

Memorial Sloan Kettering Cancer Center CME Program Terms of Use

Effective June 17, 2020

1. Acceptance of Terms.

These CME Program Terms of Use (“Terms of Use”) govern you or your (“you” or “your”) attendance and participation in any in-person, virtual or online continuing medical education (“CME”) course or broadcast that is conducted, presented or otherwise made available to you by Memorial Sloan Kettering Cancer Center (“CME Program”). For the purposes of these Terms of Use, Memorial Sloan Kettering Cancer Center includes Memorial Hospital for Cancer and Allied Diseases and the Sloan Kettering Institute (collectively with Memorial Sloan Kettering Cancer Center, “MSK”). The CME Program is available only to individuals who can enter into legally binding contracts under Applicable Law and agree to these Terms of Use. These Terms of Use constitute a legally binding agreement between you and MSK regarding your use and access to the CME Program. You are not authorized to record the CME Program and agree to prevent any unauthorized copying, recording, use, distribution and/or re-broadcast of the CME Program by third-parties.

2. Participation.

By participating in or accessing the CME Program, you agree to be recorded by MSK and acknowledge that MSK reserves the right to use any image, video, audio and any and all other content, in tangible or intangible form, captured of you (the “Participation Content”). You irrevocably grant to MSK and its assigns, licensees, and successors the right to the Participation Content and Personal Information (as defined herein) in all forms and media including without limitation, composite or modified representations for all purposes, including without limitation, advertising, trade, or any commercial purpose throughout the world and in perpetuity. You waive the right to inspect or approve the Participation Content used by MSK. You hereby release MSK and its assigns, licensees, and successors from any claims that may arise regarding MSK’s use of the Participation Content including any claims of defamation, invasion of privacy, or infringement of moral rights, rights of publicity, or copyright.

3. Rules of Conduct.

3.1 As a condition of use, you promise not to use or attend the CME Program for any purpose that is prohibited by these Terms of Use or Applicable Law. You are responsible for all of your activity in connection with your use or attendance of CME Program, which shall be used or attended by you solely at your risk. You will at all times provide true, accurate, current, authorized, and complete information when sharing, submitting or disclosing Content on or during the CME Program and will comply with the terms set forth in Section 4 below.

3.2 Additionally, you shall not in relation to the CME Program: **(i)** take any action that imposes or may impose (as determined by MSK in its sole discretion) an unreasonable or disproportionately large load on MSK’s (or its third party providers’) infrastructure; **(ii)** interfere or attempt to interfere with the proper working of CME Program or any activities conducted on CME Program; **(iii)** bypass any measures MSK may use to prevent or restrict access to CME Program (or other accounts, computer systems or networks connected to the CME Program); **(iv)** run Maillist, Listserv, any form of auto-responder or “spam” on CME Program; or **(v)** use manual or automated software, devices, or other processes to “crawl” or “spider” any page of CME Program.

3.3 You shall not directly or indirectly in relation to virtual or online CME courses: (i) decipher, decompile, disassemble, reverse engineer or otherwise attempt to derive any source code or underlying ideas or algorithms of any part of CME Program, except to the limited extent Applicable Laws specifically prohibit such restriction; (ii) modify, translate, copy, distribute, market, display or otherwise create derivative works of any part of CME Program; (iii) remove or alter any proprietary notices or labels from CME Program; or (iv) copy, rent, lease, sublicense, clone, transfer, distribute, or otherwise transfer any or all of the rights that you receive hereunder.

4. Content.

4.1 For purposes of these Terms of Use, the term “Content” includes, without limitation, any advertisements, advice, suggestions, videos, pictures, audio clips, written forum comments, information, data, text, photographs, software, scripts, graphics, logos, symbols, designs, or interactive features posted, displayed, published, captured, or otherwise made available by you on or through the CME Program. You agree that MSK shall have the full ownership, right, title, and interest in and to any and all Content, including any Content that you introduce by way of the CME Program.

4.2 In addition to the foregoing, you hereby assign to MSK all of your ownership, right, title, and interest in and to all Content, including, without limitation: (a) all copyrights, patents, rights in mask works, trademarks, trade secrets, and other intellectual property rights and all other rights that may hereafter be vested relating to the Content, arising under U.S. or any other law, together with all national, foreign, state, provincial, and common law registrations, applications for registration, and renewals and extensions thereof; (b) all goodwill associated with the Content; and (c) all benefits, privileges, causes of action, and remedies relating to any of the foregoing, whether before or hereafter accrued (including without limitation the exclusive rights to apply for such registrations, renewals, and/or extensions, to sue for all past infringements or violations of any the foregoing, and to settle and retain proceeds from any such actions).

4.3 To the extent, if any, that these Terms of Use do not provide MSK with full ownership, right, title, and interest in and to the Content, you hereby grant MSK a perpetual, irrevocable, fully-paid, royalty-free, worldwide license to reproduce, create derivative works from, distribute, publicly display, publicly perform, use, make, have made, offer for sale, sell or otherwise dispose of, and import the Content, with the right to sublicense each and every such right.

4.4 You will help MSK obtain and enforce patents, copyrights, rights in mask works, trade secret rights, and other legal protections for the Content in any and all jurisdictions throughout the world. You will execute any documents MSK reasonably requests for use in obtaining or enforcing such rights and protections. You hereby appoint MSK or its designated representative as your attorney-in-fact to execute documents on your behalf for the purposes set forth in this section.

4.5 By posting Content or displaying, publishing, or otherwise posting any content on or through the CME Program, you understand that MSK shall have the right to alter, reformat, excerpt, or translate any materials, Content or information submitted by you; and that all information transmitted through the CME Program is the sole responsibility of the person from which such Content originated and that MSK will not be liable for any errors or omissions in any Content.

4.6 By way of example, and not as a limitation, in relation to the CME Program, you shall not (and shall not permit any third party to) either directly or indirectly, and either in-person, virtually, or online (as applicable) (a) take any action or (b) upload, download, post, share, submit, make available, or otherwise distribute or facilitate distribution of any Content on or while attending the CME Program, that:

- (i) infringes any patent, trademark, trade secret, copyright, right of publicity or other right of any other person or entity;
- (ii) is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, or profane;
- (iii) constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming");
- (iv) involves commercial activities and/or sales without MSK's prior written consent such as contests, sweepstakes, barter, advertising, or pyramid schemes;
- (v) contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data, password or other information of MSK or any third party;
- (vi) impersonates any person or entity, including any employee or representative of MSK; or
- (vii) furthers or promotes any criminal activity or enterprise or provide instructional information about illegal activities including, but not limited to making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses.

4.7 The CME Program, and the Content or MSK Content made available thereunder, may contain individually identifiable health information ("Patient Information"), as set forth under the applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder, as those regulations now exist or as subsequently amended, renumbered, revised or promulgated, including, but not limited to, the Health Information Technology for Economic and Clinical Health Act ("HITECH"). HIPAA, HITECH, and/or Applicable Laws (collectively, "Patient Information Laws") may impose obligations with respect to patient confidentiality that may limit your rights to retrieve, use, transmit, process, receive, report, disclose, or store Patient Information, including transmitting Patient Information to others. You represent and warrant that you will not share, submit or disclose any identifying Patient Information related to or during the CME Program. In the event you elect to share, submit or disclose any identifying Patient Information related to or during the CME Program, you are solely responsible for ensuring that any consents (if applicable), permissions or approvals required by Patient Information Laws or applicable MSK policies with respect to the retrieval, use, transmission, processing, receipt, reporting, disclosure or storage of Patient Information have been obtained, and represent and warrant that you have obtained the applicable foregoing requirements prior to sharing, submitting or disclosing said identifying Patient Information. You shall be solely responsible for your retrieval, use or misuse, transmission, processing, receipt, reporting, disclosure or storage of Patient Information. 4.5 By posting Content or displaying, publishing, or otherwise posting any content on or through the CME Program, you understand that MSK shall have the right to alter, reformat, excerpt, or translate any materials, Content or information submitted by you; and that all information transmitted through the CME Program is the sole responsibility of the person from which such Content originated and that MSK will not be liable for any errors or omissions in any Content.

5. MSK Content.

5.1 The CME Program contains or may contain Content specifically provided by MSK (“MSK Content”). Such MSK Content is or may be protected by applicable copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and Applicable Laws. You shall abide by all copyright notices, information, and restrictions contained in any MSK Content accessed or viewed through the CME Program or as further set forth under Applicable Law.

5.2 MSK makes no representations or warranties, whether express or implied, with respect to the MSK Content. Under no circumstances will MSK be liable in any way for any MSK Content, including, but not limited to, any errors or omissions in any MSK Content, or any loss or damage of any kind incurred in connection with use of or exposure to any MSK Content posted, emailed, accessed, transmitted or otherwise made available via the CME Program.

6. Personal Information.

You may be asked, required, or voluntarily submit to or on the CME Program certain personal information (“Personal Information”) including, without limitation, your name, email address, title, professional biography, and any or all other information which is or may be reasonably deemed personal in nature. You agree that your Personal Information can be collected, used, processed, transferred, stored and shared by MSK internally or with third parties in connection with the CME Program and these Term of Use, and you hereby consent to such collection, uses, processes, transfers, storage and sharing. Please do not submit any sensitive or non-public Personal Information, and note that the Personal Information you submit related to the CME Program, may be collected, used, processed, transferred, stored and shared in countries outside of the country in which you are based, including countries whose privacy and data protection laws are not equivalent to the laws in your country of residence. MSK shall collect, use, process, transfer, store and share Personal Information submitted on or to the CME Program in compliance with these Terms of Use and Applicable Law.

7. Applicable Laws.

7.1 In using or accessing the CME Program, you shall comply with all applicable federal, state, local, and applicable credentialing bodies’ laws, ordinances, rules, regulations and orders, as they now exist or as they may be subsequently amended, renumbered, revised or promulgated in the future, with or without notice to you (“Applicable Law(s”).

7.2 MSK fully complies with the legal requirements of the Americans with Disabilities Act (“ADA”) as set forth under Applicable Law, and the rules and regulations thereof. The CME Program is accessible to individuals with disabilities or special needs. Participants shall contact MSK’s CME Office at least one month prior to the course date at cme@mskcc.org to request accommodations for the CME Program.

8. Termination and Suspension.

MSK may terminate or suspend your access to all or any part of the CME Program at any time, with or without cause, with or without notice, effective immediately. In the event of termination as set forth herein: (i) all provisions of these Terms of Use which by their nature should survive termination, shall survive termination; and/or (ii) you will return or destroy all known copies of Content and MSK Content upon MSK’s request and provide proof of such destruction if requested by MSK.

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9.2 MSK makes no representations or warranties concerning the appropriateness, accuracy, reliability, usefulness, completeness, or timeliness of the CME Program. By using or accessing the CME Program, you agree that MSK shall not be responsible for (i) any Participation Content, Personal Information, Content, or MSK Content stored, posted, displayed, published, captured, or otherwise made available or transmitted on or by the CME Program; (ii) your reliance on any such Participation Content, Personal Information, Content, or MSK Content, whether or not correct, current and complete; or (iii) the consequences of any action that you or any other person takes or fails to take based on any Participation Content, Personal Information, Content, or MSK Content or otherwise as a result of your use of the CME Program.

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11. Governing Law.

These Terms of Use, and all claims arising out of, relating to or in connection with these Terms of Use or the CME Program, are governed by and construed in accordance with the laws of the State of New York, without regard to any conflicts of law principles.

12. Integration and Severability.

These Terms of Use are the entire agreement between you and MSK with respect to the CME Program and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between you and MSK with respect to the subject matter contained herein. If any provision of these Terms of Use is found to be unenforceable or invalid under Applicable Law, that provision will be limited or eliminated to the minimum extent necessary so that these Terms of Use will otherwise remain in full force and effect and enforceable. The failure of MSK to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder.

13. Miscellaneous.

MSK shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond MSK's reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation. These Terms of Use are personal to you, and are not assignable, transferable or sublicensable by you except with MSK's prior written consent. MSK may assign, transfer or delegate any of its rights and obligations hereunder without your consent. Unless otherwise agreed upon in writing between you and MSK, no agency, partnership, joint venture, or employment relationship is created as a result of these Terms of Use or your use or access of the CME Program, and neither you nor MSK has any authority of any kind to bind the other in any respect. All notices under the Terms of Use will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.

14. Contact.

Participants shall contact MSK's CME Office at cme@mskcc.org for questions or comments regarding these Terms of Use or the CME Program.



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