

THE AMERICAN ACADEMY OF DERMATOLOGY
TELEDERMATOLOGY PARTICIPATION AGREEMENT

THIS AGREEMENT is entered into and made effective on the _____ day of _____, 2018 (“Effective Date”), by and between (a) THE AMERICAN ACADEMY OF DERMATOLOGY (“AAD”), a Minnesota nonprofit corporation with its principal place of business in Schaumburg, Illinois; and _____, a dermatologist residing at _____ (“Participant”). AAD and Participant shall be referred to herein collectively as the “Parties” and individually as a “Party.”

WHEREAS, AAD has developed a volunteer program called AccessDerm that is designed to allow AAD members to provide teledermatology services using mobile devices and the Internet to patients in underserved areas where such services are not otherwise readily available; and

WHEREAS, Participant is a board-certified dermatologist who desires to participate in AccessDerm on a volunteer basis in accordance with AAD requirements and other terms of this Agreement;

NOW, THEREFORE, in consideration of the mutual promises and Agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties:

IT IS AGREED:

1. Participation in AccessDerm. Participant hereby agrees to participate in AccessDerm, and AAD hereby agree to permit Participant to participate in AccessDerm as provided herein.
2. Participant Responsibilities.
 - a. Participant and, if applicable, his/her designees acting under his/her active supervision, including residents, listed in Exhibit A to this Agreement (“Designees”), will provide teledermatology services under this Agreement in a professional, timely, and diligent manner consistent with the applicable standard of care. Participant will not be responsible for providing follow-up care to teledermatology patients unless specifically agreed upon by Participant and the patient.
 - b. In providing the teledermatology services, Participant will comply with all applicable federal and state laws, including but limited to the privacy and security regulations issued the Health Insurance Portability and Accountability Act of 1996, as amended, as well as all AccessDerm policies and procedures established by AAD.
 - c. Participant will ensure that s/he has adequate professional liability coverage for the teledermatology services, and no less than \$1 million per occurrence and \$3 million aggregate coverage. Participant will provide AAD with proof of such coverage upon request.

- d. Participant will only consult on cases that originate in a state in which the Participant is licensed or in other states that permit Participant to provide the teledermatology services to patients residing in its state.
- e. Once Participant has opened a case, s/he has 24 hours to answer it before it will be released back to the other dermatologists in the program to answer.
- f. All Participants who are dermatology residents must have their responses approved by an attending dermatologist. The AccessDerm system automatically sends all resident responses to the attending dermatologist for approval.
- g. Participant will be responsible for maintaining any records of his/her teledermatology consultations.
- h. Participant has agreed to participate in AccessDerm on a volunteer basis. AAD shall have no obligation to pay Participant for his/her participation, and Participant may not seek or accept payment or other remuneration from patients or third parties for his/her services provided through the AccessDerm platform.
- i. Participant takes full responsibility for the acts or omissions of the Designees listed in Exhibit A, including residents, in providing teledermatology consultations under this Agreement and represents that s/he has shared this Agreement with such Designees, has the authority to bind such Designees to the terms of this Agreement, and is entering into this Agreement on their behalf as well as his or her own behalf.

3. AAD Responsibilities.

- a. Teledermatology Technology. AAD will provide, at no cost to Participant, the software and login information necessary for Participant to achieve remote access to patient information from primary care physicians. The software is accessible as a mobile application for various smart phones specified by AAD, as well as on the web.
- b. Access to Patient Data. AAD shall have no access to patient identifiable data. However, it will have access to de-identified patient data for purposes of preparing analyses and reports on the effectiveness of the AccessDerm program.

4. Data Ownership; Individual Patient Data. The de-identified data for individual patients submitted by Participant shall be the exclusive property of Participant. Participant hereby agrees that the return of this information is infeasible. Participant hereby agrees that all data submitted by or on behalf of Participant to AAD or AAD's designee under this Agreement may be used for purposes of AccessDerm, including analysis and reporting on the effectiveness of the program; provided, however, that no such data shall be used in such a way as to identify Participant without Participant's written consent. Participant grants to AAD a perpetual, worldwide, royalty-free license, in all forms and all media (including derivative works), to use the de-identified data of individual patients submitted by Participant in such manner that is consistent with this Agreement.

5. Intellectual Property; Aggregated Data. Subject to Participant's rights in the data submitted hereunder, all right, title, and interest, including but not limited to all Intellectual Property Rights (as defined below), to the AccessDerm program, and any proprietary information and intellectual property relating to the AccessDerm program, including without limitation any database, aggregated data developed from data submitted by Participant and the compilation of the same with any other data received in connection with the AccessDerm program, and any derivative works, including, without limitation, any reports, analyses, calculations and models based thereon, shall be owned by AAD. For purposes of this Agreement, "Intellectual Property Rights" means all (i) trademarks, trade name, service marks, slogans, domain names, uniform resource locators or logos; (ii) copyrights and other rights in works of authorship, including, but not limited to, compilations of data; and (iii) patents and patent applications, patentable ideas, inventions and innovations;

6. Term, Enforcement and Termination. This Agreement shall be effective for a period of one year after the Effective Date. Thereafter, the Agreement shall automatically renew for additional one-year term unless either Party provides notice to the other at least thirty (30) days prior to the anniversary date of the Agreement of its or his/her intent not to renew the Agreement, in which case, the Agreement will expire on the next anniversary date..
 - a. Termination for Breach. Either Party may terminate this Agreement upon the other Party's material breach of this Agreement by providing the non-breaching Party with ten (10) days written notice of its intention to terminate for a material breach. The breaching Party shall have ten (10) days from the date of such notice to cure the breach. If ten (10) days after the date of such notification, the breach is not cured to the reasonable satisfaction of the non-breaching Party, this Agreement will immediately terminate automatically. Notwithstanding the foregoing, the non-breaching Party may determine in its sole discretion that the breach cannot be reasonably cured within the foregoing ten (10)-day period and may extend the cure period by written notice to the breaching Party.

 - b. Termination without Cause. Either Party may terminate this Agreement without cause by providing the other with at least thirty (30) days written notice.

7. Confidentiality. For the purposes of this Agreement, “Confidential Information” means any information disclosed by one Party to the other that is designated by the disclosing Party as confidential and/or is not generally known by or disclosed to the public or known to the receiving Party solely by reason of the negotiation or performance of this Agreement. Each Party shall maintain all of the other Party’s Confidential Information in strict confidence and will protect such information with the same degree of care that such Party exercises with its own Confidential Information, but in no event with less than a reasonable degree of care. Except as provided in this Agreement, a Party shall not use or disclose any Confidential Information of the other Party in any manner without the express prior written consent of such Party. Notwithstanding anything herein to the contrary, Confidential Information shall not include information that is: (i) already known to or otherwise in the possession of a Party at the time of receipt from the other Party, and that was not known or received as the result of a violation of any obligation of confidentiality; (ii) publicly available or otherwise in the public domain prior to disclosure by a Party; (iii) rightfully obtained by a Party from any third party having a right to disclose such information without restriction and without breach of any confidentiality obligation by such third party; (iv) developed by a Party independent of any disclosure hereunder, as evidenced by detailed written records made in the normal course of Participant’s business during the development process; or (v) disclosed pursuant to the order of a court or administrative body of competent jurisdiction or a government agency, provided that the Party receiving such order shall notify the other prior to such disclosure, and shall cooperate with the other Party in the event such Party elects to legally contest, request confidential treatment, or otherwise avoid such disclosure.

8. Disclaimer. ALL INFORMATION, PRODUCTS OR SERVICES CONTAINED ON OR PROVIDED THROUGH ACCESSDERM ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW AAD AND ITS OFFICERS, DIRECTORS, EMPLOYEES OR OTHER REPRESENTATIVES (COLLECTIVELY, “AFFILIATES”) HEREBY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND FREEDOM FROM COMPUTER VIRUS STRAINS. WITHOUT LIMITING THE FOREGOING, MID AND ITS AFFILIATES MAKE NO WARRANTY AS TO THE RELIABILITY, ACCURACY, TIMELINESS, USEFULNESS, ADEQUACY, COMPLETENESS OR SUITABILITY OF THE ACCESSDERM PLATFORM AND THE PRODUCTS AND SERVICES PROVIDED THEREUNDER.

9. Indemnification.
 - a. AAD Indemnification. AAD will indemnify, defend, and hold Participant harmless from any third-party claim, demand, cause of action, lawsuit, or proceeding brought against Participant based upon any gross negligence or willful misconduct on the part of AAD relating to the development and operation of the AccessDerm program (excluding the mobile app software). Such indemnification

may include: (1) reasonable attorneys' fees and costs associated with defense of such claim; (2) damages and costs finally awarded; and (3) the cost of any settlement entered into by AAD.

- b. Participant's Indemnification. Participant will indemnify, defend, and hold AAD and AAD's employees, officers, directors, agents, contractors, and business partners (collectively as the "AAD Indemnitees") harmless from any third party claim, demand, cause of action, lawsuit, or proceeding brought against one or more AAD Indemnitees based upon any medical treatment, diagnosis or prescription rendered by Participant or his/her agents arising out of any teledermatology consultation or any follow-up care or any patient data relating to such care. Participant's indemnification will include: (1) all attorneys' fees and costs associated with defense of such claim; (2) all damages and costs finally awarded; and (3) the full cost of any settlement entered into by Participant.

10. Limitation of Liability. AAD Indemnitees shall not be liable for any other damages or costs, including any special, consequential, or incidental damages. Participant agrees it will take no legal action against AAD, AAD subcontractors, AAD business partners or other Participants relating to the AccessDerm program.

11. Notices. All notices and demands of any kind or nature which either Party to this Agreement may be required or may desire to serve upon the other in connection with this Agreement shall be in writing, and may be served personally, by registered or certified United States mail, or by overnight courier (e.g., FedEx, DHL, or UPS) to the following addresses:

If to Participant:

If to AAD:

Service of such notice or demand so made shall be deemed complete on the day of actual delivery. Any Party hereto may, from time to time, by notice in writing served upon the other Party as aforesaid, designate a different mailing address or a different person to which all further notices or demands shall thereafter be addressed.

12. Assignment. Neither this Agreement nor either Parties' rights and obligations hereunder may be assigned to a third party without the prior written consent of the non-assigning Party; provided, however, that AAD may assign this Agreement and its rights and obligations to an affiliate (e.g., parent or an entity controlled by or under common control

with AAD, or a venture or entity in which AAD has a majority ownership interest, or upon a change of control of AAD) without the consent of Participant.

13. Relationship of Parties. The relationship of the Parties to this Agreement is that of independent contractors and not that of master and servant, principal and agent, employer and employee, or partners or joint venturers.
14. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.
15. Governing Law/Venue. This Agreement will be governed by and construed exclusively in accordance with the laws of the State of Illinois, without regard to any conflicts of law principles applied. Any suit or proceeding relating to this Agreement shall be brought only in Cook County, Illinois. Each Party consents to the exclusive personal jurisdiction and venue of the courts located in Cook County, Illinois.
16. Severability. All provisions of this Agreement are severable. If any provision or portion hereof is determined to be unenforceable by a court of competent jurisdiction, then the rest of the Agreement shall remain in full effect, provided that its general purposes remain reasonably capable of being effected.
17. Entire Agreement; Modification. This Agreement and the attached Appendices: (a) constitute the entire Agreement between the Parties with respect to the subject matter; (b) supersede and replace all prior agreements, oral or written, between the Parties relating to the subject matter hereof; and (c) except as otherwise indicated, may not be modified or otherwise changed in any manner except by a written instrument executed by both Parties.
18. Survival. The following sections of this Agreement shall survive any termination or expiration of this Agreement: Sections 4, 5, 7, 8, 9, 10, 11, and 15.
19. No Third-Party Beneficiaries. The Parties agree there are no third party beneficiaries, intended or otherwise, to this Agreement, including, without limitation, patients of any Participant.

[Remainder of page intentionally left blank. Signature page to follow.]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed as of the Effective Date:

PARTICIPANT (on his/her own behalf and on behalf of his/her Designees) Signature: _____ Name: _____ Title: _____ Date: _____ E-Mail Address: _____ Phone: _____	AAD Signature: _____ Name: _____ Title: _____ Date: _____
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EXHIBIT A
PARTICIPANT'S DESIGNEES