

PMP GATEWAY USE TERMS & CONDITIONS AGREEMENT

THIS AGREEMENT is entered into by and between _____ (hereinafter, “the Healthcare Entity”) and the State of Indiana acting by and through the Indiana Professional Licensing Agency on behalf of the Indiana Board of Pharmacy, State of Indiana (hereinafter, the Agency”). The Healthcare Entity and the Agency are hereinafter collectively referred to as “the Parties.”

WHEREAS, the Agency entered into a contract with its technology partner, Appriss Inc., (hereinafter “Appriss”) to allow “Authorized Users” (defined in paragraph 1.6. below) to access the PMP Gateway Service (defined in paragraphs 1.1 and 1.9 below) via INSPECT (defined in paragraph 1.3. below) at no charge to the Healthcare Entity; and

WHEREAS, such information may be used or disclosed only in accordance with the privacy regulations [45 CFR §§ 164.502(e); 164.504(e)] and the security regulations [45 CFR §§ 164.308; 164.314] issued pursuant to the Health Insurance Portability and Accountability Act [42 USC §§ 1320 - 1320d-8], relevant amendments effected by the American Recovery and Reinvestment Act of 2009 [Pub. L. 111-5, §§ 13400 *et seq.*] and the terms of this Agreement, or more stringent provisions of the law of the State of Indiana;

WHEREAS, Appriss is a third party beneficiary under the terms of this PMP Gateway Use Terms and Conditions Agreement (hereinafter, “the Agreement”);

WHEREAS, with respect to the access and use of the Gateway Service (defined in paragraph below) and Service Information (defined in paragraph 1.10. below), the Terms and Conditions herein shall apply; and

NOW THEREFORE, the Healthcare Entity, intending to be legally bound, agrees as follows:

1. DEFINITIONS.

1.1 Affiliate means any entity that directly, or indirectly, is controlled by, is under common control with, or controls, a party to this Agreement. For purposes of this Agreement, “control” means the ownership of or exercise of voting control or direction over shares, securities, or other voting instruments of such entity carrying fifty percent (50%) or more of the unrestricted voting rights, or ownership, or exercise of other rights or powers entitling the holder thereof to direct, cause the direction of, or to manage the business of such entity.

1.2 Authorized Users means pharmacies and/or healthcare practitioners 1) who are in professional practice as a healthcare entity; or 2) who are within a healthcare entity organization; or 3) who are within or part of a healthcare entity or healthcare entities which have a member or client relationship with a healthcare entity, which relationship is described in a valid agreement between such practitioners or entities and a healthcare entity, and that, in accordance with the terms of this Agreement:

1.2.1. Comply with all applicable Requirements;

I. Are validly licensed pharmacists or healthcare practitioners;

1.2.2. Are validly authorized by a healthcare entity with which they are associated to access PMP Data from or via INSPECT in accordance with applicable law;

1.2.3. Access or use PMP Data from or via INSPECT for healthcare decision-making related to a patient in accordance with applicable law; and

1.2.4. Properly authenticate to INSPECT, as required, when seeking to query Indiana's PMP Data or PMP Data maintained in one or more state's PMP(s).

1.3 Confidentiality of State Information. The Healthcare Entity understands and agrees that data, materials, and information, including but not limited to INSPECT data, other states' PMP data, PHI, the Gateway Service, all software provided with or utilized by the Gateway Service, and all algorithms, methods, techniques, processes related thereto and Service Information—all of which are collectively defined as “Confidential Information”—disclosed to the Healthcare Entity may contain confidential and protected information. The Healthcare Entity covenants that data, material, and information gathered, based upon or disclosed to the Healthcare Entity for the purpose of this Agreement shall not be disclosed to or discussed with third parties except as described and intended by this Agreement and as permitted pursuant to IC 35-48-7 or without the prior written consent of the Agency.

The Parties acknowledge that the services to be performed under this Agreement may require or allow access to data, materials, and information containing Social Security numbers maintained by the Agency in its databases, computer systems, or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Parties agree they shall comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by the Healthcare Entity, the Healthcare Entity agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Agreement.

Confidential Information does not include information that: (a) was in the possession of, or was rightfully known by, the recipient without an obligation to maintain its confidentiality prior to receipt; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by the recipient from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by the recipient without reliance in any way on the Confidential Information; (e) under the Health Insurance Portability and Accountability Act (HIPAA) as may be amended from time to time, is protected health information (PHI), in which case the Healthcare Entity and the Agency agree to handle such health information in accordance with the terms this Agreement; or (e) is not protected health information, as defined herein, but is defined under applicable law as personal data or personally identifiable information or the like, such as an individual's name and the corresponding social security number, driver's license number, or financial account number, in which case the receiving party agrees to securely maintain such personal data during the term of this Agreement and following its termination, if such data is permitted to be retained, to not use or disclose such personal data except as permitted under the terms of this Agreement and to comply with laws applicable to such personal data including but not limited to breach notification and disposal requirements.

1.4 Documentation means the user, installation, technical, and training publications delivered by Appriss as available in conjunction with the Gateway Service.

1.5 Employee means an employee of each of the Parties, including contractors engaged to augment staff and/or perform duties traditionally performed by employees under a party's direct supervision.

1.6 Gateway Service means a data communication service (including but not limited to an Application Programming Interface (API)), which is owned by Appriss Inc. and, in conjunction with Third Party Material(s), facilitates the transmission of requests for, and the retrieval of, controlled substance prescription related services and information, including, as applicable, PMP Data from participating PMPs for Authorized Users. The Gateway Service includes Third Party Material(s) that Appriss utilizes in connection with providing the Gateway Service.

1.7 Healthcare Entity means the same entity which made a formal request to access and use the Gateway Service (as defined in paragraph 1.8 below) by submitting to the Agency an Integration Request Form. Only Healthcare Entities may enter into an agreement with the Agency, such as this one, to gain authorized access to and the use of the Gateway Service and Service Information (defined in paragraph 1.10. below).

1.8 Individual means the person who is the subject of the PHI; this includes the person's personal representative.

1.9 INSPECT means the PMP for the State of Indiana. The term INSPECT is an acronym for **Indiana Scheduled Prescription Electronic Collection and Tracking**.

1.10 PMP or PMPs means one or more state prescription monitoring programs that collect prescription drug dispensing information from entities, such as pharmacies or healthcare centers, and authorize users who meet applicable state-designated requirements to access and use such information.

1.11 PMP Data means patient prescription history information maintained by a PMP or PMPs.

1.12 Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information found at 45 CFR Parts 160 and Part 164, Subparts A and E, and any amendments thereto.

1.13 Protected Health Information (hereinafter "**PHI**") means individually identifiable information received from or on behalf of the Agency via INSPECT, which information relates to the past, present, or future physical or mental health or condition of an individual; or the past, present or future provision of mental or physical healthcare to an individual; or the past, present or future payment for mental or physical healthcare provided to an individual as all of these terms are more fully defined in 45 CFR § 160.103, and any amendments thereto.

1.14 Requirements means applicable laws and/or rules established, from time to time, by a state related to its PMP including, but not limited to, PMP access or permitted use(s) of PMP Data, by the federal government, and/or rules issued by Appriss related to the Gateway Service

(defined in paragraph 1.9. below) which have been provided to Healthcare Entity in advance. “Requirements” may relate to INSPECT or one or more state’s PMPs, as the context requires.

1.15 Security Incident means the unauthorized access, use, disclosure, modification, or destruction of information or interference with the Gateway Services or any connected PMP, including INSPECT, but not including unsuccessful attempts of a nature occurring on a daily basis with respect to Healthcare Entity’s networks and servers.

1.16 Service Information means data that is input, transmitted, or output via the Gateway Service, including but not limited to user data, search criteria, PMP Data, and any other controlled substance prescription related services provided by Appriss.

1.17 Third-Party Material(s) means any information, services, software, or goods provided, manufactured or created by any a party other than Appriss and which Appriss licenses or utilizes with permission.

1.18 Unauthorized User means any user who is not an Authorized User as defined in paragraph 1.6. above.

1.19 Unsecured PHI is PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.

1.20 NABP means the National Association of Boards of Pharmacy.

2. PERMITTED USE.

The Healthcare Entity agrees that it shall not receive, create, use or disclose PHI or Confidential Information except as follows:

2.1 Covered Functions. To facilitate the transmission of PHI from the PMP to the Healthcare Entity in accordance with IC 35-48-7.

2.2 Disclosure Restrictions. If necessary for the proper management and administration of the Healthcare Entity or to carry out legal responsibilities of the Healthcare Entity, PHI may only be disclosed to another person/entity for such purposes if:

2.2.1. Disclosure is required by law; or

2.2.2. All uses and disclosures of PHI are in compliance with IC 35-48-7.

3. LICENSE AND USE RESTRICTIONS.

3.1 License Grant. Subject to the terms, conditions, and restrictions set forth in this Agreement, the Agency (through its relationship with Appriss) grants to the Healthcare Entity a limited, non- exclusive, non-transferable license to access and use the Gateway Service solely for internal use by the Healthcare Entity and its Authorized Users. Any rights not expressly granted in this Agreement are expressly reserved. Use of the Gateway Service and/or Service

Information constitutes the Healthcare Entity's and its Authorized Users' agreement to be bound by the terms of this Agreement. The Healthcare Entity shall only use the Service Information to assist an Authorized User in his or her professional healthcare decision-making with respect to a specific patient encounter; provided, however, that the Healthcare Entity agrees and acknowledges that under no circumstance shall the Service Information replace an Authorized User's professional judgment.

3.2 Restrictions. The Healthcare Entity shall not directly or indirectly: (a) reverse engineer, disassemble, or decompile the Gateway Service or any portion thereof; (b) sublicense, rent, lease or otherwise transfer the Gateway Service, or any portion thereof; (c) use the Gateway Service for any third-party use including, but not limited to, training of third parties, facilities management, time-sharing, service bureau use, or data processing; (d) publish any results of benchmark tests run on the Gateway Service; (e) attempt to circumvent or render inoperative any usage restriction features contained in the Gateway Service; or (f) remove, obscure, alter, or move Appriss' and its licensors' proprietary notices or other notices on the Gateway Service or Documentation. Further, the Healthcare Entity shall not permit any third party to engage in the acts prohibited in this paragraph.

3.3 Agency Determinations. The Healthcare Entity acknowledges that the Agency determines whether Authorized Users are allowed access and/or utilize INSPECT PMP Data or access and/or utilize via INSPECT the PMP Data of other states' PMPs through the Gateway Service. The Healthcare Entity agrees to provide any and all required information, affirmations, and agreements to the Agency so that the Agency may make such determinations. Further, the Healthcare Entity acknowledges that the authorization granted by Appriss when directed by the Agency to enable Authorized Users to access or use the Gateway Service or Service Information does not constitute an endorsement by Appriss or its licensors of such entities or users, or the services or products provided by such entities or users, including, but not limited to, medical services, pharmacy services, or quality of care.

3.4 Access and Use Policies. The Healthcare Entity shall maintain and enforce policies and procedures to limit access and use of the Gateway Service and Service Information as follows:

3.4.1. Only Authorized Users may access or use the Gateway Service;

3.4.2. Authorized Users may only access or use the Gateway Service and patient-related Service Information in accordance with applicable state and federal law and regulations and the terms and conditions of this Agreement;

3.4.3. The Healthcare Entity shall provide proper training to its Authorized Users on accessing and using the Gateway Service and Service Information;

3.4.4. The Healthcare Entity shall ensure that Gateway Service and Service Information, and its systems used in connection therewith, are accessed and used in a secure manner in accordance with applicable state and federal law and regulations and the terms of this Agreement; and

3.4.5. Copies of said policies and procedures shall be provided upon request of the Agency.

3.5 Use of Service Information. The Healthcare Entity shall not, either directly or indirectly, itself or through any agents or third parties: (a) request, compile, store, maintain or use the Service Information to build or enhance its own database or for any other purpose except to fulfill any applicable legal requirements in connection with a patient medical record or as permitted under this Agreement or (b) copy or otherwise reproduce any Service Information.

3.6 Credentialing and Validation. The Healthcare Entity shall ensure that its credentialing and identity validation processes adhere to all applicable laws and regulations of the State of Indiana; all federal laws and regulations; and all rules and Requirements for the credentialing and validation of pharmacists and/or healthcare practitioners and their duly delegated agent(s) (if any) as allowed by state or federal statutes, regulations, or rules, who seek to access or use the Gateway Service or Service Information, as well as any other entities, including but not limited to employees, contractors, or others who do not provide patient care but who seek to access or use the Gateway Service and/or Service Information.

3.7 Responsibility for Use. The Healthcare Entity shall be responsible if use of or access to the Gateway Service under Healthcare Entity's license is improper or illegal or otherwise does not conform to the terms of this Agreement. The Healthcare Entity acknowledges that neither the Agency nor Appriss is responsible for any access to or use of the Gateway Service or Service Information by the Healthcare Entity, or Healthcare Entity's Authorized Users, or any of the Healthcare Entity's users, pharmacists, healthcare practitioners, employees, patients, affiliates, agents, contractors, or others who access or seek to access the Gateway Service or Service Information through the Healthcare Entity.

3.8 Processes. The Healthcare Entity is responsible for adopting and enforcing reasonable processes designed to confirm Authorized Users and others comply with applicable law, regulations, and Requirements to access, use, and maintain the security of the Gateway Service and Service Information. The Healthcare Entity shall be responsible for its and its employees', staff's, contractors', and affiliates' compliance with the terms of this Agreement.

3.9 Complaints. The Healthcare Entity agrees to promptly investigate all complaints and claims that a Healthcare Entity Employee, agent, contractor, or Affiliate failed to comply with laws, regulations, or rules applicable to Service Information or failed to comply with any Requirements for access to or use of the Gateway Service or Service Information. The Healthcare Entity agrees to promptly report the results of its investigation to the Agency.

3.10 Investigations. The Healthcare Entity is responsible for investigating all complaints and claims that an Authorized User or the Healthcare Entity failed to comply with any laws, regulations, or rules applicable to the Gateway Service or Service Information or any Requirements for access to or use of Service Information. The Healthcare Entity acknowledges that State of Indiana may have the authority to investigate, take action, sanction, or discipline those who improperly access or use the Gateway Service or Service Information, including but not limited to Authorized Users. The Healthcare Entity agrees it is obligated under the terms of this Agreement promptly report the results of its investigation to the Agency.

3.11 Compliance with Law. The Healthcare Entity is responsible for compliance with all local, state, and federal laws, regulations, and rules applicable to PMP Data, personally identifiable information, and health information organizations including, but not limited to, confidentiality, security, registration, and licensure requirements.

3.12 Conduct. The Healthcare Entity, the Healthcare Entity's Employees, agents, contractors, Affiliates, and Authorized Users shall not engage in unlawful, objectionable, or malicious conduct or activities related to the Gateway Service, the Gateway Service servers, or Service Information including, but not limited to, the transmission or distribution of viruses, computer worms, Trojan horses, malicious code, denial of service attacks, unsolicited commercial e-mail, or the like; the unauthorized entry to any other machine accessible via the Gateway Service; the unauthorized submission or transmission of data or material protected by a proprietary right of a third party; or the submission of otherwise objectionable information, material, or communications.

3.13 Documentation. The Healthcare Entity shall comply with all requirements specified in the Documentation concerning access to the Service Information and use or display of Service Information.

4. DUTY TO MINIMIZE USE OF PHI.

The Healthcare Entity agrees that it shall not request, use or release more than the minimum necessary amount of PHI to accomplish the purpose of the use, disclosure, or request.

5. UNAUTHORIZED DISCLOSURE AND INCIDENT REPORTING; REMEDIATION; AND PRIVACY AND SECURITY BREACH NOTIFICATIONS.

5.1 Incident Reporting. The Healthcare Entity shall report to the Agency the following:

5.1.1. Any use or disclosure of PHI which is not in compliance with the terms of this Agreement or applicable law, regulations, or rules of which it becomes aware; and

5.1.2. Any Security Incident of which it becomes aware.

5.1.3. Within twenty-four (24) hours of the discovery and verification of a suspected reportable Security Incident as defined in the preceding paragraph, the Healthcare Entity shall notify the Agency of the existence and nature of the Security Incident as understood at that time. The Healthcare Entity shall immediately investigate the Security Incident and within seventy-two (72) hours of discovery shall provide the Agency, in writing, a report describing the results of the Healthcare Entity's investigation. The report shall be based on best available information known at the time. If the investigation is ongoing, the report must reflect that. The Agency may request updates to the report, and the Healthcare Entity shall provide an addendum as soon as possible upon completion of the investigation. The report shall include the following information.

5.1.3.1. What data elements were involved, the extent of the data involved in the incident, and the identification of affected individuals, if applicable;

5.1.3.2. A description of any persons or entities known or reasonably believed to have improperly used or disclosed PHI, or to have been responsible for the incident;

5.1.3.3. A description of where the PHI is believed to have been improperly transmitted, sent, or utilized, if applicable;

5.1.3.4. A description of the probable causes of the Security Incident;

5.1.3.5. A description of the proposed plan for preventing similar future incidents, including ongoing risk remediation plan approval; and

5.1.3.6. Whether the Healthcare Entity believes any federal or state laws or regulations which require notifications to individuals have been triggered.

5.1.4. Reporting and other communications made to the Agency under this section must be made to the Agency's HIPAA privacy officer as identified below:

Kara Slusser
317- 234-8039
KSlusser@pla.IN.gov
Indiana Professional Licensing Agency
402 W. Washington Street, Room W072
Indianapolis, IN 46204
IPLA Fax: 317-233-4236

5.2 Healthcare Entity Mitigation. In addition, the Healthcare Entity agrees to mitigate, to the extent practicable, any harmful effect that is known to the Healthcare Entity of a use or disclosure of PHI by the Healthcare Entity in violation of the requirements of this Agreement, and report its mitigation activity back to the Agency. The Healthcare Entity shall preserve all evidence of the violation and provide such evidence to the Agency upon request.

5.3 Coordination. The Healthcare Entity shall coordinate with the Agency to determine additional, specific actions which shall be required for mitigation of the breach, which may include notification to the individuals, entities, or other authorities. Notifications, if any, will be made at the direction of the Agency.

5.4 Incident costs. The Healthcare Entity shall bear all reasonable costs directly arising from a Security Incident arising directly out of the breach of unsecured PHI under its care, custody, or control which arise out of a material breach of the obligations under this Agreement. This may include, but is not be limited to, actual costs associated with notifying affected individuals as required by law. It also may include, if required by law or regulation, the actual cost of investigation, remediation, and assistance to affected individuals, including services such as a standard level of credit-monitoring.

6. SUBCONTRACTOR OBLIGATIONS.

The Healthcare Entity shall ensure that all of its Subcontractors and agents are bound, in writing, by the same restrictions and obligations contained in this Agreement, including but not limited to the obligation to implement reasonable and appropriate safeguards to protect information, whenever PHI is made accessible to such Subcontractors or agents. The Healthcare Entity shall obtain Agency approval prior to entering into such agreements with Subcontractors and agents.

7. ACCESS TO PHI

The Healthcare Entity shall make all PHI and related information maintained by Healthcare Entity or its agents or Subcontractors available as soon as practicable following a request for PHI, but within fifteen (15) days, to the extent necessary to fulfill the following obligations:

7.1 Inspection and Copying. Make the PHI maintained by Healthcare Entity or its agents or subcontractors in Designated Record Sets available to the Agency for inspection and copying to enable the Agency to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524 and consistent with Section 13405 of the HITECH Act.

7.2 Accounting. To account for disclosures of PHI in accordance with the provisions of the Privacy Rule, including, but not limited to 45 CFR § 164.528 and the HITECH Act; and shall make all PHI in its possession available to the Agency as soon as practicable following a request for PHI, but within fifteen (15) days, to fulfill the Agency's obligation to amend PHI and related information in accordance with 45 CFR § 164.526, and shall, as directed by Agency, incorporate any amendments or related statements into the information held by the Healthcare Entity and any subcontractors or agents.

8. PROPRIETARY RIGHTS.

8.1 Ownership. Agency and/or its licensors shall be the sole owner of all intellectual property rights, whether perfected or recognized under applicable law, in and to: (i) the Gateway Service, as described herein, and the Documentation related thereto (but excluding the PMP Data); (ii) any deliverables and/or work product developed while providing the Gateway Service; and (iii) enhancements, modifications or derivative works to the Gateway Service. Agency and its licensors may utilize all ideas, suggestions and feedback, or the like that the Healthcare Entity provides to the Agency or otherwise makes with respect to Gateway Services without any obligation to the Healthcare Entity. To the extent that the Healthcare Entity has or later obtains any intellectual property rights in and to the Gateway Service or any future enhancement or modification thereto or any part thereof by operation of law or otherwise, the Healthcare Entity hereby disclaims such rights, and assigns and transfers such rights exclusively to Agency or Agency's identified licensor, and agrees to provide reasonable assistance to Agency to give effect to such assignment and to protect, enforce and maintain such rights.

8.2 Protection of Confidential Information. Each party may furnish the other party with Confidential Information. Neither party shall (a) directly or indirectly disclose or cause to be disclosed, or otherwise transfer any Confidential Information of the other party to any third party; or (b) utilize Confidential Information for any purpose, except as expressly contemplated

by this Agreement, or otherwise authorized in writing by the other party. Each party shall limit the disclosure of the other party's Confidential Information to Affiliates and Employees with a need-to-know and who have been advised of and have agreed in writing to maintain the confidential nature thereof or third party consultants with a need-to-know and who have been contractually obligated to maintain such confidentiality through signature of a written nondisclosure agreement acknowledging the non-disclosure obligations of this Agreement;. Each party shall provide the other party with copies of any such nondisclosure agreements upon written request. Each party shall be liable for any breach by any Employee, Affiliate, or third party consultant of the confidentiality obligations contained herein.

8.3 Required Disclosures. In the event one party is required under applicable law, rules, regulations, or court or administrative order to disclose Confidential Information of the other party, the first party shall use commercially reasonable efforts to: (a) give at least ten (10) days prior written notice of such disclosure to the other party; (b) limit such disclosure to the extent possible; and (c) make such disclosure only to the extent so required.

9. WARRANTIES.

EXCEPT AS PROVIDED IN THIS AGREEMENT, THE AGENCY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GATEWAY SERVICE OR THE SERVICE INFORMATION, OR ANY SUPPORT OR OTHER SERVICES PROVIDED BY APPRISS INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. AGENCY DOES NOT WARRANT THAT: (a) THE GATEWAY SERVICE WILL OPERATE UNINTERRUPTED; (b) ALL GATEWAY SERVICE ERRORS CAN BE CORRECTED; (c) THE GATEWAY SERVICE MEETS ALL OF THE HEALTHCARE ENTITY'S BUSINESS REQUIREMENTS; OR (d) THE PMP DATA IS COMPLETE, ACCURATE OR ERROR-FREE. THE HEALTHCARE ENTITY ACKNOWLEDGES THAT IT HAS ASSESSED FOR ITSELF THE SUITABILITY OF THE GATEWAY SERVICE FOR ITS REQUIREMENTS. HEALTHCARE ENTITY ACKNOWLEDGES AND AGREES THAT PMP DATA IS PROVIDED BY THE PMPs AND THAT NEITHER AGENCY NOR ITS LICENSORS SHALL HAVE ANY LIABILITY IN THE EVENT THAT A PMP DENIES THE HEALTHCARE ENTITY'S REQUEST TO ACCESS PMP DATA OR REVOKES THE HEALTHCARE ENTITY'S ACCESS TO PMP DATA, OR IF PMP DATA IS UNAVAILABLE FOR ANY REASON. THE HEALTHCARE ENTITY ACCEPTS THE PMP DATA AND ANY PRESCRIPTION HISTORY SERVICES BASED ON THE PMP DATA ON AN "AS IS" "AS AVAILABLE" BASIS.

10. INDEMNIFICATION.

The Healthcare Entity shall indemnify and hold harmless the Agency, the NABP, and each of their respective officers, directors, Employees, members, contractors, subsidiaries, and Affiliates, against any third party claim, including costs and reasonable attorneys' fees, in which any of they are named as a result of: (a) the exercise or practice of any right granted hereunder; (b) the breach of any material term or condition of this Agreement by the Healthcare Entity, or its Employees, agents, contractors, Affiliates, or Authorized Users; (c) any access or use of the

Gateway Service or Service Information by the Healthcare Entity, or its Employees, agents, contractors, Affiliates, or Authorized Users; (d) any medical services, products or medication offered or sold by the Healthcare Entity or its Employees, agents, contractors, or Affiliates, or Authorized Users; (e) any act or omission of negligence or willful misconduct of the Healthcare Entity or its affiliates; or (f) violations of applicable law, regulations, rules or Requirements by the Healthcare Entity or Authorized Users in connection with the performance of this Agreement, including access or use of PMP Data.

11. LIMITATIONS OF LIABILITY.

THE AGENCY SHALL NOT BE LIABLE IN ANY AMOUNT FOR ANY DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER ARISING, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. COMPLIANCE AND HHS ACCESS.

The Healthcare Entity shall make available to the Agency and to the Secretary of the U.S. Department of Health and Human Services any and all internal practices, documentation, books, and records related to the use and disclosure of PHI received from the Agency, or created or received by the Healthcare Entity on behalf of the Agency. Such access is for the purpose of determining the Agency's compliance with HIPAA, regulations promulgated by the United States Department of Health and Human Services, and any amendments thereto. Any non-compliance by the Healthcare Entity with the terms of this Agreement or the privacy and security regulations shall be a breach of this Agreement if the Healthcare Entity knew of the breach and failed to take immediate and reasonable steps to cure the non-compliance. The Healthcare Entity agrees that the Agency has the right to immediately terminate this Agreement and seek relief, including the right to contract for replacement service through another entity at the same cost, with the Healthcare Entity responsible for paying any difference in cost, if the Agency determines that the Healthcare Entity has violated a material term of the Agreement.

13. OWNERSHIP AND DESTRUCTION OF INFORMATION.

The PHI and any related information created or received from or on behalf of the Agency is and shall remain the property of the Agency. The Healthcare Entity agrees that it acquires no title in or rights to the information, including any de-identified information. Upon termination of this Agreement, unless otherwise required by law, the Healthcare Entity agrees, at the option of the Agency, to return or securely destroy all PHI created or received from or on behalf of the Agency following 74 FR 19006 Guidance Specifying the Technologies and Methodologies That Render PHI Unusable, Unreadable, or Indecipherable to Unauthorized Individuals for Purposes of the Breach Notification Requirements under Section 13402 of Title XIII. The Healthcare Entity agrees that it will not retain any copies of PHI except as required by law. If PHI is destroyed, the Healthcare Entity agrees to provide the Agency with appropriate documentation or certification evidencing such destruction. If return or destruction of all PHI and all copies of PHI is not feasible, the Healthcare Entity agrees to extend the protections of this Agreement to such

information for as long as it is maintained and to limit further uses and disclosures to those which make return or destruction infeasible. Termination of this Agreement shall not affect any of its provisions that, by wording or nature, are intended to remain effective and to continue in operation.

14. TERM AND TERMINATION.

14.1 Term. The authorized representatives of each party, by signing this Agreement, signify their intention to be bound by the terms herein. This Agreement shall become effective and deemed executed upon the signature of the Agency's Authorized Representative and shall remain in effect unless it is terminated by agreement of the Parties or unless other termination actions as set forth below in paragraph 14.2 are initiated. Any amendment altering or adding terms to this Agreement must be in writing and signed by the authorized representatives of each party in order to be binding, except those changes allowed by the terms of paragraph 18 below which are necessitated by modifications to state and federal law. Each party shall review this Agreement at least one per year to determine if any changes or additions necessitating a written amendment are needed.

14.2 Termination. The Agency may terminate this Agreement if at any time it determines that the Healthcare Entity has violated a material term of this Agreement. In the alternative, the Agency may, at its sole discretion, take any action provided for in this Agreement, may suspend this Agreement, or may allow the Healthcare Entity a reasonable period of time to cure before termination, when such action is determined to be in the Agency's best interest. Upon suspension of this Agreement, the Agency may, at its sole discretion, require the Healthcare Entity to comply with the requirements of the above Ownership and Destruction of Information provisions in paragraph 13 above in the same manner as though this Agreement had been terminated. This paragraph shall in no way alter, amend, limit or change the terms and conditions in this Agreement as they relate to performance of this Agreement, and shall solely relate to violation of the terms of this Agreement.

14.3 Effect of Termination. Upon termination of this Agreement, (a) use of the Gateway Service will immediately cease; and (b) all obligations concerning such Gateway Service will cease. Within thirty (30) days of termination, the Healthcare Entity shall destroy all copies of the applicable Gateway Service Documentation, any other Confidential Information, whether such Confidential Information is the Agency's or a third party's, and will certify to the Agency that all copies have been destroyed.

15. SURVIVORSHIP.

The obligations to safeguard the confidentiality, privacy and security of PHI and Confidential Information imposed herein shall survive the termination of this Agreement.

16. INJUNCTIVE RELIEF.

Notwithstanding any rights or remedies under this Agreement or provided by law, the Agency retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of

PHI by the Healthcare Entity, any of its Subcontractors or agents, or any third party who has received PHI from the Healthcare Entity.

17. BINDING EFFECT.

Subject to the limitations on assignment provided elsewhere in this Agreement, the Agreement shall be binding on the parties and their successors, but neither party may assign the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. This Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the Agency and the Healthcare Entity.

18. AMBIGUITIES, STRICT PERFORMANCE, AND PRIORITIES.

Any ambiguities in this Agreement shall be resolved in favor of an interpretation that promotes compliance with Indiana law and federal law, including but not limited to HIPAA and regulations promulgated thereunder and HITECH. Any conflicts in the security and privacy terms and conditions of this agreement with those in this Agreement shall be interpreted to favor of the terms and conditions that promote greater degree of security and privacy. The parties agree that any modifications to those laws shall modify the obligations of the Parties under this Agreement without the need for formal amendment of the Agreement. Any other amendments to this Agreement shall not be effective without the written agreement of both parties, as stated in paragraph 14.1. This Agreement shall be construed in accordance with the plain meaning of its language and neither for nor against the Agency, which is the drafting party. The headings in this Agreement are for convenience only and will not affect the interpretation of any of the Agreement terms and conditions. If at any time either party fails to demand strict performance by the other party of any term or terms of this Agreement, such failure will not be construed as a waiver of any such term or terms, and either party may at any time demand strict and complete performance by the other party.

19. NOTICE.

19.1 For any notice under this Agreement to be effective, the notice must be made in writing and sent to the address of each party's Appropriate Contact provided below.

19.2 Notwithstanding section 5 of this Agreement, any notice to the other party pursuant to this Agreement shall be deemed provided if sent by first class United States mail, postage prepaid, as follows:

To The Agency:

The Indiana State Board of Pharmacy
Attn: Kara Slusser Indiana Professional
Licensing Agency 402 West
Washington Street, Room W072
Indianapolis, IN 46204
317-234-8039
IPLA Fax: 317-233-4236

To The Healthcare Entity:

Name of Organization: _____

Attn: _____

Address: _____

City: _____

State: _____

Zip Code: _____

Phone No. _____

FAX No. _____

20. AUTHORITY TO BIND HEALTHCARE ENTITY.

The signatory for the Healthcare Entity represents that he/she has been duly authorized to execute this Agreement on behalf of the Healthcare Entity and has obtained all necessary or applicable approvals to make this Agreement fully binding upon the Healthcare Entity when his/her signature is affixed to this Agreement and the Agreement is accepted by the Agency on behalf of the State of Indiana.

21. TERMS OF PAYMENT.

Upon the effective date of this Agreement, the Agency will initiate the provision of the Gateway Service to the Healthcare Entity at no charge; the Agency shall be responsible for paying the Healthcare Entity's licensing fee for access to the Gateway Service and Service Information.

Should funding to pay these licensing fees become unavailable to the Agency or should other contingencies occur which prevent the Agency from paying all or part of the Healthcare Entity's Gateway Service licensing fees, the Agency reserves the right to require all or partial payment from the Healthcare Entity to ensure continued service. The Agency shall negotiate with the Healthcare Agency on the amount and terms of such payment. Any necessary changes or additions to this Agreement regarding payment of license fees shall be effective only upon the execution of a written amendment to this Agreement or upon the execution of an entirely new Agreement between the Parties.

22. GOVERNING LAW.

The terms of this Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Any legal action by either party must be brought in the state courts of Indiana.

IN WITNESS WHEREOF, the Parties, through their duly Authorized Representatives whose signatures are affixed hereto, agree to the foregoing and cause this Agreement to be executed as of the day and year last written below.

Authorized Representative for the
Healthcare Entity

Authorized Representative for the
Indiana Professional Licensing Agency

Signature of _____

Signature of Deborah J. Frye

Title: _____
who is the Authorized Representative
the Healthcare Entity:

Executive Director
Indiana Professional Licensing Agency

Date: _____

Date: _____

[THE BALANCE OF THIS PAGE IS INTENTIONALLY LEFT BLANK]