

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 ABC Organization (“ABC”) 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 and create 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. ABC desires to obtain the rights and licenses necessary to conduct Project ECHO Activities in the U.S. and foreign countries by ABC and UNMHSC desires to provide the rights and licenses to ABC 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 ABC**

**2.1 Conduct of Project ECHO Activities at ABC.** Subject to the terms and conditions of this Agreement, UNMHSC grants to ABC the nonexclusive right to conduct Project ECHO Activities at ABC, 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 ABC, UNMHSC hereby grants to ABC 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 ABC a non-exclusive right and license to create Derivative Works, which shall be subject to the terms of Section 4.2. Notwithstanding the foregoing, ABC shall not have the authority to sub-license the Licensed Intellectual Property to any third party. Specifically, the license contemplated herein is exclusive to ABC 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, ABC 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 help implement best practices 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 ABC 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, ABC 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 foundations, philanthropists, city, county, state or federal legislative sources (to support ECHO-related activities).

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

### **ARTICLE III – RESPONSIBILITIES OF ABC**

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

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

- a) pay and be responsible for all costs and expenses of ABC related to the performance by ABC 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 ABC.
- b) as further described herein, comply with all Applicable Laws and ethical rules, including copyright. Specifically, ABC 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 ABC 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 ABC, including written, online and marketing materials, using the Project ECHO Licensed Brand Marks (Exhibit A). Specifically, ABC must place a banner with the authorized and approved ECHO logo in prominent view of the camera for the conduct of Project 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. Use of the name “ECHO Institute” which is reserved specifically for Project ECHO at UNMHSC, is forbidden
- f) fully utilize the ECHO software program called iECHO to track all ECHO-related activities at ABC. 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 ABC.
- 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 ABC falls below standard, ABC shall use reasonable efforts to restore such quality within a reasonable period of time. ABC 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 ABC.
- 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, and evaluating the overall impact of the ECHO model on implementing best practices around the world.

### **ARTICLE IV – INTELLECTUAL PROPERTY RIGHTS**

**4.1 Ownership of Licensed Intellectual Property.** This Agreement does not provide ABC 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. ABC 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 ABC under this Agreement, ABC 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 ABC, 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 ABC 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 ABC, 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 ABC shall provide the other with written notice of non-renewal at least ninety (90) days prior to the anniversary of the Effective Date. ABC understands and hereby agrees that pursuant to UNMHC’s contract for the Zoom software, that software is only available to ABC until December 31, 2025 at no cost to ABC. After that date, UNMHSC shall no longer be responsible for providing access to that software to ABC. ABC also understands and agrees that use of the Zoom software by ABC 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, ABC understands and agrees that UNMHSC and the ECHO Institute are not providing any guidance, counsel, or support related to ABC’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) ABC

is an independent contractor of UNMHSC; (c) ABC 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 ABC 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 2.3, 4.2, and 5.2 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 ABC 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

ABC

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: Sanjeev Arora, MD, MACP, FACG Printed Name: \_\_\_\_\_

Title: Director, Project ECHO Title: \_\_\_\_\_

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

Office of University Counsel, Approved as to Form:

By: \_\_\_\_\_

Printed Name: Scot Sauder

Title: Deputy University Counsel for Health Sciences

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

## **GLOSSARY**

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

“ABC expert” means individuals employed by or affiliated with ABC who are experts in a field in which ABC conducts Project ECHO® Activities.

“Applicable Law” means (i) for an Organization 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 Academic Medical Center 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 ABC.

“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 experts with other stakeholders in diverse geographic areas for the purpose of implementing best practices.

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

**EXHIBIT A**  
**LICENSED INTELLECTUAL PROPERTY**

Licensed Trademarks:

ECHO® U.S. Trademark Registration No. 4,212,865 (and registration application pending in India);  
PROJECT ECHO® and Project ECHO® U.S. Trademark Registration No. 4,212,866 (and registration application pending in India);  
Design of Project ECHO™;  
ECHO HEALTH® and ECHO Health® U.S. Trademark Registration 4,696,236 (and registration application pending in India);  
ECHOSYSTEM™ U.S. Trademark Registration Application No. 86/886,884 (and registration application pending in India);  
ECHOSOFT™ U.S. Trademark Registration Application No. 86/886,904 (and registration application pending in India);  
IECHO™ and iECHO™ U.S. Trademark Registration Application No. 87/186157 (and registration application pending in India);  
teleECHO™;  
ECHO model™;  
ECHO Institute™;  
ECHO Care™; and  
MetaECHO™

Health Care, Electronic Health Care Management, and Advisory Services Software of the ECHO Institute™  
("Licensed Software"):

iECHO™ – proprietary teleECHO™ clinic management software and database;  
iHEALTH™ – proprietary patient case presentation and patient data collection/tracking software and database; and  
ECHO HEALTH™ – proprietary patient case presentation, patient data collection and case management software and database.

Other Licensed Materials and Know-How:

Copyright protected materials including those concerning the set-up and operation of a facility through which Project ECHO® services are rendered and various didactic and teaching materials of a technical and instructional nature relating to health care.

SAMPLE