

Project ECHO® (Extension for Community Healthcare Outcomes)

PROJECT ECHO® INTELLECTUAL PROPERTY TERMS OF USE AGREEMENT

Effective (“DATE”), The Regents of the University of New Mexico, for its public operation known as the Health Sciences Center (“UNMHSC”), specifically for the School of Medicine, a state institution of higher education, and Academic Medical Center (“AMC”) agree as follows:

BACKGROUND

The UNMHSC’s ECHO Institute has developed Project ECHO® (Extension for Community Healthcare Outcomes), a pioneering telementoring and distance learning program designed to improve patient care and create healthcare workforce multiplication. Project ECHO includes intellectual property developed and owned by The Regents of the University of New Mexico (“UNM”) the rights to which have been assigned or licensed to UNMHSC for protection and to be made available for public use and benefit. AMC desires to obtain the rights and licenses necessary to conduct Project ECHO Activities in the U.S. and foreign countries by AMC and UNMHSC desires to provide the rights and licenses to AMC to enable it to conduct Project ECHO Activities, all in accordance with Project ECHO’s mission and the terms and conditions of this Agreement.

MISSION STATEMENT

ECHO is a movement to demonopolize knowledge and amplify the capacity to provide best practice care for underserved people all over the world.

ARTICLE I – DEFINITIONS

A capitalized word or phrase in this Agreement shall have the meaning ascribed to it in the attached Glossary.

ARTICLE II – CONDUCT OF PROJECT ECHO ACTIVITIES AT AMC

2.1 Conduct of Project ECHO Activities at AMC. Subject to the terms and conditions of this Agreement, UNMHSC grants to AMC the nonexclusive right to conduct Project ECHO Activities at AMC, provided that the ECHO name be used as part of or integrated into the name of any and all projects resulting from this collaboration or modeled after Project ECHO or the ECHO Institute™. The name or title of the project will be determined by the organizational name used in this customized Intellectual Property Terms of Use Agreement.

2.2 Grant of License. In order to permit the conduct of Project ECHO Activities at AMC, UNMHSC hereby grants to AMC a nonexclusive right and license to use and reproduce the Licensed Intellectual Property in the conduct of Project ECHO Activities at no cost. In addition, UNMHSC hereby grants to AMC a non-exclusive right and license to create Derivative Works, which shall be subject to the terms of Section 4.2. Notwithstanding the foregoing, AMC shall not have the authority to sub-license the Licensed Intellectual Property to any third party. Specifically, the license contemplated herein is exclusive to AMC and shall not be used or purported to be used by third parties in any way as to create any additional rights or licenses not contemplated and expressly granted in this Agreement.

2.3 Noncommercial Purposes Only. Without the prior written consent of UNMHSC, which consent may be withheld or conditioned at UNMHSC’s discretion, AMC shall use the Licensed Intellectual Property and conduct Project ECHO Activities in a manner consistent with the Project ECHO mission, which is to demonopolize knowledge and amplify the capacity to provide best practice care for underserved people all over the world. Using Project ECHO for unapproved commercial purposes is prohibited. By way of example, selling the ECHO model, Licensed Intellectual Property, curriculum materials, software, hardware, access to hardware, or consultation services related to ECHO model, mission, resources or the replication of ECHO projects outside of AMC is expressly prohibited. To seek permission for any other commercial use, please contact

the ECHO Institute Director, Dr. Sanjeev Arora.

Notwithstanding the foregoing, financial arrangements with local or national payers to sustain the ECHO project are acceptable. UNMHSC requests notice of funding for ECHO projects and initiatives originating outside of the United States. By way of example, AMC may:

- a) use ECHO Model™ and Licensed Intellectual Property to develop grants and funding for their own ECHO project, including solicitation of federal, nonfederal and foundation monies.
- b) receive funding from insurance and third-party healthcare payer organizations to fund patient care, training and other ECHO-related activities.
- c) receive funding from city, county, state or federal legislative sources including Medicare, Medicaid, departments of health, etc. to support ECHO-related activities.

2.4 Consulting Services. The ECHO Institute may, under separate arrangements with AMC, provide consulting services and training to AMC with respect to the conduct of Project ECHO Activities at AMC.

ARTICLE III – RESPONSIBILITIES OF AMC

3.1 Conduct of Project ECHO Activities at AMC. AMC shall implement and conduct Project ECHO Activities at AMC in accordance with this Agreement.

3.2 Obligations of AMC. In connection with its conduct of Project ECHO Activities, AMC shall:

- a) pay and be responsible for all costs and expenses of AMC related to the performance by AMC of the Project ECHO Activities including the costs of acquisition of any equipment and third party software necessary for the operation of the Project ECHO Activities by AMC.
- b) as further described herein, comply with all Applicable Laws and ethical rules, including copyright. Specifically, AMC shall have the sole and exclusive responsibility of complying with applicable laws when acting both in and outside of the United States territories. This includes, but is not limited to state, local, and international laws, regulations, compliance and other requirements.
- c) require that the Permitted PCCs and AMC Specialists comply with all Applicable Law and ethical rules with respect to their participation in the Project ECHO Activities.
- d) conspicuously brand Project ECHO Activities conducted at AMC, including written, online and marketing materials, using the Project ECHO Licensed Brand Marks (Exhibit A) customized for their specific project. Specifically, AMC must place a banner with the authorized and approved ECHO logo (customized for AMC, per the Licensed Brand Marks) in prominent view of the camera for the conduct of ECHO activities.
- e) incorporate “Project ECHO” into the name or title of the project, which will be determined by the organizational name used in this customized Intellectual Property Terms of Use Agreement. Forbidden is use of the name “ECHO Institute” which is reserved specifically for Project ECHO at UNMHSC.
- f) fully utilize the ECHO software program called iECHO to track all ECHO-related activities at AMC. In addition, there may be additional data and information requests from the ECHO Institute which will need to be fulfilled regarding the application and implementation of the ECHO model at AMC.
- g) conduct Project ECHO Activities as high quality, professional services consistent with the quality of the Project ECHO Activities conducted by the ECHO Institute. If the quality of the activities at AMC falls below standard, AMC shall use reasonable efforts to restore such quality within a reasonable period of time. AMC agrees to permit representatives of UNMHSC and the ECHO Institute to review from time to time the quality of the Project ECHO Activities conducted at AMC.
- h) work with the ECHO Institute to create mechanisms necessary for sharing and aggregating de-identified data for the purpose of discovering and disseminating best practices in different parts of the world, developing individualized decision-making tools, assessing disease patterns in

diverse geographic areas and evaluating the overall impact of the ECHO model on healthcare delivery systems around the world.

ARTICLE IV – INTELLECTUAL PROPERTY RIGHTS

4.1 Ownership of Licensed Intellectual Property. This Agreement does not provide AMC with title or ownership to the Licensed Intellectual Property or the Project ECHO Activities, but only the limited rights of use as provided in this Agreement. AMC shall reproduce and include in all copies of the Licensed Intellectual Property the copyright notices and proprietary legends of UNMHSC and/or UNM as they appear in the Licensed Intellectual Property and on media containing the Licensed Intellectual Property.

4.2 License Grantback. As part of the consideration for the grant of rights to AMC under this Agreement, AMC hereby grants to UNMHSC and to UNM a worldwide, nonexclusive, fully sub-licensable, royalty-free right and license at no cost to use and exploit any Derivative Works prepared, developed, or conceived by AMC, its agents, employees, or contractors, in the conduct of the Project ECHO Activities in its use of the Licensed Intellectual Property.

ARTICLE V – DISCLAIMER OF WARRANTIES & LIMITATION OF LIABILITY

5.1 DISCLAIMER OF WARRANTIES. THE LICENSED INTELLECTUAL PROPERTY AND ANY SERVICES PROVIDED BY UNMHSC OR UNM IS PROVIDED “AS IS.” NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS OR IMPLIED, ARE MADE WITH RESPECT TO THE LICENSED INTELLECTUAL PROPERTY OR PROJECT ECHO AND UNMHSC AND UNM EXPRESSLY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER IMPLIED WARRANTIES WITH RESPECT TO THE CAPABILITIES, SAFETY, UTILITY, APPLICATION OF THE LICENSED INTELLECTUAL PROPERTY OR PROJECT ECHO.

5.2 LIMITATION OF LIABILITY. IN NO EVENT SHALL UNMHSC, UNM OR PROJECT ECHO BE LIABLE TO AMC OR ANY THIRD PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES (INCLUDING LOST OR ANTICIPATED REVENUES OR PROFITS RELATING TO THE SAME), ARISING FROM ANY CLAIM RELATING TO THIS AGREEMENT OR THE CONDUCT OF THE PROJECT ECHO ACTIVITIES BY AMC, WHETHER SUCH CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF AN AUTHORIZED REPRESENTATIVE OF SUCH PARTY IS ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF SAME. THE LIABILITY OF UNMHSC, UNM OR PROJECT ECHO/THE ECHO INSTITUTE, WILL BE SUBJECT IN ALL CASES TO THE IMMUNITIES AND LIMITATIONS OF THE NEW MEXICO TORT CLAIMS ACT SECTION 41-4-1 ET SEQ. NMSA 1978 AS AMENDED.

ARTICLE VI – TERM

6.1 Term. This Agreement will remain valid and in force until the date that is one year after the Effective Date, and thereafter shall automatically renew for consecutive one year terms unless either UNMHSC or AMC shall provide the other with written notice of non-renewal at least ninety (90) days prior to the anniversary of the Effective Date. AMC understands and hereby agrees that pursuant to UNMHC’s contract for the Zoom software, that software is only available to AMC until December 31, 2019 at no cost to AMC. After that date, UNMHSC shall no longer be responsible for providing access to that software to AMC. AMC also understands and agrees that use of the Zoom software by AMC is exclusively limited for Project ECHO activities, as required by UNMHSC’s contract with Zoom.

