

2009 PROGRAM AGREEMENT

This Agreement is made and entered into as of the ____ day of _____, 200__ by and between the American Orthopaedic Foot & Ankle Society, an Illinois not-for-profit corporation with its principal place of business at 6300 N. River Road, Suite 510, Rosemont, Illinois 60018 (the "Society") and _____, M.D. (the "Program Director"), the Program Director of the Foot and Ankle Fellowship Program at _____ (the "Program").

RECITALS

WHEREAS, the Society works with the San Francisco Match to facilitate advanced clinical experience and fellowship placement services for orthopaedic surgeons with special interest in the prevention and treatment of foot and ankle conditions (the "Match");

WHEREAS, the Program offers one or more fellowships and desires to participate in the Match to locate and accept applicants for such fellowships; and

WHEREAS, the Society and the Program Director desire to memorialize certain terms and conditions of the Program's participation in the Match to locate and accept applicants for the Program's fellowships.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties agree as follows:

1. Definitions. The following terms shall have the meanings set forth below:

1.1 "Applicant" shall mean a person seeking to obtain a position as a Fellow.

1.2 "Fellow" shall mean a physician who spends six (6) months or greater training in a Program's Fellowship as a fellow or ACE.

1.3 "Fellowship" shall mean an advanced clinical experience or fellowship training for orthopaedic surgeons with special interest in the prevention and treatment of foot and ankle conditions that lasts at least six (6) months and involves direct patient care and not only observation and/ or research.

1.4 "Participating Program" shall mean those programs, such as the Program, then participating in the Match.

2. Conditions of Participation.

2.1 The Program hereby agrees to pay to the Society a \$7,500 fee in the event the Program fails to honor its obligations under this Program Agreement, or otherwise breaches this Program Agreement, as further provided in Section 5.2 hereof.

3. Program Obligations. As consideration for the Society's efforts to facilitate placement services for Applicants and Participating Programs, the Program shall adhere to the conditions set forth below:

3.1 The Program shall not accept a fellow for its Fellowship who is not a participating Match Applicant. All Fellowships offered by the Program will be filled through the San Francisco Match, with the following exceptions:

(a) Any Fellowship position that is "unmatched" through the San Francisco Match.

3.2 The Program shall not pressure Applicants to commit to a Fellowship prior to the Match.

3.3 The Program shall not ask an Applicant about where the Applicant intends to rank ANY fellowship program, shall not seek assurances from Applicants as to an Applicant's intent to "rank" a Program's Fellowship in a certain order, and shall similarly not state or imply in any way that the Applicant's position on the Program's San Francisco Match Rank List is at all dependent upon the Applicant's relative level of interest in the Program's Fellowship.

3.4 The Program shall not withdraw any Fellowship positions from the Match at any time prior to "Match Day," nor offer any Applicant, irrespective of whether or not the Applicant has signed a Participation Agreement, any position as a Fellow prior to Match Day.

3.5 The Program shall not interview any Applicant for a Fellowship position prior to executing its Participation Agreement and the Program Agreement with the Society corresponding to the year the Fellowship is being offered by the Program.

3.6 After the date of the Applicant's formal interview with the Program, the Program shall not communicate with the Applicant except by written means (letter/ email) addressed and sent to all Applicants to the Program until Match Day. The Program shall not suggest or imply in any way that the Applicant communicate with the Program after the date of the Applicant's formal interview. The Program may respond to an oral or written request from the Applicant only if the Program's response is in writing and sent to all Applicants to the Program.

4. Society Obligations. As consideration for the Program's participation in the Specialty Matching Service, the Society shall perform the following:

4.1 The Society shall form a Fellowship Match Committee whose membership shall total five (5), and shall include a Chair who does not participate in fellowship training, three (3) members who also do not participate in fellowship training, and one (1) member who does participate in fellowship training and is a party to a Program Agreement with the Society. The Fellowship Match Committee shall be responsible for implementing the provisions of this Program Agreement and determining whether a Program has failed to honor its obligation under this Program Agreement, or otherwise breached this Program Agreement.

4.2 The Society may make certain research and educational grants available only to programs that have executed a Program Agreement with the Society ("Participating Programs").

4.3 The Society will publicize the names, applicant contact information, and/or additional selected program information for all Participating Program Fellowships by such means as the Society website, advertisements taken out by the Society in orthopaedic journals, and/or information released by the Society's to other orthopaedic organizations, orthopaedic residents, orthopaedic residency program directors and/or other faculty involved in resident education. The Society will not publicize the above-listed information for fellowship positions offered by programs that have not entered into a Program Agreement with the Society.

4.4 The Society will allow the Program and Applicants to participate in a fellowship interview process at the Society's annual Specialty Day meeting and may facilitate other interview opportunities throughout the year.

4.5 The Society may provide the following incentives to Fellows:

- (a) The Society may waive its membership fee for Fellows in a Participating Program. The Society may then offer Fellows who complete a Fellowship through a Participating Program a 50% reduction of the Society's usual membership fee for the Fellow's first year in practice.
- (b) The Society may allow Fellows in a Participating Program to participate in a "Fellows-only" program at the Society's annual summer meeting.
- (c) The Society may provide Fellows who have completed a Fellowship with a Participating Program with an official Fellowship or Advanced Clinical Experience Completion Certificate and list on its website these Fellows.
- (d) The Society may provide Fellows in a Participating Program with access to a list of then-available academic and private practice positions for physicians specializing in the prevention and treatment of foot and ankle conditions.

4.6 The Society will survey Applicants and Fellows after the Match has taken place as to whether any Program violated its Participation Agreement and, if so, to obtain further information as to the specifics of any alleged breach.

4.7 The Society may give preference to faculty from Participating Programs over faculty from non-participating programs with respect to the awarding of research grants, the acceptance of papers to be presented at the Specialty Day and at the Society's annual summer meeting, as Symposium faculty, as Educational Course faculty, for membership on Society Committees and/or for service on the Society's Board of Directors.

5. Events of Default. Should the Program fail to honor its obligations under this Program Agreement, or otherwise breach this Program Agreement, as determined by a majority vote of the Society's Fellowship Match Committee (a "Defaulting Program"), the Defaulting Program agrees to the following restrictions upon its future participation in the San Francisco Match for qualifying Fellowships:

5.1 The Defaulting Program will be ineligible to participate as a Participating Program for two (2) years following the date of its breach.

5.2 The Defaulting Program will pay the Society \$7,500 to compensate for the Society's time and effort in facilitating future qualifying Fellowships through the San Francisco Match and maintaining the integrity of the programs.

The Program acknowledges and agrees that only after satisfaction of the requirements and conditions in this Article 5 will a Defaulting Program be eligible to again participate in the San Francisco Match for Fellowships.

Should a Defaulting Program disagree with the Fellowship Match Committee's determination that the Program failed to honor its obligations under this Program Agreement, or otherwise breached this Program Agreement, the Defaulting Program may appeal the determination to the Society's Board of Directors. Reversal or modification of a determination of the Fellowship Match Committee may be made by the Board of Directors upon a two-thirds (2/3) majority vote.

5.3 The Society will report a Defaulting Program's breach of the terms of this Program Agreement to the San Francisco Match.

6. Program Director Disincentives. The Program Director agrees and understands that in the event of his or her Program's Default under Article 5 hereof, the Society may impose the following restrictions on the Program Director's program and program faculty:

6.1 Ineligibility for research grants from the Society:

- (a) Program Director for three (3) years following the Program's Default; and
- (b) Remaining Fellowship faculty associated with the Program for two (2) years following the Program's Default.

6.2 Ineligibility for participation in Scientific Paper presentations at the Society's annual Specialty Day and the Society's annual Summer Meetings:

- (a) Program Director for two (2) years following the Program's Default;
- (b) Any submission listing the Program Director as an author for two (2) years following the Program's Default; and
- (c) Remaining Fellowship faculty associated with the Program for one (1) year following the Program's Default.

6.3 Ineligibility of Fellowship Program for participation as Symposium speaker or session moderator at the Society's annual Specialty Day and the Society's annual Summer Meetings:

- (a) Program Director for two (2) years following the Program's Default; and

- (b) Remaining Fellowship faculty associated with the Program for one (1) year following the Program's Default.

6.4 Ineligibility of Program Director for participation as Society Education Course Faculty for two (2) years following the Program's Default.

6.5 Ineligibility of Program Director for participation as a Society Committee Member for two (2) years following the Program's Default.

6.6 Ineligibility for service on the Society's Board of Directors:

- (a) Program Director for two (2) years following the Program's Default; and
- (b) Remaining Fellowship faculty associated with the Program for one (1) year following the Program's Default.

The disincentives listed in this Article 6 will begin on July 15, 2009 and will continue in effect for the time period as stated above.

7. Compliance with Applicable Laws and Regulations. The Program agrees that it will comply with applicable federal, state and local laws in executing its responsibilities under this Program Agreement and its Participation Agreement.

8. Term. This Program Agreement shall be effective as of July 15, 2009 and shall continue in full force and effect until June 30, 2010.

9. Termination. The Society may terminate this Program Agreement upon thirty (30) days written notice if the Program breaches or is in default of any obligation hereunder and said breach or default has not been remedied within fifteen (15) days after receipt of notice of such default or breach. Notwithstanding the above, the provisions of Article 5 and Article 6 concerning Defaulting Programs will survive the termination of this Program Agreement.

10. Notice. All notices, requests, demands and other communications hereunder shall be in writing and shall be duly given to any party, (a) upon delivery to the address of such party specified below if delivered in person or by courier; (b) delivery into the United States Mail by certified or registered mail, return receipt requested, postage prepaid; or (c) upon dispatch if transmitted by telecopy or other means of facsimile, to the following addresses or telecopy numbers as the case may be:

If to the Society:

American Orthopaedic Foot & Ankle Society
6300 N. River Road, Suite 510
Rosemont, Illinois 60018
ATTN: Executive Director

If to the Program Director:

The parties may change the foregoing addresses and facsimile numbers through written notice to the other party as provided herein.

11. Waiver. A party may waive its rights under this Program Agreement only in writing. Any waiver by either party of its rights under this Program Agreement shall not constitute a waiver of any other rights hereunder.

12. Assignment. The rights and obligations arising under this Program Agreement may not be assigned by either party without the express written consent of the other party.

13. Severability. Whenever possible, each provision of this Program Agreement shall be interpreted in such manner as to be effective and valid under applicable law. If any provision of this Program Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Program Agreement.

14. Complete Agreement. This Program Agreement sets forth all of the understandings of the parties with respect to the subject matter hereof, supersedes any prior, oral or written understandings and may not be altered, modified, or amended except by written instruments signed by both parties.

15. Governing Law. This Program Agreement shall be construed and enforced under the laws of the State of Illinois.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Program Agreement to be executed on the day and year first above written.

American Orthopaedic Foot & Ankle Society

By: _____
Its: Executive Director

Program Director

By: _____
Fellowship Program Director