

PMP GATEWAY TERMS & CONDITIONS AGREEMENT

THIS AGREEMENT is entered into by and between _____ (referred to as “Subscribing Organization”) and the Michigan Department of Licensing and Regulatory Affairs (referred to as “Agency”).

WHEREAS, the Agency entered into an agreement with its technology partner Appriss Inc. (“Appriss” “Service Provider”) to allow ‘Authorized Users’ (as defined below) in Michigan to access the PMP ‘Gateway Service’ (as defined below). The State shall cover the cost for Appriss to integrate the Subscribing Organization’s Electronic Health Record or Pharmacy Management System with MAPS and licensing costs through August 31, 2023. The State will not cover any additional costs that the Subscribing Organization’s software vendor may charge related to the integration; 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 Michigan;

WHEREAS, Appriss is a third-party beneficiary under the terms of this PMP Gateway 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, Subscribing Organization, intending to be legally bound, agrees as follows:

1. DEFINITIONS.

- 1.1. **“Protected Health Information (“PHI”)”** means individually identifiable information relating to the past, present or future physical or mental health or condition of an individual, provision of health care to an individual, or the past, present or future payment for health care provided to an individual, as more fully defined in 45 CFR § 160.103, and any amendments thereto, received from or on behalf of the Agency.
- 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. **“Subscribing Organization”** shall be the organization listed in the Integration Request Form.
- 1.4. **“Individual”** means the person who is the subject of the PHI and includes the person’s personal representative.
- 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. **“Analytics”** means information and analysis services provided by Appriss via the Gateway Service based, in whole or in part, on the PMP Data or other information. For clarity, Analytics does not include the PMP Data itself.
- 1.8. **“Authorized Users”** means pharmacists or health care practitioners within Subscribing Organization’s organization or health care entities that have a member or client relationship with Subscribing Organization, which is described in a valid agreement between such practitioners or entities and Subscribing Organization, and that, in accordance with the terms of this Agreement:
- 1.8.1. Comply with applicable Requirements;
 - 1.8.2. Are validly licensed;
 - 1.8.3. Are validly authorized by the Subscribing Organization to access PMP Data in accordance with applicable law;
 - 1.8.4. Access or use PMP Data for health care decision-making related to such patient, in accordance with applicable law; and
 - 1.8.5. Properly authenticate to the applicable PMP, as required, when seeking to query one or more state's PMPs.
- 1.9. **“Confidential Information”** means non-public information. Confidential Information of Appriss includes, without limitation, the Gateway Service, all software provided with or utilized by the Gateway Service, the Analytics, and all algorithms, methods, techniques and processes related thereto. 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 Subscribing Organization and the Agency agree to handle such health information in accordance with the terms of 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 or as specifically authorized by the individual about whom such data pertains, and to comply with laws applicable to such personal data including but not limited to breach notification and disposal requirements.

- 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. **“Michigan PMP”** means the PMP for the State of Michigan.
- 1.14. **“NABP”** means the National Association of Boards 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. **“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 Analytics, and any other controlled substance prescription related services provided by Service Provider.
- 1.19. **“Third-Party Material(s)”** means any information, services, software, or goods provided, manufactured or created by any party other than Appriss and that Appriss licenses or utilizes with permission.

2. Permitted Use. The Subscribing Organization 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 Subscribing Organization in accordance with MCL 333.7333a.

2.2. Disclosure Restrictions. If necessary for the proper management and administration of the Subscribing Organization or to carry out legal responsibilities of the Subscribing Organization. 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 must be in compliance with privacy and security laws, MCL 333.7333a of the Michigan Public Health Code as amended, and Michigan Board of Pharmacy Administrative Rules 338.3162b-338.3162e as amended. Violations may result in criminal and/or administrative prosecution and penalties.

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 the Service Provider), grants to Subscribing Organization a limited, non-exclusive, non-transferable license to use the Gateway Service solely for internal use by Subscribing Organization and its Authorized Users. Any rights not expressly granted in this Agreement are expressly reserved. Use of the Gateway Service or Service Information constitutes the user's agreement to be bound by the terms of this Agreement. Subscribing Organization shall only use the Service Information to assist an Authorized User in his or her professional health care decision-making with respect to a specific patient encounter; provider, however, that Subscribing Organization agrees and acknowledges that under no circumstance shall the Service Information replace an Authorized User's professional judgment.

3.2. Restrictions. Subscribing Organization 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; (f) remove, obscure, alter, or move Appriss' and its licensors' proprietary notices or other notices on the Gateway Service or Documentation; or (g) to modify or alter any scores, reports, or information provided via Analytics products.

3.3. State Determinations. Subscribing Organization acknowledges that each state determines whether Authorized Users may access or utilize the state's PMP Data through the Gateway Service. Subscribing Organization agrees to provide the required information, affirmations, and agreements to Service Provider and/or the applicable state(s) so that the state(s) may make such determinations. Service Provider will provide any information it receives under this Section 3.3 to the applicable state(s). 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. Subscribing Organization will 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 Entities or 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 the terms and conditions of this Agreement;
- 3.4.3. Subscribing Organization shall provide proper training to its Authorized Users on accessing and using the Gateway Service and Service Information;
- 3.4.4. Subscribing Organization 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 law and the terms of this Agreement; and
- 3.4.5. Copies of said policies and procedures shall be provided upon request of a state or Service Providers.

3.5. Use of Service Information. Subscribing Organization shall not, either directly or indirectly, itself or through any agents or third party: (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 the Service Information.

3.6. Credentialing and Validation. Subscribing Organization 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 Subscribing Organization must prevent delegates from accessing the Gateway Service and Service Information.

3.7. Responsibility for Use. Subscribing Organization 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 Service Information by Subscribing Organization, Authorized Users, or any of Subscribing Organization's users, pharmacists, practitioners, employees, patients, affiliates, agents or contractors, or any state employees, agents, affiliates, or contractors.

3.8. Processes. Subscribing Organization 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 Service Information. Subscribing Organization shall be responsible for its and its

employees', staff's, contractors', and affiliates' compliance with the terms of this Agreement.

3.9. Complaints. Subscribing Organization agrees to promptly investigate all complaints and claims that a Subscribing Organization 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 or Service Information. Subscribing Organization agrees to promptly report the results of its investigation to the Agency, Michigan PMP, and any requesting state.

3.10. Investigations. Subscribing Organization is responsible for investigating all complaints and claims that an Authorized User 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. Subscribing Organization acknowledges that states 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. Subscribing Organization agrees to promptly report the results of its investigation to the Agency, Michigan PMP, and any requesting state.

3.11. Compliance with Law. Subscribing Organization 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. Subscribing Organization, Subscribing Organization 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, 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. Subscribing Organization shall comply with all requirements specified in the Documentation concerning access to the Service Information and use or display of Service Information.

4. Minimize Use of PHI. The Subscribing Organization 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. Subscribing Organization shall report to Agency 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, Subscribing Organization shall notify Agency of the existence and nature of the incident as understood at that time. Subscribing Organization shall immediately investigate the incident and within 72 hours of discovery shall provide Agency, in writing, a report describing the results of Subscribing Organization’s investigation. The report shall be based on best available information known at the time. If the investigation is ongoing, the report should reflect that. The Agency may request updates to the report, and the Subscribing Organization will provide an addendum as soon as possible upon completion of the investigation. The report shall include:
- 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 Subscribing Organization believes any federal or state laws requiring notifications to individuals are triggered.
- 5.1.3.** Reporting and other communications made to the Agency under this section must be made to the Agency’s Point of Contact:

Haley Winans, Specialist
Michigan Automated Prescription System
Bureau of Professional Licensing
PHONE: 517-342-4797
EMAIL: WinansH@michigan.gov
611 West Ottawa – 3rd Floor
Lansing, MI 48909

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

5.3. Coordination. Subscribing Organization will coordinate with the Agency 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 Agency.

5.4. Incident costs. Subscribing Organization 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 available to Michigan agencies under state term schedules.

6. Subcontractor Obligations. Subscribing Organization 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 Subscribing Organization shall obtain Agency 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, the Analytics, and the Documentation related thereto (but excluding the PMP Data); (ii) any deliverables and/or work product developed while providing the Gateway Service or the Analytics; and (iii) enhancements, modifications or derivative works to the Gateway Service or the Analytics. Subject only to the licenses expressly granted in this Agreement, as between Service Provider and Subscribing Organization, the Agency and Subscribing Organization 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 Subscribing Organization provides to Service Provider or otherwise makes with respect to the Service Provider without any obligation to Subscribing Organization. To the extent that Subscribing Organization 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, Subscribing Organization hereby disclaims such rights, and assigns and transfers such rights exclusively to Service Provider, and agrees to provide reasonable assistance to Service Provider 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 Subscribing Organization 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, as defined in section 1.9, 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 AGENCY MAKES NO REPRESENTATIONS OR WARRANTIES OF ANYKIND, 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, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND APPRISS EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES. 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 SUBSCRIBING ORGANIZATION'S BUSINESS REQUIREMENTS; OR (d) THE PMP DATA IS COMPLETE, ACCURATE OR ERROR-FREE. SUBSCRIBING ORGANIZATION ACKNOWLEDGES THAT IT HAS ASSESSED FOR ITSELF THE SUITABILITY OF THE GATEWAY SERVICE FOR ITS REQUIREMENTS. SUBSCRIBING ORGANIZATION 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 SUBSCRIBING ORGANIZATION'S REQUEST TO ACCESS PMP DATA OR REVOKES SUBSCRIBING ORGANIZATION'S ACCESS TO PMP DATA, OR IF PMP DATA IS UNAVAILABLE FOR ANY REASON. SUBSCRIBING ORGANIZATION ACCEPTS THE PMP DATA AND ANY PRESCRIPTION HISTORY SERVICES BASED ON THE PMP DATA ON AN "AS IS" "AS AVAILABLE" BASIS.

9. INDEMNIFICATION. Subscribing Organization shall indemnify and hold harmless the Agency, Service Provider and NABP, and each of their respective officers, directors, employees, members, contractors, parents, subsidiaries, and affiliates, (the "Service Provider Parties") against any third party

claim, including costs and reasonable attorneys' fees, 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 Subscribing Organization, Subscribing Organization employees, agents, contractors, or affiliates, or Authorized Users; (c) any access or use of the Gateway Service or Service Information by Subscribing Organization, any user of Subscribing Organization, Subscribing Organization Employees, agents, contractors, or affiliates, or Authorized Users; (d) any medical services, products or medication offered or sold by Subscribing Organization, Subscribing Organization Employees, agents, contractors, or affiliates, or Authorized Users; (e) any act or omission of negligence or willful misconduct of Subscribing Organization or its affiliates; or (f) violations of applicable law or the Requirements by Subscribing Organization, or Authorized Users, in connection with the performance of this Agreement, including access or use of PMP Data.

10. 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.

11. Compliance and HHS Access. The Subscribing Organization 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 Subscribing Organization 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 amendment thereto. Any non-compliance by the Subscribing Organization with the terms of this Agreement or the privacy and security regulations shall be a breach of this Agreement if the Subscribing Organization knew of the breach and failed to take immediate and reasonable steps to cure the non-compliance. The Subscribing Organization agrees that 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 Subscribing Organization responsible for paying any difference in cost, if Agency determines that the Subscribing Organization has violated a material term of the Agreement.

12. Ownership and Destruction of Information. The PHI and any related information created or received from or on behalf of Agency is and shall remain the property of the Agency. The Subscribing Organization 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, Subscribing Organization agrees, at the option of Agency, to return or securely destroy all PHI created or received from or on behalf of 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 Subscribing Organization agrees that it will not retain any copies of PHI except as required by law. If PHI is destroyed, the Subscribing Organization agrees to provide 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 Subscribing Organization 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 in feasible. 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.

13. TERM AND TERMINATION.

13.1. Term. This Agreement shall be effective upon the signature of both parties and shall remain in effect through August 31, 2023 unless other termination actions as set forth herein are initiated. If intending to renew this Agreement, Agency shall give written notice to Subscribing Organization prior to expiration.

13.2. Termination. The Agency may terminate this Agreement if at any time it determines that the Subscribing Organization has violated a material term of this Agreement. In the alternative, the Agency may, at its sole discretion, take any action provided in this Agreement, may suspend this Agreement, or may allow the Subscribing Organization 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 Subscribing Organization to comply with the requirements of the above Ownership and Destruction of Information 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 this Agreement.

13.3. 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. Within thirty (30) days of the expiration, Subscribing Organization shall destroy all copies of the applicable Gateway Service Documentation, any other Confidential Information, whether such Information is the Agency's or a third party's, and will certify to Appriss that all copies have been destroyed.

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

15. Injunctive Relief. Notwithstanding any rights or remedies under this Agreement or provided by law, Agency retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by the Subscribing Organization, any of its subcontractors or agents, or any third party who has received PHI from the Subscribing Organization.

16. 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 Agency and the Subscribing Organization.

17. 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.

18. 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.

19. 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:

**Michigan Department of Licensing & Regulatory Affairs
ATTENTION: Douglas Padgett
611 W. Ottawa St., 3rd Floor
Lansing, MI 48933
Ph: 517-241-0166
Fx: 517-241-5072**

To Subscribing Organization:

Subscribing Organization: _____
Attention: _____
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.

Subscribing Organization

Michigan Department of Licensing and Regulatory Affairs

Representative (signature):

Representative (signature):

Printed name:

Printed name:

Title:

Title:

Date:

Date: