

DermACELL Guarantee Program

As a committed partner to hospitals and healthcare providers, NOVADAQ Corp. (the “Company”) hereby offers the a customer (a “Customer) of Dermacell product (the “Product”) participation in the Dermacell Guarantee Program (the “Program”), which shall include the following Product guarantees, subject to the terms and conditions set forth herein:

A. Replacement Guarantee.

In the event that revisionary surgery requires replacement Dermacell Product following use of a Product purchased by Customer, Novadaq shall provide replacement of the Product used in the original surgery free of charge, provided that both (i) a SPY imaging device was used with the appropriate Novadaq issued consumable imaging agent to establish adequate tissue perfusion for the original surgery, and (ii) the Product, SPY Imaging device and imaging agent were all used in the original surgical procedure in accordance with each product’s applicable approved indication of use (and with respect to the Product, in the breast or wound fields of use) (the “Replacement Guarantee Requirements”). In order to satisfy the Company of the Replacement Guarantee Requirements, the Customer may be required to provide the Company reasonably requested evidence, including, but not limited to, the system log and system generated images, demonstrating that perfusion localized to the area of the surgical procedure was sufficient. The Replacement Guarantee Requirements will be reviewed and analyzed by the Company’s Chief Medical officer who will make a final and binding determination as to whether the Customer’s claim qualifies for the Replacement Guarantee. In the event that the revisionary surgery requires a more costly Product that originally supplied, the price of the original Product being replaced will be credited against the applicable price.

B. ‘Red Breast’ Guarantee.

In the event a Dermacell Product purchased by a Customer is implanted in a patient during a breast reconstruction procedure and such patient develops Red Breast Syndrome (as defined below) within forty (40) days of the original procedure date, Novadaq shall credit the Customer an amount equal to the effective price paid for the Dermacell Product, provided that the Customer is able to provide documentation reasonably satisfying Novadaq that Red Breast Syndrome arose from erythema of the skin and is not the result of, or is otherwise connected to, an underlying infection. In order to satisfy the Company of the foregoing, the Customer may be required to provide the Company reasonably requested evidence demonstrating the following: (a) date of original procedure; (b) the onset of Red Breast Syndrome and the status of thereof approximately forty (40) days after the procedure (unidentifiable patient photographs required), (c) that no clinical indicators of an underlying infection were present in the patient, including (i) white blood cell count at onset of Red Breast Syndrome and on or around forty (40) days after the surgery, and (ii) the results of an erythema exam conducted by a licensed plastic surgeon, and (d) a clinical course of treatment was taken to mitigate and/or reduce a potential infection (collectively, the “Red Breast Guarantee Requirements”). The Red Breast Guarantee Requirements will be reviewed and analyzed by the Company’s Chief Medical Officer who will make a final and binding determination as to whether the Customer’s claim qualifies for the Red Breast Guarantee.

Credits provided to the Customer in connection with the Red Breast Guarantee must be used towards the purchase of another Product and may not be assigned, traded, redeemed for cash, or transferred and do not provide any other benefits other than those described in these terms and conditions.

For the purposes of the Red Breast Guarantee, “Red Breast Syndrome” shall mean non-infectious erythema occurring within forty (40) days of a breast reconstruction procedure and localized over the area where the Product was implanted.

C. Terms and Conditions

- i. Claims for either of the foregoing guarantees are to be sent to the Company’s Customer Service Department at 1-844-668-2327 or customerservice@novadaq.com. Appropriate Company personnel will contact the Customer and request documentation satisfying the Replacement Guarantee Requirements or Red Breast Guarantee Requirements (as applicable).
- ii. A credit or replacement Product will not be awarded and may not be redeemed on any item where awarding or redeeming the credits, or receiving a replacement Product, is prohibited by any law, rule, statute, regulation, order, judgment, decree, treaty or other requirement having the force of law.

- iii. A claim for either guarantee will not qualify if it is determined by Novadaq, in its sole and absolute discretion, that the failure of the Product in respect of the Replacement Guarantee or the onset of Red Breast Syndrome (as applicable) was caused by or otherwise arose from, directly or indirectly: (a) negligence, (b) misrepresentation, (c) willful misconduct or (d) failure to follow user guides, clinical protocols, training manuals, instructions for use and other documents and directions provided by the Company or LifeNet Health.
- iv. The Company reserves the right to identify and contact the Customer for the mutual benefit of the Customer and the Company. The Customer consents to and agrees that on occasion, the Company may communicate special offers, information and other services to the Customer.
- v. Any disputes regarding the Program will be resolved by the Company in its sole discretion including but not limited to disputes regarding the interpretation of these terms and provisions or any administrative or other procedures as may be established by the Company from time to time. All determinations made by the Company in connection with this Program shall be binding on the Customer.
- vi. Neither the Company or LifeNet Health guarantees or makes any representation, condition, or warranty whatsoever, whether express or implied, including, without limitation, warranties of merchantability or fitness for a particular purpose. The Company or LifeNet Health shall not be liable to the Customer in any way or in any manner whatsoever for any direct or indirect (including incidental, punitive, lost profits or consequential) claims, losses, costs, damages or expenses caused by or arising from, but not limited to, the Customer's participation in the Program, reliance on the guarantee(s) or otherwise from the offers contained herein, and Customer hereby waives any right to seek such damages, claims, losses or costs.
- vii. The parties intend to comply with the federal Anti-Kickback Statute, 42 U.S.C. s 1320a-7b and intend for any discount, credit, rebate and/or other price concession (other than any warranty, including either Product guarantee) provided to Customer hereunder to be treated as a 'discount or other reduction in price' as such terms are defined under the Anti-Kickback Statute. The parties intend for any applicable warranty, including the Replacement Guarantee and Red Breast Guarantee, to satisfy the requirements of the Warranties Safe Harbor, 42 C.F.R. § 1001.952(g). Company and the Customer agree to use their best efforts to comply with any and all requirements imposed upon sellers and buyers, respectively, under 42 C.F.R. s 1001.952(h) and 42 C.F.R. s 1001.952(g), as applicable. In this regard, the Customer may have an obligation to accurately report, under any state or federal program that provides cost or charge-based reimbursement for any products or services purchased by the Customer from Novadaq, or as otherwise requested or required by any governmental agency, the net cost actually paid by the Customer after application of a discount or a warranty.
- viii. Company acknowledges that Customer is a "covered entity" under HIPAA (as defined below) and both parties agree to comply with the applicable provision of the privacy regulations within the Health Insurance Portability and Accountability Act of 1996, as enacted in 45 C.F.R. parts 160, 162, and 164 and as codified at 42 U.S.C. § 1320d, as amended from time to time ("HIPAA"). Except as permitted or required by state or federal law, each party will not use or disclose patient information in a manner that would violate the requirements of the HIPAA Security and Privacy Standards with respect to any Protected Health Information ("PHI"), under HIPAA, which Provider may have access to on behalf of Customer. Company agrees to execute Customer's standard Business Associate Agreement, at the request of the Customer. If Customer determines that Company must agree to additional terms to comply with HIPAA or any other privacy law or regulation, then Company must negotiate in good faith with Customer for mutually agreeable terms. If Customer and Company do not reach agreement, then Customer may terminate its participation under this Agreement without cost or penalty by providing 30 days' prior written notice to Company.
- ix. The Company has the right to amend these terms and conditions from time to time or terminate the Program in its entirety, or the Replacement Guarantee or the Red Breast Guarantee individually, at any time without prior written notice. Notwithstanding the foregoing, the Red Breast Guarantee shall automatically expire, and be of no force or effect, on December 31, 2017.