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 University of New Mexico Health Sciences Center has developed Project ECHO® (Extension for Community Healthcare Outcomes), a pioneering telehealth 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 at 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

The mission of the Project ECHO is to develop the capacity to safely and effectively treat chronic, common, and complex diseases in rural and underserved areas, and to monitor outcomes of this treatment.

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™.

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.

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 only in a manner consistent with the Project ECHO mission, which is to serve the underserved. Using Project ECHO for commercial purposes is prohibited. By way of example, selling or sublicensing 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 commercial uses or uses outside of the scope of the Project ECHO mission, please contact the ECHO Institute Director, Dr. Sanjeev Arora. However, financial arrangements with local or national payers to sustain the ECHO project are acceptable. 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,
2.4 Consulting Services. The ECHO Institute may, under separate arrangements with AMC, provide consulting services and training to AMC with respect to training for and 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 and in accordance with Project ECHO Guidelines.

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) comply with all Applicable Law and ethical rules, including copyright.
   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 using the Project ECHO Licensed Brand Marks (Exhibit A) customized for their specific project.
   e) incorporate “ECHO” into the name or title of the project, and submit name for approval by the ECHO Institute at UNMHSC. Expressly forbidden is use of the name “ECHO Institute” which is reserved specifically for Project ECHO at UNMHSC.
   f) 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.

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 Agreement Intellectual Property prepared, developed, or conceived by AMC, its agents, employees, or contractors, in the conduct of the Project ECHO Activities by AMC or using 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
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.

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, AMC shall comply with all Applicable Law, including U.S. export law; (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.

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: ___________________________

Approved as to form by

Ariadna Vazquez
Assistant University Counsel
1/14/14

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

“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.

“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.

“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.

“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 telehealth 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.

“Project ECHO® Guidelines” means written guidelines, operational rules, and reporting requirements developed by the ECHO Institute from time to time for the conduct of Project ECHO® Activities at all institutions and organizations that conduct Project ECHO® Activities.
EXHIBIT A
LICENSED INTELLECTUAL PROPERTY

For complete and updated list see “Licensed Intellectual Property”

Licensed Brand Marks:

“ECHO®”
“Project ECHO®” (the wordmark)
“Project ECHO®” (the design)
“ECHO HEALTH™

Health Care, Electronic Health Care Management, and Advisory Services:

“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.

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.