



**KANSAS STATE BOARD OF PHARMACY
PDMP GATEWAY TERMS & CONDITIONS AGREEMENT**

THIS AGREEMENT is entered into by and between _____
(referred to as "Healthcare Entity") and The Kansas State Board of Pharmacy (referred to as
"Department").

WHEREAS, the Department entered into an agreement with its technology partner Appriss Inc.
("Appriss" "Service Provider") to allow 'Authorized Users' (as defined below) in Kansas 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 K.S.A. 65-
1685 and K.A.R. 68-21-5, 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 PMP Data and PMP Usage Data; and
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 Parts 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 or registered in Kansas;

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 or pharmaceutical 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. Kansas PMP means the PMP for the Kansas State 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 Kansas 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.

1.21. Service Provider Parties means Appriss and NABP.

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 K.S.A. 65-1685(c)(1), and amendments thereto.

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).

2.2.2. In addition to the foregoing, PMP Data and PMP Usage Data may only be disclosed in accordance with K.S.A. 65-1685, and amendments thereto, and only to those classes of persons identified in K.S.A. 65-1685(c), and amendments thereto.



3. LICENSE AND USE RESTRICTIONS.

3.1 License Grant. Subject to the terms, conditions and restrictions set forth in this Agreement, the Department (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 Department upon request. 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. The Department reserves the right to disable access for an Authorized User or any other individual. The Healthcare Entity shall disable access for any Authorized User or any other individual immediately upon written notification by the Department.

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 the Kansas Prescription Monitoring Program Act, K.S.A. 65-1681, *et seq.*, any rules and regulations promulgated thereunder.



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 Department.

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 in connection with a patient medical record or as permitted under this Agreement; or (b) copy or otherwise reproduce the Appriss Service Information.

3.6 Credentialing and Validation. Healthcare Entity shall ensure that its credentialing and identity validation processes adhere to all applicable state and federal laws and rules and Requirements for credentialing and validation of the pharmacists or health care practitioners, their delegates, and entities or users who seek to access or use the Gateway Service or Service Information, and employees and contractors who do not provide patient care but who seek to access or use the Gateway Service. If state law prohibits health care practitioners' delegates from accessing the PMP or PMP Data, then the credentialing and identity validation processes of Healthcare Entity must prevent delegates from accessing the Gateway Service and 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 Usage 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 or the terms of this Agreement. Healthcare Entity agrees to report any complaint or claim to the Department and any requesting state within 24 hours.

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 PMP Data, 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 report the results of its investigation to the Department and any requesting state within 72 hours of receiving the complaint or claim.

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 Department the following:

5.1.1.1. Any access to, use of, 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 Department of the existence and nature of the incident as understood at that time, and shall immediately discontinue any access to the Gateway Service for any individual(s) suspected of such reportable incident. Healthcare Entity shall immediately investigate the incident and, within 72 hours of discovery, shall provide the Department 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 persons known or reasonably believed to have improperly accessed, 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, accessed, 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 Department under this section must be made to the Kansas State Board of Pharmacy:

Attn: Reyne Kenton
800 SW Jackson, Suite 1414
Topeka, KS 66612
pharmacy@ks.gov

5.1.4 The Healthcare Entity shall promptly respond to any requests for follow-up information from the Department related to the reportable incident.

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 Department. Healthcare Entity shall preserve evidence for a minimum of five years after the conclusion of any related or resulting investigations or litigation.



5.3 Coordination. Healthcare Entity shall coordinate with the Department 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, shall be made at the direction of the Department.

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 or upon the request of the Department, the cost of investigation, remediation, and assistance to individuals including services such as a standard level of credit-monitoring.

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.

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 Department 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. Service Provider may utilize all ideas, suggestions and feedback, or the like that Healthcare Entity provides to Department otherwise makes with respect to the Service Provider Property without any obligation to Healthcare Entity. To the extent that Healthcare Entity has or later obtains any intellectual property rights in and to the Service Provider Property, or any future enhancement or modification thereto or any part thereof, by operation of law or otherwise, Healthcare Entity hereby disclaims such rights, and assigns and transfers such rights exclusively to Service Provider, and agrees to provide reasonable assistance to Appriss to give effect to such assignment and to protect, enforce and maintain such rights.

7.2 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 will 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; provided, however, that Healthcare Entity will obtain Appriss' prior written consent before disclosing any Appriss Confidential Information to any third party. 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.

7.3 Required Disclosures. In the event a party is required under applicable law, rule, regulation, 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.

8. WARRANTIES. THE DEPARTMENT 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, OR 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. NEITHER APPRISS NOR ITS LICENSORS SHALL HAVE ANY LIABILITY IN THE EVENT THAT A PMP DENIES HEALTHCARE ENTITY'S REQUEST TO ACCESS PMP DATA OR REVOKES HEALTHCARE ENTITY'S ACCESS TO PMP DATA, OR IF PMP DATA IS UNAVAILABLE FOR ANY REASON. 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 any of the Service Provider Parties 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 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 to or use of PMP Data (hereinafter “Third-Party Claim”). Healthcare Entity agrees to indemnify and hold harmless Department and Service Provider Parties from any such Third-Party Claim.

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

10.2 Relationship of the Parties. It is the express intention of the parties hereto that this Agreement shall not be construed as, or given the effect of, creating a joint venture, partnership or affiliation, or association that would otherwise render the parties liable as partners, agents, employer-employee or otherwise create any joint and several liability.

11. Compliance and HHS Access. The Healthcare Entity shall make available to the Department 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 Department, or created or received by the Healthcare Entity on behalf of the Department. Such access is for the purpose of determining the Department’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 Department 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 Department 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 June 30, 2021 and shall automatically renew for successive one-year terms unless otherwise terminated as provided for herein. Each party shall have the right to terminate this Agreement by delivering to the other party written notice of termination at least thirty (30) days prior to the effective date of said termination.

12.2 Termination. The Department may terminate this Agreement immediately and without prior notice 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 Department 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 Department's best interest. Upon suspension of the Agreement, the Department may, in its sole discretion, require the Healthcare Entity to comply with the requirements of the above Section 5 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 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 the termination, Healthcare Entity shall destroy all copies of the applicable Gateway Service Documentation, any other Confidential Information, whether such Information is the Department's or a third party's, and will certify to Appriss that all copies have been destroyed.

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

14. Injunctive Relief. Notwithstanding any rights or remedies under this Agreement or provided by law, Department 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 Department and the Associate.

16. Ambiguities, Strict Performance and Priorities. Any ambiguities in this Agreement shall be resolved in favor of an interpretation that promotes compliance with the Kansas Prescription Monitoring Program Act, K.S.A. 65-1681 et seq. and amendments thereto and regulations promulgated thereunder (hereinafter the "PMP Law"), HIPAA, regulations promulgated thereunder, and HITECH. Any conflicts in the security and privacy terms and conditions of this Agreement with those in the PMP Law shall be interpreted to favor of the terms and conditions that promote greater degree of security and privacy. The parties agree that any amendment or modifications to the PMP Law 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:

18.1 All notices to the Healthcare Entity regarding this Agreement shall be sent to the following address:

18.2 All notices to the Department regarding this Agreement shall be sent to the following address:

Attn: Executive Secretary
Kansas State Board of Pharmacy
800 SW Jackson, Suite 1414
Topeka, KS 66612-1244

19. Entire Agreement and Applicable Law. This Agreement constitutes the entire understanding of the parties related to the subject matter hereof, and supersedes any and all other agreements or understandings, oral or written. This Agreement shall be governed and interpreted by the laws of the State of Kansas.

20. Changes in Service Delivery Due to Federal and/or State Mandated Requirement. If the Federal Government and/or the Kansas Legislature were to make any significant changes in any requirements associated with this Agreement, the Department and the Healthcare Entity shall enter into negotiations to establish fair and reasonable changes to the Agreement affected by these federally-mandated or state-mandated requirements. All changes will be supported by an Amendment signed by the Healthcare Entity and the Department. Failure on the part of the Healthcare Entity to sign the Amendment may result in termination of the Agreement.

21. Availability of Funds. Should appropriations to the Department be reduced for any reason and these services are no longer funded, the Department may immediately terminate this Agreement. The Department's Executive Secretary shall have the sole and unfettered discretion in determining the availability of funds.

22. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected and each provision shall be enforced to the fullest extent provided by law.

23. Contractual Provisions Attachment. The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof.



SIGNATURES:

By signing below, the signatories represent and agree they each have the authority to enter this Agreement and agree to all terms and conditions of this Agreement on behalf of their respective entities.

Signature: _____ Date: _____

Printed Name: _____

KANSAS STATE BOARD OF PHARMACY

By: _____ Date: _____
Alexandra Blasi, Executive Secretary

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

- 1. Terms Herein Controlling Provisions:** It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.
- 2. Kansas Law and Venue:** This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.
- 3. Termination Due To Lack Of Funding Appropriation:** If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges-hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.
- 4. Disclaimer Of Liability:** No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).
- 5. Anti-Discrimination Clause:** The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total \$5,000 or less during the fiscal year of such agency.

- 6. Acceptance Of Contract:** This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.
- 7. Arbitration, Damages, Warranties:** Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.
- 8. Representative's Authority To Contract:** By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.
- 9. Responsibility For Taxes:** The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.
- 10. Insurance:** The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.
- 11. Information:** No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.
- 12. The Eleventh Amendment:** "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."
- 13. Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.