.1 Except with respect to any rights of any Indemnified Party pursuant to Section 2.6, no provision of this Agreement is intended to create any third-party beneficiary to this Agreement. This Agreement and all of the provisions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns; provided, however, that neither this Agreement nor any of the rights, interests, or obligations hereunder may be assigned by (i) the SOC without the prior written consent of DePuy or (ii) the Escrow Agent without the prior written consent of DePuy. Any assignment in violation of this Section 6.10.1 shall be null and void ab initio.

6.10.2 For the avoidance of doubt and without limitation of Section 6.10.1 but also without limitation of the SOC’s right to enforce this Agreement, no Program Claimant

EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

or U.S. Program Claimant shall have any right to institute any proceeding, judicial or otherwise, against DePuy or the Escrow Agent to enforce, or otherwise with respect to, this Agreement.

6.11 Amendments

This Agreement may be amended by an instrument signed by DePuy, the SOC and the Escrow Agent.

6.12 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument. It shall not be necessary for any counterpart to bear the signature of all Parties hereto.

6.13 Certain Payments

Any amount payable pursuant to Section 2.4 or Section 2.6 shall be deemed to constitute “Administrative Expenses” for purposes of the Settlement Agreement. Any amount payable pursuant to Section 2.4 or Section 2.6 shall be paid out of the ASR Hip Administrative Expenses Fund; provided that if the funds in the ASR Hip Administrative Expenses Fund are not sufficient to entirely pay any such amount within sixty (60) days of it becoming due and payable then DePuy shall directly pay such unpaid amount to the Escrow Agent.

6.14 Amendments to the Settlement Agreement; Claims Processor

6.14.1 DePuy and the SOC shall promptly notify the Escrow Agent of any amendment or modification to the Settlement Agreement and include in such notice a copy of any such amendment or modification.

6.14.2 DePuy and the SOC shall promptly apprise the Escrow Agent of any change in the identity of the “Claims Processor” under the Settlement Agreement.

6.15 No Claims

In furtherance and not in limitation of 6.9, no Program Claimant or U.S. Program Claimant (or his counsel), or other third party, shall have (i) any right, title or interest in, or any right to execute upon, garnish or attach, the ASR Settlement Escrow Fund or any funds therein in any manner or (ii) any right to compel payment from the ASR Settlement Escrow Fund of any claim or other amount. For the avoidance of doubt, all issues relating to when Settlement Award Payments are required to be paid are governed solely by the Settlement Agreement.

6.16 Patriot Act Requirements

Pursuant to Section 326 of the USA PATRIOT Act and the Escrow Agent’s identity verification procedures, the Parties agree to provide the Escrow Agent with and

## EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

consent to the Escrow Agent obtaining from third parties any such identifying information required as a condition of opening an account with or using any service provided by the Escrow Agent, including without limitation name, address and organizational documents (“identifying information”).

### 6.17 Customer Identification and TIN Certification

6.17.1 To help the government fight the funding of terrorism and money laundering activities, federal laws require all financial institutions to obtain, verify and record information that identifies each individual or entity that opens an account. Therefore, the Escrow Agent must obtain the name, address, taxpayer or other government identification number, and other information, such as date of birth for individuals, for each individual and business entity that is a party to this Agreement. For individuals signing this Agreement on their own behalf or on behalf of another, the Escrow Agent requires a copy of a driver’s license, passport or other form of photo identification. For business and other entities that are parties to this Agreement, the Escrow Agent will require such documents as it deems reasonably necessary to confirm the legal existence of the entity.

6.17.2 At the time of or prior to execution of this Agreement, DePuy and the SOC (the “Escrow Parties”) providing a tax identification number for tax reporting purposes shall provide to the Escrow Agent a completed IRS Form W-9, and every individual executing this Agreement on behalf of an Escrow Party shall provide to the Escrow Agent a copy of a driver’s license, passport or other form of photo identification acceptable to the Escrow Agent. The Escrow Parties agree to provide to the Escrow Agent such organizational documents and documents establishing the authority of any individual acting in a representative capacity as the Escrow Agent may require in order to comply with its established practices, procedures and policies.

### 6.18 Further Assurances

The Escrow Parties shall execute and deliver any and all such agreements or other documents, and do all other things, reasonably necessary or appropriate to carry out fully the provisions of this Agreement and requested from time to time by the Escrow Agent. Without limitation of the foregoing, the Escrow Agent may reasonably specify the form of any notice or direction that may be given to it under Article IV hereof.

## **ARTICLE VII**

### **DEFINITIONS**

#### 7.1 Definitions

For the purposes of this Agreement, the following terms (designated by initial capitalization throughout this Agreement) shall have the meanings set forth in this Section.

7.1.1 “ASR Hip Administrative Expenses Fund” means a segregated sub-account of the ASR Settlement Escrow Fund for the purpose of separately holding and administering any amount transferred by DePuy pursuant to the Settlement Agreement and

EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

specified pursuant to Section 3.1 that it must be deposited into the ASR Hip Administrative Expenses Fund.

7.1.2 "Agreement" means this Escrow Agreement.

7.1.3 "Awards" means a "PART A Award" or "PART B Award" as those terms are defined in the Settlement Agreement.

7.1.4 "Awards Report" means a "Weekly PART A Settlement Awards Report" or "Monthly PART B Awards Report" as those terms are defined in the Settlement Agreement, provided that the form of an Awards Report also must be in a form reasonably satisfactory to the Escrow Agent.

7.1.5 "Claims Administrator" has the meaning ascribed to such term in the Settlement Agreement.

7.1.6 "Claims Processor" has the meaning ascribed to such term in the Settlement Agreement.

7.1.7 "Common Benefit Fees and Expenses Fund" means a segregated sub-account of the ASR Settlement Escrow Fund for the purpose of separately holding and administering any amount transferred by DePuy pursuant to Section 3.1.4.

7.1.8 "MDL Court" means the United States District Court for the Northern District of Ohio.

7.1.9 "Moody's" means Moody's Investors Service, Inc.

7.1.10 "Net Investment Earnings" means, with respect to any specified period, the Earnings minus the Losses, in each case for such period, provided that if, with respect to any specified period, such amount would (but for this proviso) be a negative number, "Net Investment Earnings" for such specified period shall be deemed to equal zero and such negative amount shall be carried over into the calculation of "Net Investment Earnings" with respect to the immediately following specified period.

7.1.11 "Escrow PART A Settlement Fund" means a segregated sub-account of the ASR Settlement Escrow Fund for the purpose of separately holding and administering any amount transferred by DePuy pursuant to the Settlement Agreement and specified pursuant to Section 3.1 that it must be deposited into the Escrow PART A Settlement Fund.

7.1.12 "Escrow PART B Settlement Fund" means a segregated sub-account of the ASR Settlement Escrow Fund for the purpose of separately holding and administering any amount transferred by DePuy pursuant to the Settlement Agreement and specified pursuant to Section 3.1 that it must be deposited into the Escrow PART B Settlement Fund.

EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

7.1.13 “Payment Report” means a report itemizing and certifying all Administrative Expenses.

7.1.14 “Permitted Investments” means (i) direct obligations of the United States, or of any agency thereof, or obligations guaranteed as to principal and interest by the United States or any agency thereof, (ii) certificates of deposit or bankers’ acceptances issued, or time deposits held, or investment contracts guaranteed, by any nationally-recognized securities dealer or any other commercial bank, trust company, savings and loan association or savings bank organized under the laws of the United States, or any State thereof, or of any other country which is a member of the OECD, or a political subdivision of any such country, and in each case having outstanding unsecured indebtedness that (on the date of acquisition thereof) is rated AA- or better by S&P or Aa3 or better by Moody’s (or an equivalent rating by another nationally-recognized credit rating agency of similar standing if neither S&P nor Moody’s is then in the business of rating unsecured bank indebtedness), (iii) obligations with any bank or trust company described in clause (ii), above, or any nationally-recognized securities dealer, in respect of the repurchase of obligations of the type described in clause (i), above, provided that such repurchase obligations shall be fully secured by obligations of the type described in said clause (i) and the possession of such obligations shall be transferred to, and segregated from other obligations owned by, such bank or trust company or such securities dealer, (iv) commercial paper rated (on the date of acquisition thereof) A-1 or P-1 or better by S&P or Moody’s, respectively (or an equivalent rating by another nationally-recognized credit rating agency of similar standing if neither S&P nor Moody’s is then in the business of rating commercial paper), (v) any eurodollar certificate of deposit issued by any commercial bank, trust company, savings and loan association or savings bank organized under the laws of the United States, or any State thereof, or of any country which is a member of the OECD, or a political subdivision of any such country, and in each case having outstanding unsecured indebtedness that (on the date of acquisition thereof) is rated AA- or better by S&P or Aa3 or better by Moody’s (or an equivalent rating by another nationally-recognized credit rating agency of similar standing if neither S&P nor Moody’s is then in the business of rating unsecured bank indebtedness), (vi) money market or mutual funds registered under the Investment Company Act of 1940, as amended, (x) investing in any of the instruments described in the foregoing clauses (i) through (v) or (y) rated AAA by S&P or Aaa by Moody’s, (vii) enhanced cash funds, (viii) any other investment vehicle agreed to, from time to time, by DePuy and the SOC or (ix) any combination of the foregoing clauses (i) through (viii).

7.1.15 “S&P” means Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc.

7.1.16 “Settlement Parties” means DePuy and the SOC.

7.1.17 “Special Master” has the meaning ascribed to such term in the Settlement Agreement.

7.1.18 “Sub-Fund” means any of the ASR Hip Administrative Expenses Fund, the Escrow PART A Settlement Fund, the Escrow PART B Settlement Fund, and the Common Benefit Fees and Expenses Fund.

EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

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

**SETTLEMENT OVERSIGHT COMMITTEE**

\_\_\_\_\_  
Steven J. Skikos  
Adriana Suarez Diamond  
Skikos, Crawford, Skikos & Joseph

Dated: \_\_\_\_\_

\_\_\_\_\_  
Perry Weitz  
Ellen Relkin  
Weitz & Luxenberg, P.C.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Christopher A. Seeger  
Dave Buchanan  
Seeger Weiss LLP

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michael A. Kelly  
Khaldoun Baghdadi  
Walkup, Melodia, Kelly & Schoenberger

Dated: \_\_\_\_\_

\_\_\_\_\_  
R. Eric Kennedy  
Weisman, Kennedy &  
Berris Co., L.P.A.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Peter J. Flowers  
Meyers & Flowers

Dated: \_\_\_\_\_

\_\_\_\_\_  
Brian Panish  
Hon. Peter J. Polos (Ret.)  
Panish Shea & Boyle

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ken Seeger  
Brian J. Devine  
Seeger Salvas LLP

Dated: \_\_\_\_\_

\_\_\_\_\_  
Ben W. Gordon, Jr.  
Michael Papantanio  
Levin, Papantanio, Thomas,  
Mitchell, Rafferty & Proctor, P.A.

\_\_\_\_\_  
Lawrence Gornick  
Kaiser Gornick LLP

EXHIBIT 11.1.1 to ASR Hip Settlement Agreement--DRAFT FORM OF ESCROW AGREEMENT

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Michelle L. Kranz  
Zoll, Kranz & Borgess LLC

\_\_\_\_\_  
Mark P. Robinson, Jr.  
Robinson, Calcagnie & Robinson

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

\_\_\_\_\_  
Daniel R. Lapinski  
Wilentz, Goldman & Spitzer, P.A.

Dated: \_\_\_\_\_

**DEPUY ORTHOPAEDICS, INC.**

By: \_\_\_\_\_  
Scott R. Ryan  
Vice President, Law  
DePuy Orthopaedics, Inc.

Dated: \_\_\_\_\_

**JP MORGAN CHASE BANK, N.A.**

By: \_\_\_\_\_  
Name:  
Title: