

American College of Mohs Surgery, Inc.

MohsAIQ Registry

Project Data License Agreement

(version 04-17-24)

This data license agreement (this “**Agreement**”), effective as of the date of the last signature below (the “**Effective Date**”) is by and between the **American College of Mohs Surgery, Inc.**, a Wisconsin nonstock corporation (“**ACMS**”), and _____, a _____ resident and an individual member in good standing of ACMS (“**Requestor**”). ACMS and Requestor are sometimes hereinafter referred to individually as “**Party**” and collectively, the “**Parties**.”

Recitals

ACMS has developed and owns certain computerized databases referred to as the “Mohs Advancing and Improving Quality Registry,” or “MohAIQ”, which contain certain information relating to Mohs surgery from third parties submitting data to such databases pursuant to rules and procedures specified by ACMS (said databases collectively referred to herein as the “**Registry**”). Requestor desires to obtain a limited license to access certain data from the Registry that is described in the attached Addendum A (“**ACMS Project Data**”) solely for use in furtherance of a certain project described therein and otherwise in accordance with, and ACMS is willing to consider same for approval, subject to, the terms and conditions within this Agreement.

Agreement

In consideration of the mutual covenants set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties hereto agree as follows:

1. Procedure for Requesting ACMS Project Data. Requestor shall comply the following two-step process in order to undertake to obtain ACMS Project Data:

Step 1: Requestor shall make an Initial request for use of the ACMS Project Data by paying to ACMS a \$100 non-refundable fee and submitting to ACMS a “**Step 1 Form**” in such format as ACMS may establish from time to time for such purpose. ACMS reserves the right, in its sole discretion, to deny such request for any reason after its review of Requestor’s Step 1 Form, any such denial to be final and nonappealable.

Step 2: If ACMS approves Requestor's Step 1 Form, Requestor shall then complete and submit to ACMS a "**Step 2 Form**" in such format as ACMS may establish from time to time for such purpose, together with payment of an additional \$400 fee (the "**Step 2 Fee**"). ACMS's independent data warehouse service provider for the Registry (the "**Data Warehouse Service Provider**," currently Arbormetrix) may provide to Requestor an estimate of additional fees that it may assess and require with respect to such request ("Data Warehouse Service Provider Fees"), the amount of which shall be based on the nature, extent and complexity of the pull of the ACMS Project data requested by Requestor. In the event Requestor determines not to proceed further with such request at any time during this Step 2 before the Data Warehouse Service Provider Fees are due and, in any event, before Requestor has been given access to any ACMS Project Data, Requestor may terminate this Agreement upon delivering written notice of same to ACMS, in which event ACMS shall refund the \$400 Step 2 fee paid to ACMS by Requestor. In all events, if Requestor does not pay the Data Warehouse Provider Fees within thirty (30) days after the date of invoicing to Requestor, this Agreement shall terminate and ACMS shall have no further obligations under this Agreement other than to refund the \$400 Step 2 Fee previously paid to ACMS by Requestor. If Requestor pays the Data Warehouse Provider Fees when due, the parties shall proceed in accordance with Section 4 of this Agreement.

Requestor hereby agrees and acknowledges that only de-identified data that is not individually identifiable health information for purposes of the Health Insurance Portability and Accountability Act of 1996, as amended, or regulations thereunder ("HIPAA") or that is otherwise subject to regulation under HIPAA may be requested by Requestor or provided by ACMS to Requestor hereunder.

2. Nonexclusive License. ACMS hereby grants to Requestor a non-exclusive, revocable License to use any ACMS Project Data to which Requestor is provided access pursuant to the procedure set forth in Section 1, above, solely for the purpose(s) of performing the research (the "**Research**") or advocacy (the "**Advocacy**") project described in the attached Addendum A (the "**Permitted Purpose**"), subject in all respects to the provisions of this Agreement.

3. Confidentiality of ACMS Project Data. Notwithstanding anything to the contrary, the Requestor shall not disclose, release, reveal, show, sell, rent, lease, loan, input into or otherwise grant access to the ACMS Project Data to any third party or any artificial intelligence application. In this regard, Requestor agrees as follows:

- a. To limit access to the ACMS Project Data to the minimum number of Requestor's employee, agents or subcontractors who have a reasonable need for such access in order to carry out the Permitted Purpose.
- b. Not to use or further disclose, or permit the use or disclosure of, the ACMS Project Data or any information contained herein other than as

permitted by this Agreement or required by ACMS's organizational or operational documents or by applicable law.

