International Skin Imaging Collaboration ("ISIC") Terms of Use Agreement and Privacy Policy

Medical Disclaimer:

IF YOU THINK YOU MAY HAVE A MEDICAL EMERGENCY, PLEASE CALL YOUR DOCTOR OR EMERGENCY SERVICES NUMBER IMMEDIATELY. MSKCC DOES NOT RECOMMEND OR ENDORSE ANY TESTS, PRODUCTS, PROCEDURES, OPINIONS, OR OTHER INFORMATION THAT MAY BE MENTIONED ON THE SITE. RELIANCE ON ANY CONTENT ON THE SITE IS SOLELY AT YOUR OWN RISK.

The contents of this website (the "Site") are intended to provide useful information to the general public. All materials, including texts, graphics, images, and audio, on the Site are for informational purposes only and are not a substitute for medical diagnosis, advice, or treatment for specific medical conditions. All visitors to the Site should seek expert medical care and consult their own physicians for any specific health issues. Memorial Sloan Kettering Cancer Center ("MSKCC") and its affiliates specifically disclaim all responsibility for any liability, loss, or risk, personal or otherwise, which is incurred as a consequence, directly or indirectly, of the use or application of any of the material on this Site.

1. Terms of Use.

Unless you or your employer have entered into a separate written Agreement with MSKCC which specifically supersedes this Terms of Use Agreement, this Terms of Use Agreement and the agreements referenced herein (the "Agreement" or "Terms of Use") constitute the entire agreement between MSKCC on the one hand, and users of this Site ("Users"), on the other hand, pertaining to the subject matter hereof. This Agreement binds users of the Site whether or not they contribute to the Site. However, contributors to the Site are required to affirm assent to this Agreement and otherwise conform to the provisions of Section 2 in order to contribute content. Access, contribution to, or use of the Site all signify assent by contributors and Users to all terms of the Agreement.

2. Account Information.

- 2.1. The Site may be accessed and used without creation of an account with MSKCC. However, if you wish to upload a digital image ("Image") of a skin lesion to the Site or to provide an annotation for such an Image (an "Annotation"), you will be required to register an account ("Account") and abide by the terms of this Agreement. To register an Account, you will be required to provide MSKCC with certain contact information. In registering the Account, you represent and warrant that such contact information is accurate and complete. Failure to comply with the foregoing shall constitute a breach of these Terms of Use, which may result in the immediate termination and deletion of the Account. Use of the term "Image" or "Annotation" in this Agreement includes the plural, unless the context clearly indicates otherwise.
- **2.2.** All contact information provided by you shall be governed by the Site Privacy Policy, as discussed in Section 10.
- 2.3. Each Account will be accessible by means of a password. If you register an Account, you are responsible for maintaining the confidentiality of the password and are fully responsible for all activities that occur under your password or Account. You agree to immediately notify MSKCC if you become aware of any unauthorized use of your password or Account or any other breach of security.

3. Contributions.

3.1. If you have registered an Account, you may provide or upload Images to the Site. Upon submitting Images to the Site, you will be required to select one of three Creative Commons (https://creativecommons.org) licenses (either CC0, BY, or BY-NC,) to apply to the Images (the "Contributor License"). If you do not or cannot agree to apply one of these licenses to a contributed Image, do not upload your Image. You agree only to post or upload Images to which you have been duly authorized to transmit and license to MSKCC and to Users in accordance with this Agreement and the Contributor License you select for each Image and/or to which you own all copyrights and other rights. You agree, represent and warrant that use of the Images you have posted or uploaded in

connection with the Site does not and will not violate or infringe the copyright, trademark, privacy, publicity, HIPAA (as defined below) or any other intellectual property or other rights, of any kind or nature whatsoever, of any person(s) or entity(ies).