ARTICLE VII – MISCELLANEOUS

7.1 Miscellaneous Terms. The following terms shall apply to this Agreement: (a) in the performance

of its duties and obligations under this Agreement, each Party agrees that they shall not, directly or indirectly, violate any U.S. law, regulation or treaty, or any other international treaty or agreement, relating to the export or re-export of any material or associated technical data, to which the U.S. adheres or with which the U.S. complies. Further to the above, AMC understands and agrees that UNMHSC and the ECHO Institute are not providing any guidance, counsel, or support related to AMC's international activities, as such may be required, and any legal or other requirements related to those activities and the use of the ECHO model in those localities. Nothing in this agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a party to this agreement; (b) AMC is an independent contractor of UNMHSC; (c) AMC may not transfer, assign, or sublicense any of its rights, powers, duties, or obligations under this Agreement; (d) this Agreement constitutes the entire agreement between UNMHSC and AMC with respect to the subject matter hereof, supersedes all prior Agreements with respect thereto, and may not be modified except by written agreement; (e) this Agreement shall be construed under and governed by the laws of the State of New Mexico without regard to its conflicts of laws principles; (f) any legal action brought under this Agreement must be brought in state or Federal court in New Mexico; (g) any notices to be given under this Agreement shall be given in writing; (h) upon termination of this agreement, the obligations and responsibilities of clauses 2.1, 2.3 and 3.2 shall survive such termination, i.e. ECHO activities must retain the ECHO name and brand and restrictions on selling ECHO IP to third parties remain in effect.

IN WITNESS WHEREOF, UNMHSC and AMC have caused this Agreement to be signed by their duly authorized representatives as of the day and year indicated above.

Regents of the University of New Mexico, for the Health Sciences Center

By: _____ By: _____
Printed Name: Richard Larson, MD, PhD Printed Name: _____
Title: Vice Chancellor for Research, Health Sciences Center Title: _____
Date: _____ Date: _____

Project ECHO, Approved by:

By: _____ By: _____
Printed Name: Dr. Sanjeev Arora Printed Name: _____
Title: Director, Project ECHO Title: _____
Date: _____ Date: _____

Office of University Counsel, Approved as to Form:

By: _____
Printed Name: Ariadna Vazquez
Title: Associate University Counsel, Health Law Section
Date: _____

GLOSSARY

“Agreement” means this PROJECT ECHO® TERMS OF USE AGREEMENT.

“AMC Specialist” means providers employed by or affiliated with AMC who are specialists in a medical field in which AMC conducts Project ECHO® Activities.

“Applicable Law” means (i) for an Academic Medical Center that is not a federal entity, all applicable state statutes and regulations, as well as all applicable Federal statutes, regulations, and policy requirements; and, (ii) for an AMC that is a federal entity, all applicable Federal statutes, regulations, and policy requirements.

“Derivative Works” means any collateral or materials, whether process-orientated, clinical, educational or technical, developed in the process of carrying out Project ECHO activities. Examples might include case presentation templates, evaluation resources or tools, clinical didactic presentations, grant-writing resources, community partner recruitment strategies or tools, etc.

“ECHO Institute” means the Project ECHO® Activities conducted at the University of New Mexico Health Sciences Center.

“Effective Date” means the date set out on the opening paragraph of this Agreement.

“Intellectual Property” means any inventions, discoveries, improvements, works of authorship or the like, including patents, patent applications, and certificates of invention; trade secrets, know how or similar rights; copyright materials; trademarks, service marks, logos, and trade dress; and similar property under any laws or international conventions throughout the world.

“Licensed Intellectual Property” means the Licensed Software Programs, the Licensed Brand Marks, the Licensed Materials, and the Licensed Know-How identified on attached Exhibit A and such intellectual property as UNMHSC develops after the date of this agreement that it makes available to AMC.

“Permitted PCCs” means primary care clinicians that provide health care to significantly underserved or uninsured patient populations, including rural and frontier providers, and providers to prison populations.

“Project ECHO® Activities” means the design, structure, and process constituting the telementoring and distance learning program developed at UNMHSC Project ECHO® that utilizes teleconferencing, videoconferencing, internet-based assessment tools, online presentations, telephone, fax, and email communications to connect specialists with primary care providers in rural areas and prisons for the purpose of improving patient care.

“Software” means Zoom, Box, Teamwork and the Licensed Software Programs.

EXHIBIT A
LICENSED INTELLECTUAL PROPERTY

Licensed Brand Marks:

“ECHO®”
“Project ECHO®” (the wordmark)
“Project ECHO®” (the design)
“ECHO HEALTH™”
“ECHO Health®”
“teleECHO™”
“ECHO model™”
“ECHO Institute™”
“ECHO Care™”
“MetaECHO™”
“ECHOSYSTEM™”
“ECHOSOFT™”

Health Care, Electronic Health Care Management, Advisory Services, and software (“Licensed Software Programs”):

“iECHO” – ECHO Institute’s proprietary teleECHO clinic management software and database.
“iHEALTH” – ECHO Institute’s proprietary patient case presentation and patient data collection/tracking software and database.
“ECHO HEALTH” – ECHO Institute’s proprietary patient case presentation, patient data collection and case management software and database.

Licensed Materials and Know-How:

Copyrighted materials concerning the set-up and operation of a Project ECHO® facility and various didactic and teaching materials of a technical and instructional nature relating to health care.