

AGREEMENT REGARDING CLAIM 43 OF U.S. PATENT NO. 9,005,293

This Agreement is made and entered into by and between Moskowitz Family LLC, a limited liability company organized and existing under the laws of the State of Maryland, and Medtronic, Inc., a Minnesota corporation (“Medtronic”). Moskowitz Family LLC and Medtronic are individually referred to herein as a “Party” and collectively as the “Parties.” This Agreement is effective as of the date the last Party executes this Agreement (the “Effective Date”).

WHEREAS, on February 28, 2025, Moskowitz Family LLC sued Medtronic and certain of its Affiliates in the U.S. District Court for the District of Minnesota (Case No. 25-cv-00769 PJS/DLM, the “Litigation”) alleging infringement of U.S. Patent No. 9,005,293 (the ’293 Patent) and related patents (the “Asserted Patents”);

WHEREAS, Medtronic denies all claims alleged against it and its Affiliates in the Litigation, including that it infringes the Asserted Patents, that Moskowitz Family LLC is entitled to any damages for alleged infringement of the Asserted Patents, and that the Asserted Patents are valid;

WHEREAS, Medtronic has filed an inter partes review (“IPR”) petition challenging the validity of Claim 43 of the ’293 Patent, captioned IPR2025-01598, before the Patent Trial and Appeal Board (“PTAB”) of the U.S. Patent and Trademark Office, and the parties have agreed to jointly request that the PTAB terminate IPR2025-01598 in connection with this Agreement; and

WHEREAS, to avoid further expense of the Litigation or IPR concerning Claim 43 of the ’293 Patent, and without any admission of liability or fault, the Parties desire to enter into an agreement with respect to Claim 43 of the ’293 Patent, on the terms and conditions set forth herein; and

NOW, THEREFORE, in consideration of the above and the mutual covenants contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged by each Party, the Parties, intending to be legally bound, hereby agree as follows:

1. DEFINITIONS.

1.1 “Affiliate” means, with respect to any specified entity, any Person that is directly or indirectly controlling, controlled by, or under common control with such specified entity. For purposes of this Agreement, “control” means with respect to any specified entity, possession, directly or indirectly, of the power to direct or cause the direction of management or policies of a corporation or other entity whether through the ownership of voting securities, or by contract or otherwise. Control will be presumed where a Party has ownership of 50% or more of the outstanding voting shares of the Person.

1.2 “Covered Products or Services” means the past, current, and future products and services, product lines, devices, systems, components, apparatus, equipment, machines, tools, parts, instrumentalities, software, hardware, and any combination of the foregoing, which are made, made for, used, imported, exported, distributed, sold, offered for sale, developed, and/or advertised by any of Medtronic and its Affiliates. The Covered Products include, without limitation, all of Medtronic and/or its Affiliates’ current, former, and future spinal implants.

1.3 “Medtronic Third Parties” means vendors, suppliers, manufacturers, developers, distributors, resellers, OEMs, contractors, partners, hosts, customers and end-users (including hospitals, surgeons, and other health care providers) of Medtronic and its Affiliates, to the extent they have made, used, imported, exported, distributed, sold, offered for sale, developed, and/or advertised any Covered Products or Services.

1.4 “Person” means an individual, trust, corporation, partnership, joint venture, limited liability company, association, unincorporated organization or other legal entity.

1.5 “Third Party” means any Person or entity other than the Parties to this Agreement and their Affiliates.

2. COVENANT NOT TO SUE.

2.1 Covenant Not to Sue. Moskowitz Family LLC, on behalf of itself and its Affiliates and their respective successors and assigns, covenants not to sue or bring or maintain any other action, proceeding, claim, allegation, or demand against any of Medtronic or its Affiliates, or their respective successors or assigns, for direct or indirect (including induced or contributory) infringement of Claim 43 of the ‘293 Patent. Moskowitz Family LLC, on behalf of itself and its Affiliates and their respective successors and assigns, also covenants not to sue or bring or maintain any other action, proceeding, claim, allegation, or demand against any Medtronic Third Party, or their respective successors or assigns, for direct or indirect (including induced or contributory) infringement of Claim 43 of the ‘293 Patent relating in any way to any Covered Products or Services. These covenants are unconditional and irrevocable, and may not be modified or terminated for any reason without the written consent of both Parties. For avoidance of doubt, the covenants in this Section 2.1 apply only to Claim 43 of the ‘293 Patent and do not apply to any other claim of the ‘293 Patent, any claim of any other Asserted Patent, or any other patent or patent application.

2.2 After Acquired Affiliates. In the event that Medtronic or its Affiliates acquire a Third Party entity or any assets or product lines of a Third Party entity, where the acquired products or services or Third Party arguably or allegedly infringed Claim 43 of the ‘293 Patent prior to the acquisition, the newly acquired Affiliate will enjoy and benefit from the covenants set out in this Agreement including, without limitation, for the activities occurring prior to the acquisition.

2.3 No Other Rights. Nothing contained in this Agreement shall be construed as conferring by implication, estoppel, exhaustion, release, waiver, or otherwise upon any Person any right (including a license, covenant, immunity, or defense) under any patents or patent claims except for the covenant not to sue as to Claim 43 of the ‘293 Patent expressly granted under Section 2.1. For avoidance of doubt, this Agreement does not release, waive, limit, license, exhaust,

covenant away, or otherwise affect any rights, claims, defenses, contentions, or remedies concerning any claim of the '293 Patent other than Claim 43, any claim of any other Asserted Patent, or any other patent or patent application.

3. TERM.

3.1 Term. The term of this Agreement shall commence upon the Effective Date and shall continue until the expiration of the enforceability period for the '293 Patent.

4. ASSIGNABILITY.

4.1 Assignability. Medtronic may (i) assign its rights under this Agreement to any of its Affiliates and (ii) assign its rights under this Agreement to (a) an acquirer of all or substantially all of the equity or assets of its business to which this Agreement relates; or (b) the surviving entity in any merger, change of control, consolidation, equity exchange, or reorganization of its business to which this Agreement relates. This Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties and their permitted successors and assigns.

4.2 Spin-Offs and Divestments. In the event Medtronic or an Affiliate thereof sells any portion of its assets, or otherwise divests or spins off a product line, business unit, division or Affiliate, including through formation of a joint venture or sale of an entity (any of the foregoing, a "Divested Entity"), then Medtronic or its Affiliates shall have the right to extend the benefits of the covenant granted herein to such Divested Entity with respect to such assets or business provided, however, that any covenant benefits so extended to any Divested Entity shall be limited to the business of the Divested Entity as of the date of the divestment or other sale, and shall not extend otherwise to any acquirer of such Divested Entity, such acquirer's Affiliates or any such acquirer's or such Affiliates' other businesses. This Agreement shall otherwise remain in effect with respect to Medtronic and its Affiliates and the covenant shall continue to apply to the business and assets retained or later acquired by Medtronic and its Affiliates in addition to those transferred to the Divested Entity.

4.3 Acquisitions by Medtronic. If Medtronic or any of its Affiliates acquires any third party, or any business or asset of a third party, such acquired Third Party, or business or asset, shall be granted the covenant set forth in Section 2.1, and shall thereby be released from any liability for infringement of Claim 43 of the '293 Patent, whether past, present or future. For purposes of clarity, this means that the covenant and other provisions concerning Covered Products or Services and Medtronic Third Parties shall also apply to the acquired Third Party or other business or asset to the same extent as Medtronic or any other Medtronic Affiliate.

4.4 Encumbrances Run with Patents. Without limiting Section 2, Moskowitz Family LLC agrees, on behalf of itself and each of its Affiliates, that the covenant not to sue and other benefits granted by Moskowitz Family LLC and its Affiliates in Section 2 of this Agreement, shall run with the '293 Patent, and that Moskowitz Family LLC shall ensure that any assignee, transferee, or successor to the '293 Patent (including the acquiring or surviving entity in connection with any acquisition or other change of control of Moskowitz Family LLC), or any other person (such as an exclusive licensee) that obtains any enforcement rights with respect to the '293 Patent agrees in writing, prior to such assignment, transfer, or grant, to be bound by the obligations of

Moskowitz Family LLC in this Agreement (including the obligation to obtain such written agreement from any subsequent assignee, transferee, successor, or grantee).

5. MISCELLANEOUS.

5.1 FRE 408. The terms of this Agreement, and any terms reflected herein, and the existence and content of any negotiations between the Parties are subject to FRE 408.

5.2 Relationship of the Parties. Nothing in this Agreement is intended or will be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship among the Parties.

5.3 Severability. If any portion of this Agreement is found to be invalid, illegal, or unenforceable for any reason, the remainder of the Agreement will continue in force and, if needed, the Parties or a court of competent jurisdiction will substitute suitable provisions having like economic effect and intent.

5.4 Modification. This Agreement cannot be modified, terminated, or amended in any respect orally or by conduct of the Parties. Any termination, modification, or amendment may be made only by a writing signed by all Parties. No waiver of any provision will be binding in any event unless executed in writing by the Party making the waiver.

5.5 Counterparts. This Agreement may be executed in several counterparts, each of which is deemed to be an original but all of which constitute one and the same instrument.

5.6 Independent Legal Advice. The Parties acknowledge that they have been advised by their own independently selected counsel and other advisors in connection with this Agreement and enter into this Agreement solely on the basis of that advice and on the basis of their own independent investigation of all of the facts, laws and circumstances material to this Agreement or any provisions thereof, and not in any manner or to any degree based upon any statement or omission by any other Party and/or its counsel.

5.7 Fees and Costs. Each Party shall bear its own costs and attorney fees incurred in connection with the Litigation and the IPR as it pertains to Claim 43 of the '293 Patent, including the negotiation and consummation of this Agreement. However, nothing in this Agreement shall otherwise impact, in any way, the Parties' present or future claims for fees and costs concerning the other asserted claims and asserted patents in the Litigation or in other *inter partes* review proceedings.

5.8 Construction. Each Party and counsel have reviewed and approved this Agreement, and accordingly any presumption or rule of construction permitting ambiguities to be resolved against the drafting party will not be employed in the interpretation or application of this Agreement.

5.9 Headings. The headings inserted in this Agreement are for reference only and are not intended to form any part of the operative portion of this Agreement, and they will not be employed in the interpretation or application of this Agreement.

5.10 Governing Law; Venue. This Agreement, its performance and interpretation shall be construed and governed by the laws of the State of Minnesota, excluding its choice of law rules to the contrary. The Parties hereby agree that any legal proceeding arising under, relating to, or otherwise concerning this Agreement, including, without limitation, the negotiation, execution, interpretation, performance, breach or nonperformance of this Agreement and the transactions contemplated in this Agreement, may be brought in the federal courts of the District of Minnesota and agree to its jurisdiction. For clarity, the foregoing shall not affect the jurisdiction of proceedings involving the '293 Patent that may be held before the U.S. Patent and Trademark Office, Patent Trial and Appeal Board, or any similar intellectual property office in any other jurisdiction (e.g., ex parte reexaminations).

5.11 Bankruptcy. The Parties acknowledge and agree that the '293 Patent is "intellectual property" as defined in Section 101(35A) of the United States Bankruptcy Code (the "Code"), as the same may be amended from time to time, that is the subject of a covenant not to sue hereunder in exchange for good and valuable consideration as set forth herein. Moskowitz Family LLC acknowledges that if either it, as a debtor in possession, or a trustee in bankruptcy in a case under the Code, rejects this Agreement, Medtronic may elect to retain the benefits of the covenant under this Agreement as provided in Section 365(n) of the Code. Moskowitz Family LLC and the bankruptcy trustee, as applicable, will comply in all respects with Section 365(n), including, without limitation, by not interfering with the rights of Medtronic as provided by this Agreement.

5.12 No Further Exchange of Information. Nothing in this Agreement is to be construed as requiring any accounting, document-sharing, or any other exchange of further information by Medtronic or its Affiliates with respect to Claim 43 of the '293 Patent. Nothing in this Section limits any discovery obligation, disclosure obligation, court order, subpoena, or other obligation in the Litigation concerning claims, counterclaims, defenses, contentions, or remedies not dismissed by the parties' stipulation.

5.13 Incorporation of Whereas Clauses. The "WHEREAS" recitals at the beginning of this Agreement are incorporated herein in their entirety as if restated here in full and made part of this Agreement.

5.14 No Admissions. The terms and conditions of this Agreement are for the purpose of resolving the Claim 43 dispute only. Neither the fact of a Party's entry into this Agreement nor the terms hereof nor any acts undertaken pursuant hereto shall constitute an admission or concession by either Party of liability or wrongdoing on the part of such Party, infringement, or patent validity. Neither the fact of a Party's entry into this Agreement nor the terms hereof nor any acts undertaken pursuant hereto shall be offered or admitted in evidence in any legal proceeding against any Party other than as necessary to enforce rights and obligations arising out of this Agreement, to seek termination of IPR2025-01598, to comply with 35 U.S.C. § 317, 37 C.F.R. § 42.74, the Parties' district-court stipulation or order, court order, subpoena, or applicable law.

BY EXECUTING THIS AGREEMENT, EACH OF THE PARTIES ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT AND UNDERSTANDS ITS TERMS AND PROVISIONS. For convenience, this Agreement may be executed by signatures transmitted by PDF or other electronic means. Unless otherwise waived by a signing Party, a signing

Party's signature shall become void if this Agreement is not fully executed within fifteen (15) days of the date of such signing Party's signature.

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IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties to be effective as of the last date set forth below.

MOSKOWITZ FAMILY LLC

MEDTRONIC, INC.

By: Nathan Moskowitz

By: _____

Name: Nathan Moskowitz

Name: _____

Title: Head

Title: _____

Dated: 6/15/26

Dated: _____

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties to be effective as of the last date set forth below.

MOSKOWITZ FAMILY LLC

MEDTRONIC, INC.

By: _____

Name: _____

Title: _____

Dated: _____

Signed by:
By: Anthony Sheh
E265AEE12DA744A...

Name: Anthony Sheh

Title: Senior Principal Litigation Counsel

Dated: June 16, 2026