- **3.2.** If you have registered an Account, as an additional, optional capability, you may be permitted to annotate Images to note certain relevant attributes in response to questions automatically posed by the Site. These Annotations are stored and may be available for download separately from the original Image or together with the original Image. Annotations, when made available, may include the User name of the User providing the Annotation. You agree that every and any annotation which you submit will be licensed under Creative Commons (https://creativecommons.org) license CC0. The derivative work formed by combining an Annotation with the applicable Image will be licensed under the applicable Contributor license for that Image. If you do not or cannot agree to apply Creative Commons license CC0 to your Annotation, do not contribute your Annotation. You agree only to provide Annotations to which you own all copyrights and other rights, and/or to which you have been duly authorized to transmit and license to MSKCC and to Users in accordance with this Agreement and the Creative Commons license CC0. You agree, represent and warrant that use of the Annotations you have posted or uploaded in connection with the Site does not and will not violate or infringe the copyright, trademark, privacy, publicity, HIPAA (as defined below) or any other intellectual property or other rights, of any kind or nature whatsoever, of any person(s) or entity(ies).
- 3.3. Should any part of the Contributor License for any reason be judged legally invalid or ineffective under applicable law, such partial invalidity or ineffectiveness shall not invalidate the remainder of the Contributor License, and in such case you hereby affirm that you will not (i) exercise any of your rights in the Images which were purportedly granted by the selected Contributor License or (ii) assert against (x) Users or (y) MSKCC or any of its subsidiaries, affiliates, partners, directors, officers, employees, agents, contractors, successors, licensees or assignees (jointly and severally, MSKCC)

and any and all of the foregoing listed in subsection (y) are the "MSKCC Protected Parties"), any associated claims or causes of action with respect to the Images.

- **3.4.** You agree, represent and warrant the following for any Images and Annotations you submit or contribute:
 - 3.4.1. The Images and Annotations, including any file names, captions or other metadata, do not contain any Individually Identifiable Health Information, as defined at 45 C.F.R. 160.103, of the subject of the Images or Annotation, or of anyone else, including any of the 18 individual identifiers listed at 45 C.F.R. 164.514(b)(2)(i) (such as, but not limited to, name, street address, phone number, dates of treatment, email address, URL, or identifiable face, feature or marking) ("Protected Health Information" or "PHI"), or that the Images and Annotations have otherwise been rendered de-identified in accordance with the requirements for de-identification set forth at 45 C.F.R. 164.514 ("De-identified Images"), or, if the Images or Annotation are subject to a jurisdiction outside of the United States, that the Images or Annotation have been rendered de-identified in accordance with the requirements for de-identification in the applicable foreign jurisdiction; or
 - 3.4.2. For any Images or Annotations that contain PHI or other personally identifying information (collectively, "Personal Information"), you have obtained a valid written authorization from the subject of the Images or Annotations, which authorization satisfies the requirements set forth at 45 CFR 164.508; and
 - 3.4.3. If you, as a contributor, or any Images or Annotations you submit or contribute, are subject to other privacy laws, regulations, directives or agreements outside of the United States, you agree, represent and warrant that, prior to upload or submission, you have obtained any and all consents, permissions, authorizations or approvals, including from any persons appearing in any Images or Annotations which you upload or submit, and have taken such other steps as may be required by the applicable jurisdiction or institution. You hereby acknowledge that all such

Images, Annotations, or other data may be transferred to the United States and/or other countries that have laws less protective of data privacy than those of your country of residence or the jurisdiction applicable to the Images or Annotations. You hereby consent to such transfer.

- 3.4.4. You further agree, represent and warrant that you have obtained any consent needed for you to grant the Contributor License. Contributors are expected to provide non-identifiable medical details associated with specific images (e.g., diagnosis, patient age, patient history of skin cancer). You agree, represent and warrant that the non-identifiable medical details you provide for each Image will be current, accurate, and correct as of the time of upload. If you determine that the non-identifiable medical details you submitted at the time of upload were incorrect, you agree to send an email to the email address identified in the "Contacts" section of the Site and to include in the message the correct details and identification of the Image.
- 3.5. Any Personal Information disclosed in or with the Images or Annotations may be accessible to the general public. If you upload Personal Information, you acknowledge that the following may be deemed to apply to your use and disclosure: (i) certain sections of the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, Pub. L. 104-191, enacted Aug. 21, 1996 (codified at 42 U.S.C. §1320d); (ii) the regulations concerning privacy and security of health-related information and personally identifiable financial data as set forth at 45 C.F.R. Parts 160 through 164 and the federal security regulations set forth in 45 C.F.R. Part 142, and as amended (subsections (i) and (ii) referred to collectively as "HIPAA Requirements"); or (iii) other privacy directives, laws or regulations.
- **3.6.** Furthermore, to the extent it is alleged or determined at any time that the HIPAA Requirements, EU General Data Protection Regulation, EU-US Privacy Shield, EU Data Protection Directive, privacy laws or regulations of any other jurisdiction, or third-party rights are implicated by your disclosure of Personal Information, you agree to indemnify and hold harmless the MSKCC Protected Parties from any claim, demand, or regulatory

action, including reasonable attorneys' fees and costs of regulatory investigations, made by any third party due to or arising out of your provision of the Images and Annotations, use of and access to the Site and disclosure of personally identifiable information in violation of any applicable laws or regulations.

3.7. MSKCC reserves the right to review all Images and Annotations prior to or after contribution or submission to the Site and to remove them for any reason, at any time, without prior notice, at its sole discretion. Notwithstanding the foregoing, no exercise, or failure to exercise, or delay in exercising any right, power or remedy vested in MSKCC or the MSKCC Protected Parties under this provision shall constitute a waiver by MSKCC or the MSKCC Protected Parties of that or any other right, power or remedy. MSKCC does not guarantee that it will review or remove any Image, Annotation or other content.

4. Rights in Site.

4.1. Generally. Your right to enter into, access and make use of the Site is governed by the Agreement. However, components of this Site are independently licensed and/or dedicated to the public domain. In addition to the Images and Annotations contributed by our Users (which are licensed to you under the applicable Contributor License), the Site consists of the software necessary for the Site to function and related copyrighted templates, documentation and materials (together, the "Site Software"), non-trivial organized collections of publically available data, in the form of the selection and arrangement of the Images and related clinical datasets (the "Site Database") and certain confidential information and data used to operate the Site. Unless otherwise expressly stated in the applicable materials accompanying the Site Software, the Site Software is licensed and conditions of the Apache 2.0 License (http://www.apache.org/licenses/LICENSE-2.0). To the extent that applicable law provides copyright protection for the Site Database, the Site Database is made available to our Users under the Creative Commons Public Domain Dedication (CC0) as set forth

- in Section 3.3. Software documentation and other supporting media, such as tutorials, manuals, and webinars is made available to our Users under the Creative Commons Attribution 4.0 License.
- **4.2.** <u>License in Images</u>. The Images are made available to Users under the Contributor License chosen by the contributor of the Image in question. You may use, copy, distribute, display, modify, or otherwise exploit the Images only in conjunction with the applicable Contributor License.
- **4.3.** <u>License in Annotations</u>. The Annotations are made available to Users under Creative Commons (https://creativecommons.org) license CC0. Any derivative work formed by combining an Annotation with an applicable Image will be licensed under the applicable Contributor license for that Image. You may use, copy, distribute, display, modify, or otherwise exploit an Annotated Image only in conjunction with the applicable Contributor License.

4.4. License in Site Software.

4.4.1. Generally, the Site Software is licensed under the terms and conditions of the Apache 2.0 License (http://www.apache.org/licenses/LICENSE-2.0) (the "Software License"). In some cases, certain components of the Site Software will continue to use the underlying software's license terms. In such case, the notices, license, readme, or other documentation accompanying the affected software will so state, and the expressly identified license will take precedence over the Site License.

4.5. No Database Rights Reserved in Site Database - Creative Commons CCO.

4.5.1. To the greatest extent permitted by, but not in contravention of, applicable law, and except as otherwise expressly provided below, MSKCC hereby overtly, fully, permanently, irrevocably and unconditionally waives, abandons, and surrenders all of its copyright rights and associated claims and causes of action, whether now

known or unknown (including without limitation existing as well as future claims and causes of action), in the Site Database: (i) in all territories worldwide, (ii) for the maximum duration provided by applicable law or treaty (including future time extensions), (iii) in any current or future medium and for any number of copies, and (iv) for any purpose whatsoever, including without limitation commercial, advertising or promotional purposes (the "Waiver"). MSKCC makes the Waiver for the benefit of the Site's Users and each member of the public at large, and to the detriment of MSKCC's successors, fully intending that such Waiver shall not be subject to revocation, rescission, cancellation, termination, or any other legal or equitable action to disrupt the quiet enjoyment of the Site Database by Users and the public at large.

4.5.2. Should any part of the Waiver for any reason be judged legally invalid or ineffective under applicable law, then the Waiver shall be preserved to the maximum extent permitted. In addition, to the extent the Waiver is so judged, MSKCC hereby grants to each affected person a royalty-free, transferable, sublicensable, non-exclusive, irrevocable and unconditional license to exercise MSKCC's rights in the Site Database: (i) in all territories worldwide, (ii) for the maximum duration provided by applicable law or treaty (including future time extensions), (iii) in any current or future medium and for any number of copies, and (iv) for any purpose whatsoever, including without limitation commercial, advertising or promotional purposes (the "Database License"). The Database License shall be deemed effective as of the date the "No Rights Reserved" mark was applied to the Site. Should any part of the Database License for any reason be judged legally invalid or ineffective under applicable law, such partial invalidity or ineffectiveness shall not invalidate the remainder of the Database License, and in such case MSKCC hereby affirms that MSKCC will not: (i) exercise any of MSKCC's remaining rights in the Site Database; or (ii) assert any associated claims or causes of action with respect to the Site Database.

- 5. <u>Trademark</u>. None of the Software License, Waiver, nor the Database License shall apply to any trademarks or service marks belonging to MSKCC or to any third party. Nothing contained on the Site should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any trademark and/or service mark displayed on the Site without the prior written permission of MSKCC or such third party owner(s).
- 6. Warranty Disclaimer. THE SITE AND ITS CONTENT ARE PROVIDED ON AN "AS IS" BASIS. MSKCC, ITS OWNERS, EMPLOYEES, SPONSORS, SITE DEVELOPERS, AGENTS, PARTNERS AND LICENSORS, TO THE FULLEST EXTENT PERMITTED BY LAW, DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS, AND FITNESS FOR PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, NONE OF THE MSKCC PROTECTED PARTIES MAKE ANY REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY, RELIABILITY, COMPLETENESS, CORRECTNESS, OR TIMELINESS OF THE CONTENT, SOFTWARE, TEXT, GRAPHICS, LINKS, OR COMMUNICATIONS PROVIDED ON OR THROUGH THE USE OF THE SITE. IN ADDITION, NONE OF THE MSKCC PROTECTED PARTIES WILL BE LIABLE FOR THE DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF CONTRIBUTORS, USERS OR THIRD PARTIES.
- 7. <u>Limitation of Liability</u>. UNDER NO CIRCUMSTANCES SHALL ANY OF THE MSKCC PROTECTED PARTIES BE LIABLE FOR ANY INDIRECT LOSS, DAMAGE (WHETHER INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR ANY OTHER TYPE OF DAMAGE), INJURY, CLAIM, LIABILITY OR OTHER CAUSE OF ACTION OF ANY KIND RESULTING FROM OR IN ANY WAY ASSOCIATED WITH THE SITE, CONTENT, SOFTWARE, IMAGES, ANNOTATIONS, ANY LINKED SITE, OR ANY USE OF ANY OF THE FOREGOING. THIS LIMITATION APPLIES TO THE FULLEST EXTENT PERMITTED BY LAW AND WITHOUT REGARD TO WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE,

STRICT LIABILITY, OR ANY OTHER BASIS, EVEN IF AN MSKCC PROTECTED PARTY (OR PARTIES) HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. IF FOR ANY REASON THE MSKCC PROTECTED PARTIES ARE FOUND TO BE LIABLE, THEIR AGGREGATE LIABILITY TO YOU OR ANY OTHER PARTY OR PARTIES CLAIMING WITH, UNDER OR THROUGH YOU, SHALL BE LIMITED TO THE GREATER OF (A) THE AMOUNT YOU PAID, IF ANY, TO MSKCC FOR MEMBERSHIP IN THE SITE, OR (B) TEN DOLLARS (\$10), NOTWITHSTANDING THE NUMBER OF CLAIMS AND NOTWITHSTANDING ANY CLAIM THAT SUCH REMEDY FAILS OF ITS ESSENTIAL PURPOSE. NO CLAIM OR ACTION ARISING FROM OR CONCERNING THE SITE, CONTENT OR SOFTWARE OR OTHERWISE HEREUNDER MAY BE BROUGHT LATER THAN ONE YEAR FROM THE DATE THE CLAIM OR CAUSE OF ACTION AROSE.

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OF CERTAIN TYPES OF DAMAGES OR LIABILITY AND, ALTHOUGH THE EXCLUSIONS, LIMITATIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL ALWAYS BE CONSTRUED TO BE EFFECTIVE TO THE FULLEST EXTENT OF THE LAW, YOU SHOULD CONSULT YOUR OWN LEGAL ADVISOR SHOULD YOU WISH TO DETERMINE THE LAWS AND REGULATIONS THAT APPLY TO YOU.

8. Indemnification. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS THE MSKCC PROTECTED PARTIES FROM ANY CLAIM OR DEMAND, INCLUDING **FEES** REASONABLE ATTORNEYS' AND COSTS ASSOCIATED WITH REGULATORY INVESTIGATIONS, MADE BY ANY THIRD PARTY DUE TO OR ARISING OUT OF (1) YOUR PROVISION OF ANY IMAGE, ANNOTATION OR ANY RELATED INFORMATION, (2) YOUR USE OF AND ACCESS TO THE SITE; (3) YOUR VIOLATION OF THESE TERMS AND CONDITIONS: (4) YOUR VIOLATION OF ANY RIGHTS OF A THIRD PARTY, INCLUDING BUT NOT LIMITED TO CLAIMS OF INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS OR RIGHTS OF PRIVACY OR PUBLICITY, OR CLAIMS OF DEFAMATION; AS WELL

- AS (5) YOUR VIOLATION OF ANY APPLICABLE LAWS OR REGULATIONS, INCLUDING BUT NOT LIMITED TO HIPAA TO THE EXTENT IT APPLIES.
- 9. Assumption of Risk. THE CONTENTS OF THE SITE, SUCH AS TEXT, GRAPHICS, IMAGES, ANNOTATIONS AND INFORMATION, ARE FOR INFORMATIONAL PURPOSES ONLY. MSKCC DOES NOT REPRESENT OR WARRANT THE ACCURACY, CURRENCY OR COMPLETENESS OF THE CONTENTS OF THE SITE. THE CONTENT IS NOT INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, OR TREATMENT. YOU SHOULD ALWAYS SEEK THE ADVICE OF YOUR PHYSICIAN REGARDING A MEDICAL CONDITION. YOU SHOULD NEVER DISREGARD PROFESSIONAL MEDICAL ADVICE OR DELAY IN SEEKING IT BECAUSE OF SOMETHING YOU HAVE READ ON THE SITE. NONE OF THE MSKCC PROTECTED PARTIES ASSUME ANY RESPONSIBLY OR RISK FOR THE USE OF INFORMATION PROVIDED ON THE SITE.
- 10. <u>Third Party Links</u>. The Site may contain links to other web sites that are operated by third parties and that are identifiable by a User of the Site as being operated by third parties ("<u>Links</u>"). You acknowledge that MSKCC does not endorse the Links and is not responsible for any content of the Links. You also acknowledge that the respective owners of the Links neither endorse nor are affiliated with MSKCC.

11. Site Privacy Policy.

11.1. By using the Site, you are agreeing to the terms set forth in this Site Privacy Policy, which may be found at the following link: https://isic-archive.com/#privacyPolicy.

12. Miscellaneous.

12.1. MSKCC may, in its sole and absolute discretion, take whatever action it deems necessary to preserve the integrity of the Site. Violation of any of the Terms of Use set

forth herein may result in actions being taken by MSKCC, effective immediately or at a time determined by MSKCC, which may include without limitation: (i) temporarily suspending your Account, or (ii) permanently terminating your Account. Without limiting the foregoing, MSKCC retains the right to decline service, at any time, to any User, visitor, or third party who violates the Terms of Use herein. Notwithstanding the foregoing, no exercise, or failure to exercise, or delay in exercising any right, power or remedy vested in MSKCC or the MSKCC Protected Parties under this provision shall constitute a waiver by MSKCC or the MSKCC Protected Parties of that or any other right, power or remedy.

- 12.2. MSKCC may revise the Terms of Use and Site Privacy Policy without notice from time to time by updating or revising this posting, with the revised Terms of Use and Site Privacy Policy taking effect as of the date of posting. It is your responsibility to check these Terms of Use and Privacy Policy periodically for changes. Your continued use of the Site (including, without limitation your uploading of any Image or Annotation) following the posting of changes on the Site will mean that you accept and agree to such changes.
- 12.3. This Agreement is entered into in the United States of America and shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts or choice of law principles. Each party to this Agreement submits to the exclusive jurisdiction of the courts of New York County for any dispute related thereto.
- **12.4.** It is strictly prohibited for you to upload, submit or contribute Images or Annotations or any other media of any kind that contain(s) expressions of hate, abuse, offensive images or conduct, obscenity, pornography, sexually explicit material, or any material that could give rise to any civil or criminal liability under applicable law or regulations or that otherwise may be in conflict with these Terms of Use and the Site Privacy Policy.

- **12.5.** If you wish to keep any business information, ideas, concepts, inventions, or works of authorship private or proprietary, do not upload them to the Site, include them in any of the Images or Annotations, or otherwise make them available through the Site.
- 12.6. You agree that you shall not, and shall not assist or enable any third party to, upload, submit or contribute any Images or Annotations or other media that contain software viruses or any other computer code, files or programs designed or likely to interrupt, destroy or limit the functionality of any computer software or the Site.
- 12.7. If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible on the Site, you may notify our copyright agent, in accordance with the Digital Millennium Copyright Act of 1998 ("DMCA"), Title 17, United States Code, Section 512(c)(2). For your complaint to be valid under the DMCA, you must furnish the following information when providing notice of the claimed copyright infringement:
 - 12.7.1. A physical or electronic signature of a person authorized to act on behalf of the copyright owner;
 - 12.7.2. Identification of the material that is claimed to be infringing or to be the subject of the infringing activity and that is to be removed or access to which is to be disabled as well as information reasonably sufficient to permit MSKCC to locate the material;
 - 12.7.3. Information reasonably sufficient to permit MSKCC to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address;
 - 12.7.4. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, by its agent, or by law; and

- 12.7.5. A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- **12.8.** The above information must be submitted as a written notification to the following Designated Agent:

Kristen Ahearn ahearnk@mskcc.org 1275 York Ave., New York, NY 10065 (646) 227-2034 (T) (212) 557-1236 (F)

Questions or comments regarding MSKCC should be submitted to the email address identified in the "Contacts" section of the Site. Thank you for your cooperation.