



Arizona State Board of Pharmacy
Controlled Substances Prescription Monitoring Program
P.O. Box 18520
Phoenix, Arizona 85005-8520
Fax 602-771-2748
pmp@azpharmacy.gov

PMP GATEWAY TERMS & CONDITIONS AGREEMENT (Non-Negotiable)

THIS AGREEMENT is entered into by and between _____
(referred to as "Healthcare Entity") and the Arizona Board of Pharmacy (referred to as "Board").

WHEREAS, the Board entered into an agreement with its technology partner Appriss Inc. ("Appriss" "Service Provider") to allow 'Authorized Users' (as defined below) in Arizona to access the PMP 'Gateway Service' (as defined below) at no charge; and

WHEREAS, such information may be used or disclosed only in accordance with Arizona Revised Statutes ("A.R.S.") § 36-2601, *et seq.* and the rules promulgated thereunder, Arizona Administrative Code ("A.A.C.") R4-23-501, *et seq.*, and the terms of this Agreement;

WHEREAS, Appriss is a third-party beneficiary under the terms of these Gateway License Terms and Conditions Agreement (this "Agreement");

WHEREAS, with respect to the access and use of the Gateway Service and Service Information the following Terms and Conditions shall apply; and

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

1. DEFINITIONS.

1.1. Protected Health Information ("PHI") means information in any form or medium that relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual; or the past, present or future payment for health care provided to an individual, that identifies the individual or with respect to which there is a reasonable basis to believe can be used to identify the individual, that the Parties to this Agreement receive, create, or use under the Agreement. The term PHI applies to the original data and to any data derived or extracted from the original data.

1.2. 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.

1.3. Healthcare Entity means an organization of any size that has authorized PMP Users and chooses to connect its EMR system to the PMP Gateway and is the organization listed in the Integration Request Form.

1.4. Individual means the person who is the subject of the PHI.

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

1.6. Affiliate means any entity that directly, or indirectly, is controlled by, is under common control with, or controls, a party. “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.

1.7. Authorized Users means pharmacists or health care practitioners within Healthcare Entity’s organization or health care entities that have a member or client relationship with Healthcare Entity, which is described in a valid agreement between such practitioners or entities and Healthcare Entity, and that, in accordance with the terms of this Agreement:

1.7.1. Comply with applicable Requirements;

1.7.2. Are validly licensed;

1.7.3. Are validly authorized by the Healthcare Entity to access PMP Data in accordance with applicable law;

1.7.4. Access or use PMP Data for the purposes of providing medical care to the practitioner’s patient(s), in accordance with applicable law; and

1.8. Confidential Information means non-public information. Confidential Information of patients includes personal data, Protected Health Information (PHI), and security information.

1.9. Appriss Confidential Information includes, without limitation, the Gateway Service, all software provided with or utilized by the Gateway Service, and all algorithms, methods, techniques and processes related thereto. Appriss 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 Appriss Confidential Information;

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

1.11. Employee means an employee of each party, including contractors engaged to augment staff and/or perform duties traditionally performed by employees under such party’s direct supervision.

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

1.13. NABP means the National Association of Boards of Pharmacy.

1.14. Arizona PMP means the PMP for the Arizona Board of Pharmacy.

1.15. PMP or PMPs means one or more state prescription monitoring programs that collect prescription drug dispensing information from entities such as pharmacies and permit users who meet applicable state-designated requirements to access such information.

1.16. PMP Data means prescription history information maintained by PMPs.

1.17. 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 Service Provider related to the Gateway Service.

“Requirements” may relate to one or more state PMPs, as the context requires.

1.18. Appriss Service Information means Appriss proprietary data that is input, transmitted, or output via the Gateway Service, related to controlled substance prescription related services provided by Service Provider.

1.19 PMP Usage Data means information regarding the use of the Arizona PMP by an authorized user, including but not limited to user data, search criteria, and time and date of search.

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

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 A.R.S. § 36-2601, *et seq.*, and the rules promulgated thereunder.

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 applicable state and federal laws governing confidentiality and security of PHI, including, if applicable, the Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA).

3. LICENSE AND USE RESTRICTIONS.

3.1 License Grant. Subject to the terms, conditions and restrictions set forth in this Agreement, the Board (through its relationship with the Service Provider) grants to Healthcare Entity a limited, non-exclusive, non-transferable license to use the Gateway Service solely for internal use by Healthcare Entity and its Authorized Users. Any rights not expressly granted in this Agreement are expressly reserved. Use of the Gateway Service, Appriss Service Information, or PMP data constitutes the user's agreement to be bound by the terms of this Agreement. Healthcare Entity shall only use the PMP data and Appriss Service Information to assist an Authorized User in his or her professional health care decision-making with respect to a specific patient encounter; provided, however, that Healthcare Entity agrees and acknowledges that under no circumstance shall the Appriss Service Information replace an Authorized User's professional judgment.

3.2 Restrictions. Healthcare Entity shall not, or permit any third party to, 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.

3.3 State Determinations. Healthcare Entity shall ensure that only Authorized Users may access or utilize the state's PMP Data through the Gateway Service. Healthcare Entity agrees to provide the required information, affirmations, and agreements to Service Provider and/or the Board. Further, the authorization granted by Service Provider when directed by a state PMP to enable Authorized Users to access or use the Gateway Service or Service Information does not constitute an

endorsement by Service Provider 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. Healthcare Entity will maintain and enforce policies and procedures to limit access and use of the Gateway Service, Service Information, PMP data, and PMP user data 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 PMP data in accordance with the terms and conditions of this Agreement and with their obligations under A.R.S. § 36-2601, *et seq.*, and the Terms and Conditions For Prescriber and Dispenser Use of the Arizona Prescription Monitoring Program;

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

3.4.4. Healthcare Entity shall ensure that its rules for validating that only Authorized Users seek access to or use the Gateway Service, and employ processes to ensure that employees and contractors who do not provide patient care do not have access to use the Gateway Service.

3.4.5. Healthcare Entity shall ensure that its system, used in connection with the Gateway Service are accessed and used in a secure manner in accordance with applicable law and the terms of this Agreement; and

3.4.6. Copies of said policies and procedures shall be provided upon request of the Board.

3.4.7. Patient Data. Healthcare Entity shall not, either directly or indirectly, itself or through any agents or third party, request, scrape, export, compile, store, maintain or in any way take into its electronic systems any of the patient personal data, PHI, and patient security information to which it is given access through the Gateway Service.

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

3.7 Responsibility for Use. Healthcare Entity shall be responsible if use of or access to the Gateway Service is improper or illegal or otherwise does not conform to the terms of this Agreement. Service Provider is not responsible for any access or use of the Gateway Service or Appriss Service Information, PMP data, or PMP user data by Healthcare Entity, Authorized Users, or any of Healthcare Entity's users, pharmacists, practitioners, employees, patients, affiliates, agents or contractors, or any state employees, agents, affiliates, or contractor.

3.8 Processes. Healthcare Entity is responsible for adopting and enforcing reasonable processes designed to confirm Authorized Users and others comply with applicable law and requirements to access, use, and maintain the security of the Gateway Service and Appriss Service Information. 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. Healthcare Entity agrees to promptly investigate all complaints and claims that a Healthcare Entity employee, agent, contractor, or affiliate failed to comply with laws or rules applicable to Service Information or failed to comply with any Requirement for access or use of the Gateway Service, Appriss Service Information, or PMP data. Healthcare Entity agrees to promptly report the results of its investigation to the Board, and any requesting state.

3.10 Investigations. Healthcare Entity is responsible for investigating all complaints and claims that an Authorized User or Authorized Entity failed to comply with laws or rules applicable to the Gateway

Service or Service Information or any Requirement for access or use of Service Information. Healthcare Entity acknowledges that states may have the authority to investigate, take action, sanction, or discipline those who improperly access or use the Gateway Service, Appriss Service Information, or PMP data, including but not limited to Authorized Users. Healthcare Entity agrees to promptly report the results of its investigation to the Board and any requesting state.

3.11 Compliance with Law. Healthcare Entity is responsible for compliance with all local, state, and federal laws 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. Healthcare Entity employees, agents, contractors, affiliates, and Authorized Users will not engage in unlawful, objectionable, or malicious conduct or activities related to the Gateway Service, the Gateway Service servers, Appriss Service Information, or PMP data 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. Healthcare Entity shall comply with all requirements specified in the Documentation concerning access to the Appriss Service Information and use or display of Appriss Service Information.

4. MINIMIZE USE OF PHI. The Healthcare Entity agrees that it will 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 AND REMEDIATION AND PRIVACY AND SECURITY BREACH NOTIFICATION.

5.1 Incident Reporting.

5.1.1. Healthcare Entity shall report to the Board the following:

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

5.1.1.2. Any security incident of which it becomes aware. For purposes of this Agreement, “security incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

5.1.2 Within 24 hours of discovery of a suspected reportable incident as described in 5.1.1 above, Healthcare Entity shall notify Covered Entity and the Board of the existence and nature of the incident as understood at that time. Healthcare Entity shall immediately investigate the incident and within 72 hours of discovery shall provide the Board in writing, a report describing the results of Healthcare Entity’s investigation, including:

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

5.1.2.2 A description of the unauthorized persons known or reasonably believed to have improperly used or disclosed PHI, or to have been responsible for the incident;

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

5.1.2.4 A description of the probable causes of the incident;

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

5.1.2.6 Whether the Healthcare Entity believes any federal or state laws requiring notifications to individuals are triggered.

5.1.3 Reporting and other communications made to the Board under this section must be made to Arizona Prescription Monitoring Program:

Arizona Prescription Monitoring Program

Elizabeth Dodge, CSPMP Director

P.O. Box 18520

Phoenix, AZ 85005

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

5.3 Coordination. Healthcare Entity will coordinate with the Board to determine additional, specific actions that will 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 Board. Healthcare Entity shall assist the Board, including testifying, in any proceedings or hearings, which may be undertaken for any security violation.

5.4 Incident costs. Healthcare Entity shall bear all costs associated with the incident involving PHI under its care, custody, or control that arises out of a material breach of the obligations under this Agreement. This may include, but not be limited to, costs associated with notifying affected individuals if required by law. It also may include, if required by law, the cost of investigation, remediation, and assistance to individuals including services such as a standard level of credit-monitoring such as AllClearID's standard service or other comparable service.

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

7. PROPRIETARY RIGHTS.

7.1 Ownership. "Service Provider Property" means all of the following: (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. Subject only to the licenses expressly granted in this Agreement, as between Service Provider, the Board and Healthcare Entity, Service Provider shall be the sole owner of all intellectual property rights in and to the Service Provider Property, regardless of whether perfected or recognized under applicable law. Third-Party Materials, including any enhancements, modifications, or derivative works, are and shall remain the exclusive property of Service Providers' suppliers or licensors.

8. WARRANTIES. THE BOARD MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GATEWAY SERVICE, THE APPRISS SERVICE INFORMATION, PMP DATA, PMP USER DATA OR ANY SUPPORT OR OTHER SERVICES PROVIDED BY APPRISS INCLUDING, WITHOUT

LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. APPRISS 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 HEALTHCARE ENTITY'S BUSINESS REQUIREMENTS; OR (d) THE PMP DATA IS COMPLETE, ACCURATE OR ERROR-FREE.

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. HEALTHCARE ENTITY ACCEPTS THE PMP DATA AND ANY PRESCRIPTION HISTORY SERVICES BASED ON THE PMP DATA ON AN "AS IS" "AS AVAILABLE" BASIS.

9. INDEMNIFICATION Healthcare Entity shall be responsible for its own actions and those of its Employees, agents, contractors, Affiliates or Authorized Users in performance of the terms of this Agreement, and for any third party claim in which the Board is 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 Healthcare Entity, Healthcare Entity employees, agents, contractors, or affiliates, or Authorized Users; (c) any access or use of the Gateway Service, Service Information, PMP data or PMP user data by Healthcare Entity, any user of Healthcare Entity, Healthcare Entity Employees, agents, contractors, or affiliates, or Authorized Users; (d) any medical services, products or medication offered or sold by Healthcare Entity, Healthcare Entity Employees, agents, contractors, or affiliates, or Authorized Users; (e) any act or omission of negligence or willful misconduct of Healthcare Entity or its affiliates; or (f) violations of applicable law or the Requirements by Healthcare Entity, or Authorized Users, in connection with the performance of this Agreement, including access or use of PMP Data.

10. LIMITATIONS OF LIABILITY. THE BOARD 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.

11. COMPLIANCE AND HHS ACCESS. The Healthcare Entity shall make available to the Board 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 Board, or created or received by the Healthcare Entity on behalf of the Board. Such access is for the purpose of determining the Board's compliance with HIPAA, regulations promulgated by the United States Department of Health and Human Services, and any amendment 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 Board 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 Board determines that the Healthcare Entity has violated a material term of the Agreement.

12. TERM AND TERMINATION.

12.1 Term. This Agreement shall be effective upon the signature of both parties and shall remain in effect through December 1, 2019 unless other termination actions as set forth herein are initiated. If intending to renew this Agreement, the Board shall give written notice to Healthcare Entity prior to expiration. Upon mutual agreement of both parties, such renewal shall begin at the start of the next

biennium and shall not extend beyond the expiration of the biennium in which the renewal commences.

12.2 Termination. The Board may terminate this agreement if at any time it determines that the Healthcare Entity has violated a material term of this PMP Gateway Terms & Conditions. In the alternative, the Board may, at its sole discretion, take any action provided in this Agreement, may suspend the 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 Board's best interest. Upon suspension of the agreement, the State may, at its sole discretion, require the Healthcare Entity to comply with the requirements of the above Ownership paragraph, in the same manner as though the 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 the PMP Gateway Terms & Conditions.

12.3 Effect of Termination. Upon termination or expiration of this Agreement, (a) use of the Gateway Service will immediately cease; and (b) all obligations concerning such Gateway Service will cease.

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

14. INJUNCTIVE RELIEF. Notwithstanding any rights or remedies under this Agreement or provided by law, the Board 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.

15. 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, 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 Board.

16. AMBIGUITIES, STRICT PERFORMANCE AND PRIORITIES. Any ambiguities in this Agreement shall be resolved in favor of an interpretation that promotes compliance with HIPAA, 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 hereunder 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. This Agreement will be construed in accordance with the plain meaning of its language and neither for nor against 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 of the terms of this Agreement, such failure will not be construed as a waiver of any such term, and either party may at any time demand strict and complete performance by the other party.

17. NOTICE. For any notice under this Agreement to be effective the notice must be made in writing and sent to the address of the appropriate contact provided in the Agreement.

18. 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 Agency:

Arizona Board of Pharmacy
Attn: Doug Skvarla
P.O. Box 18520
Phoenix, AZ 85005

To Healthcare Entity:

Healthcare Entity: _____

Attention: _____

Street Address: _____

City, State, Zip: _____

Phone: _____

IN WITNESS WHEREOF, the parties hereto agree to the foregoing and have caused this Agreement to be executed as of the day and year last written below.

Healthcare Entity:

Arizona Board of Pharmacy:

Representative Signature

Representative Signature

Representative Printed Name

Representative Printed Name

Title

Title

Date

Date