- c. To use appropriate safeguards to prevent use or disclosure of the ACMS Project Data other than as provided for by this Agreement.
- d. To immediately report to ACMS any use or disclosure of the Licensed Data or any part of it not provided by this Agreement.
- e. To ensure that any Requestor's employees, agents, or subcontractors who have access to the ACMS Project Data or any part of it, agree to the same restrictions and conditions that apply to the Requestor under this Agreement. Requestor shall be responsible to ACMS for any breaches of such restrictions and otherwise for any use or disclosure of the ACMS Project Data not permitted under this Agreement.
- f. Not to use the information contained in the ACMS Project Data to identify the individuals or physician whose information is contained in the ACMS Project Data, nor to contact them under any circumstances.
- g. At ACMS's election and upon its request, to destroy or return the ACMS Project Data at any point following release of the ACMS Project Data and certify to ACMS in writing that all ACMS Project Data has been destroyed or returned.
- h. Should any safety concerns be identified, Requestor shall inform ACMS, Registry@mohscollege.org, of same immediately.

4. Procedure to Obtain ACMS Project Data After Request Approved. If Requestor complies with the ACMS Project Data request process set forth in Section 1, above (including, without limitation, the requirement of Requestor's payment of the Data Warehouse Service Provider Fees assessed with respect to such request), Requestor and the Data Warehouse Service Provider shall undertake to consult with each other to the extent reasonably necessary to finalize the details of the data request and the mode and format of access thereto; provided, however, that, no such data shall be made available to Requestor unless ACMS has first given its written approval of such request as finally formulated in consultation with the Data Warehouse Service Provider.

5. Intellectual Property Rights. ACMS shall have and retain all title and rights to any and all ACMS Project Data it provides to Requestor under this Agreement, subject only to those limited license rights therein expressly set forth in Section 2, above. ACMS grants no other right or license in or to the ACMS Project Data, whether expressly or by implication, except as specifically set forth in this Agreement. The parties acknowledge that any and all rights, including but not limited to patent rights, trademarks, copyrights, and other propriety rights, in

and to the ACMS Project Data, shall reside solely in ACMS, subject only to the limited license rights expressly granted to Requestor under Section 2, above.

6. Possession/Retainer of Data and Materials Containing Same. The parties hereby mutually agree that any derivative data or file(s) and/or materials containing same or otherwise any ACMS Project Data may be possessed or retained by Requestor only during the duration of the Research comprising the Permitted Purpose and upon the completion of other termination of same, and in any event not later than two (2) years after the Effective Date shall be subject to the destruction or return requirements set forth in Section 3(g), above (which period ACMS may extend in its sole discretion).

7. Regulatory and Other Institutional Approvals. Requestor shall be solely responsible to obtain any regulatory or ethics approval necessary to conduct the Research comprising the Permitted Purpose and for compliance with any additional requirements identified by their Institutional Review Board, if applicable. ACMS shall be entitled to require verification of such compliance as a condition of its approvals described in Section 1, above.

8. Term/Termination. The term of this Agreement shall commence on the Effective Date and end on the later of (a) the date of the completion of the Research comprising the Permitted Purposes as set forth in the attached Addendum to this Agreement or terminates; and (b) the first anniversary of the Effective Date (the “**Term**”); provided, however that, the Term may be extended upon written mutual agreement of the parties. Anything herein to the contrary notwithstanding, either Party, in its sole discretion, may terminate this Agreement at any time, without cause, by providing at least thirty (30) days’ prior written notice of same to the other Party.

9. Requestor Reporting Obligation. Requestor shall report to ACMS any and all Results (as herein defined) obtained during the performance of the Research, including, without limitation, disclosing to ACMS any and all derivative data and/or files containing or comprising same. “Results,” for this purpose, shall mean all findings, results, data, and other information generated in the performance of the Research during the Term and using the ACMS Project Data. Any and all Results shall be used only as described in this Section. Any study, article, report, presentation or any other manifestation of, or containing or comprising, the Results, on or in any media (“**Project Media**”) shall, as a condition of and prior to any publication, disclosure or dissemination, first be delivered to ACMS and ACMS shall have thirty (30) days after the date of such delivery to disapprove in writing of such publication, disclosure or dissemination (and ACMS shall be entitled to disapprove the publication, disclosure or dissemination of any Project Media for any reason in its sole discretion) and if ACMS does not so disapprove within such period, Requestor may proceed with such publication, disclosure or dissemination only within sixty (60) days thereafter. If ACMS so disapproves such publication, disclosure or dissemination, Requestor shall not publish, disclose or disseminate the Project Media in any manner and Requestor shall not be entitled to any refund of any fees paid by Requestor pursuant to Section 1, above. If Requestor publishes, discloses or disseminates any Project Media pursuant to approval granted by ACMS hereunder, Requestor shall promptly

deliver to ACMS a true and correct copy of the manuscript comprising same and any and all citations pertaining to same. Any alteration or other change to any Project Media that has previously been approved by ACMS and described herein shall require additional and separate approval from ACMS in accordance with the procedure set forth herein. Under no circumstances and in no event may any Released Data be included or incorporated into any Project Media, it being hereby expressly agreed and understood that Requestor may utilize the Released Data for internal background purposes only in carrying out the Research or Advocacy in furtherance of the Permitted Purpose. ACMS shall be entitled to utilize the Results and Project Media for its own purposes. ***In the case of Advocacy in furtherance of the Permitted Purpose, Requestor shall provide to ACMS a written report summarizing the Results.***

10. Procedure for Requesting Additional Use of ACMS Project Data. In event that Requestor desires to utilize the ACMS Project Data other than for Research or Advocacy in furtherance of the Permitted Purpose, Requestor shall first obtain a separate license from ACMS for same by complying with the procedure set forth in Section 1 above with respect to same. Requestor may not use the ACMS Project Data for any purpose outside of the Permitted Purpose unless and until additional and separate approval is obtained from ACMS and compliance with said Section 1, above.

11. Required Inclusion in Project Media. Requestor shall ensure that a description of the strengths and weaknesses of the analysis and a description of the demographics of the data (i.e. number of cases, types of practices that contributed the data, and any other data set descriptors) contained in any Project Media is included therein.

12. Inventions Arising Out of Results, Project Media or ACMS Project Data. If the use of the ACMS Project Data by the Requestor under this Agreement in any way results in an Invention (as defined herein), the Requestor shall promptly disclose Invention in writing to ACMS. “**Invention**” shall mean any intellectual property, products, or procedures, whether patentable or not, that is conceived or reduced to practice from the use of the ACMS Project Data during the performance of the Research. Ownership of any Invention arising out of Requestor’s use of ACMS Project Data, shall be jointly owned and controlled between ACMS and Requestor unless ACMS expressly disclaims such interest in writing at its sole discretion.

13. Additional Requestor Representations and Warranties. Requestor hereby represents and warrants to ACMS as follows:

- a. A complete list of the Requestor’s employees, agents, or subcontractors with affiliations who will have access to the Released Data is set forth in the attached **Addendum A** along with a description of any potential conflict of interest of each; and
- b. Requestor is an ACMS member in good standing and up-to-date on annual dues payments and Requestor has attended at least one annual meeting in the last three (3) years.

14. Disclaimer/Limitations of Liability. Requestor agrees and acknowledges that ACMS provides the ACMS Project Data without, and hereby disclaims, any and all warranties or representations, whether express or implied. The ACMS Project Data is provided on an “AS-IS” and “AS-AVAILABLE” basis, without warranty of any kind. The ACMS Project Data is provided solely for private research, reference and educational use by healthcare professionals pursuant to the terms of this Agreement. Requestor agrees and acknowledges that Requestor’s use of the ACMS Project Data is at Requestor’s sole risk to the fullest extent permitted by law. By accepting and/or utilizing the ACMS Project Data, Requestor further agrees that neither ACMS nor any of its directors, officers, employees, agents, or contractors, has or will have any liability to Requestor or any of Requestor’s affiliates (including, without limitation, any institution with which Requestor is employed or otherwise affiliates, or anyone with whom Requestors works or collaborates in connection with any use of application of any ACMS Project Data, and any employee, contractor or agent of Requestor) for any loss of profit, loss of business, business interruption, or loss of business opportunity. ACMS DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE ACMS PROJECT DATA, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. ACMS MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE ACMS PROJECT DATA OR ANY INFORMATION OR OTHER CONTENT COMPRISING SAME AND ACMS SHALL NOT HAVE ANY LIABILITY OR RESPONSIBILITY FOR ANY (a) ERRORS, MISTAKES, OR INACCURACIES THEREIN; (b) ANY PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM REQUESTOR’S (OR ANY OF REQUESTOR’S AFFILIATES’) ACCESS TO OR USE OF THE ACMS PROJECT DATA, or for any Results. In no event shall ACMS (or any of its directors, officers, employees, agents or contractors) be liable to Requestor or to any other user for any direct, indirect, incidental, exemplary, special, consequential or other loss or damage, whether arising in contract, tort (including negligence or breach of statutory duty), or otherwise, even if ACMS, or any of its directors, officers, employees, agents or contractors have been advised of the possibility of such damages, arising under or in connection with any use of, inability to use, or reliance on any ACMS Project Data or any Results. Notwithstanding anything to the contrary contained herein, ACMS’s liability (and that of its directors, officers, employees, agents and contractors) for any damages or losses suffered arising out of, or in connection with, use by Requestor of the ACMS Project Data or any Results, whether in contract, tort (including negligence or breach of statutory duty), or otherwise is limited to the sum of one thousand Dollars (\$1,000).

15. Indemnification. Requestor hereby agrees to defend, indemnify, and hold ACMS harmless, including ACMS’s subsidiaries, affiliates, and all of their respective directors, officers, employees, agents and contractors, from and against any loss, damage, liability, claim, or demand, including reasonable attorneys’ fees and expenses, including, but not limited to third party claims, due to or arising out of (a) Requestor’s breach of any provision of this Agreement; (b) your violation of the rights of a third party, including but not limited to intellectual property or privacy rights. arising from your acceptance or use of any ACMS Project Data or any Results or of any other person or entity accepting or using same; or (c) or any negligent, reckless or

intentional act under this Agreement; or (d) any access to or use by Requestor or any of Requestor's affiliates of any ACMS Project Data or any Results.

16. Miscellaneous.

(a) Notices. All notices and demands of any kind or nature which any 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, by facsimile transmission or by overnight courier to the address for Requestor set forth on the signature page of this Agreement and, for ACMS, at its principal office address. Service of such notice or demand so made shall be deemed complete on the day of actual delivery. Without limiting the generality of the foregoing, if notice is given by facsimile transmission, such notice shall be deemed to be provided upon confirmation of the receipt of the transmission.

(b) Assignment. This Agreement may not be assigned by any party without the prior express written approval of the other party, except that ACMS may assign this Agreement to an affiliate, successor entity, or subsidiary without the written approval of the other party.

(c) Waiver. A waiver by any party to this Agreement of any of its terms or conditions in any one instance shall not be deemed or construed to be a general waiver of such term or condition or a waiver of any subsequent breach.

(d) Relief. Requestor hereby acknowledges that remedies at law will be inadequate to protect ACMS against any breach or threatened breach of this Agreement, and without prejudice to any other rights and remedies otherwise available to ACMS, the Requestor agrees that ACMS shall be entitled to (i) specific performance and injunctive or other relief without the need to post bond and without proof of actual damages and (ii) terminate the ACMS membership of Requestor and/or Requestor's employees, agents or subcontractors with access to the ACMS Project Data.

(d) Choice of Law and Forum. All disputes regarding the meaning, effect, force or validity of this Agreement shall be determined according to federal law and the law of the State of Wisconsin. The parties expressly agree that the Circuit Courts of Milwaukee County, Wisconsin, or the United States District Court of Wisconsin, are the most reasonable and convenient forums for resolutions of any such disputes, and they hereby designate said courts as the exclusive forums in which all such disputes shall be litigated. Accordingly, the parties consent to the jurisdiction and venue of, and service of process by, said courts.

(e) Survival. The provisions of Sections 3, 5, 9, 12 through 16, and all other terms within this Agreement that are necessary or appropriate to give meaning thereto, shall survive any termination of this Agreement.

(f) Entire Agreement. This Agreement (a) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; (b) supersedes and replaces all prior agreements, oral or written, between the parties relating to the subject matter hereof; and (c)

In witness whereof, this Agreement is executed by the parties on the dates set forth below.

Requestor: _____

By: _____

Print Name: _____

Title: _____

Telephone: _____

E-Mail: _____

Facsimile: _____

Date: _____

American College of Mohs Surgery, Inc.

By: _____

Title: _____

Date: _____

ADDENDUM

Description of Project:

Detailed Description of Data Requested:

Summary of Anticipated Project Media:

Completion Date of Project:

Description of Permitted Purpose:

Identification of All of Requestors Employees, Agents and Subcontractors per Section 13.a.
(including, for each such individual, name, address, employer name and address, e-mail address
and telephone number) of Agreement, and all potential Conflicts of Interest: