

## PMP/EMR INTEGRATION TERMS & CONDITIONS AGREEMENT

THIS AGREEMENT is entered into by and between \_\_\_\_\_ (referred to as "Healthcare Entity") and The Commonwealth of Massachusetts Department of Public Health (referred to as "Department").

**WHEREAS**, the Department entered into an agreement with its technology partner Appriss Inc. ("Appriss" or "Service Provider") to allow 'Authorized Users' (as defined below) in Massachusetts to access the PMP 'Gateway Service' (as defined below) through the Electronic Medical Record (EMR) of Healthcare Entity at no charge; and

**WHEREAS**, such information may be used or disclosed only in accordance with M.G.L. c. 94C, §24A, M.G.L. c. 66A, 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 submitted to the Department.

**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 and their respective Delegates (as defined in 105 CMR 700.00) 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 who, in accordance with the terms of this Agreement:

**1.7.1.** Comply with applicable Requirements;

**1.7.2.** Are validly licensed, if applicable;

**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.

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

**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. Massachusetts PMP** means the PMP for the Commonwealth of Massachusetts.

**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 MassPAT 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 received through the Gateway Service except as follows:

**2.1. Covered Functions.** To facilitate the transmission of PHI from the PMP to the Healthcare Entity in accordance with M.G.L. c.94C, § 24A.

**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 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 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 such information as may be reasonably requested by Service Provider and/or the Department to verify that a user of the Gateway Service is an Authorized User. 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 M.G.L. c. 94c, §24A and the Terms and Conditions For Prescriber and Dispenser Use of the Massachusetts Online 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 systems, 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. This specifically includes any prescription data provided to the Healthcare Entity by the PMP Gateway. This section does not bar Authorized Users from making clinical notes referencing the information accessed through the Gateway Service in order to reflect analysis and clinical decision making relevant to patient care and treatment.

**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 Responsibility for Use.** Healthcare Entity shall be responsible if use of or access to the Gateway Service through Healthcare Entity's electronic systems 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.

**3.7 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.

**3.8 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 Department, and any requesting state.

**3.9 Investigations.** Healthcare Entity is responsible for investigating all complaints and claims that one or more of its Authorized Users failed to comply with laws or rules applicable to the Gateway Service or Appriss Service Information or any Requirement for access or use of

Appriss 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 Department and any requesting state, subject to applicable law.

**3.10 Compliance with Law.** Healthcare Entity is responsible for its own compliance and the compliance of its Authorized Users with all applicable local, state, and federal laws and regulations applicable to PMP Data (including personally identifiable information contained therein) including but not limited to, laws and regulations related to confidentiality and security of such data.

**3.11 Conduct.** Healthcare Entity Employees, agents, contractors, affiliates, and Authorized Users will not engage in unlawful, reckless, 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; or the unauthorized submission or transmission of data or material protected by a proprietary right of a third party; or the submission of Information material or communications which are otherwise not compliant with applicable law or regulations.

**3.12 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.

## **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 use or disclosure of PHI accessed via the Gateway Service 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 successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system connected with the Gateway Service.

**5.1.2** Within 48 hours of discovery of a security incident, Healthcare Entity shall notify the Department of the existence and nature of the incident as understood at that time. Healthcare Entity shall immediately investigate the incident and within 5 business days 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 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; 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 Massachusetts Prescription Monitoring Program:

PMP Director  
Massachusetts PMP  
250 Washington Street  
Boston, MA 02108  
617-753-7310  
[mapmp.dph@state.ma.us](mailto:mapmp.dph@state.ma.us)

**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 documentation and other evidence related to the event and any mitigation for a minimum of 7 years from the date of the final closure of the incident.

**5.3 Coordination.** Healthcare Entity will 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, will be made at the direction of the Department, unless otherwise required by law.

#### **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 by Healthcare Entity, its Employees, agents, contractors, affiliates or Authorized. 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. Contractor/Subcontractor Obligations.** Healthcare Entity shall ensure that all of its contractors, subcontractors and agents who are not Authorized Users and who have access to the Gateway Service as a result of access to Healthcare Entity's electronic medical record system are subject to the same restrictions and obligations contained herein, including but not limited to the obligation to implement reasonable and appropriate safeguards to protect PMP Data that they may have access to. The Department may request in writing copies of applicable sections of contractor, subcontractor or agency 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 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, Employees, contractors or agents 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 of its respective Employees, affiliates, contractors or agents 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, 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 Appriss or DPH is named as a result of (a) the breach of any material term or condition of this Agreement by Healthcare Entity or Healthcare Entity Employees, agents, contractors, or affiliates, or Authorized Users; (b) any access or use of the Gateway Service, Appriss Service Information, PMP Data or PMP Usage Data by Healthcare Entity, or Healthcare Entity Employees, agents, contractors, or affiliates, or Authorized Users; (c) any medical services, products or medication offered or sold by Healthcare Entity or Healthcare Entity Employees, agents, contractors, or Affiliates, or Authorized Users; (d) any act or omission of negligence or willful misconduct of Healthcare Entity or its Affiliates; or (e) violations of applicable law or the Requirements by Healthcare Entity, or its Authorized

Users, in connection with the performance of this Agreement, including access or use of PMP Data.

**10. 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, 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 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 through the Gateway Service. Such access is for the purpose of determining the Department's compliance with HIPAA, regulations promulgated thereunder by the United States Department of Health and Human Services, and any amendment thereto. Any material non-compliance by the Healthcare Entity with the terms of this Agreement or the HIPAA privacy and security regulations shall be a breach of this Agreement if the Healthcare Entity knew of such non-compliance and failed to take prompt 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, 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 unless terminated by either party in writing, or unless other termination actions as set forth herein are initiated.

**12.2 Termination.** The Department or Healthcare Entity may terminate this Agreement at any time by providing 60 days' written notice to the other. Additionally, the Department may terminate this Agreement if at any time it determines that the Healthcare Entity has violated a material term of this PMP EMR 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, at its sole discretion, require the Healthcare Entity 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.

**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 such termination, Healthcare Entity shall destroy all copies

of the applicable Gateway Service Documentation, any other Confidential Information provided by the Department or Appriss pursuant to this Agreement and will certify to Appriss that all copies of Gateway Service Documentation have been destroyed; provided, however, that Healthcare Entity shall have no obligation to destroy any clinical notes referencing the information accessed through the Gateway Service as authorized under section 3.4.7 hereto.

### **13. MISCELLANEOUS PROVISIONS**

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

**13.2 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.

**13.3 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 Healthcare Entity.

**13.4 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 HIPAA and applicable regulations 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.

**13.5 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.

**13.6** Notwithstanding section 5 of this Agreement, any notice to the other party pursuant to this Agreement shall be deemed provided three business days after being sent by first class United States mail, postage prepaid, as follows:

To: PMP Director  
Massachusetts Prescription Monitoring Program:  
239 Causeway Street

Boston, MA 02114

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MASSACHUSETTS DEPARTMENT  
OF PUBLIC HEALTH

\_\_\_\_\_

By: \_\_\_\_\_  
Title:  
Dated:

By: \_\_\_\_\_  
Title:  
Dated: