

**NEW JERSEY PRESCRIPTION MONITORING PROGRAM ("NJPMP")
TERMS AND CONDITIONS AGREEMENT**

WHEREAS, N.J.S.A. 45:1-44 et seq. established a prescription monitoring program located in and administered by the New Jersey Division of Consumer Affairs in the Department of Law and Public Safety in order to monitor controlled dangerous substances ("CDS") and other substances that are dispensed in or into New Jersey by a pharmacist in an outpatient setting; and

WHEREAS, the New Jersey Prescription Monitoring Program ("NJPMP") collects certain information from pharmacies regarding prescriptions issued for CDS and other substances; and

WHEREAS, N.J.S.A. 45:1-46.1, requires prescribers and pharmacists to access the NJPMP in certain situations; and

WHEREAS, the NJPMP's contracted entity, Appriss Inc. ("Appriss"), has developed PMP Gateway as a universal connector for electronic medical records ("EMR") and pharmacy management systems ("PMS") software to integrate with the NJPMP in order to enable a prescriber or pharmacist to obtain a patient report from the NJPMP directly through the EMR/PMS software as opposed to the current process which requires a prescriber or pharmacist to access the NJPMP website which is outside of the EMR/PMS software. The integration will require the use of PMP Gateway, an Appriss product.

This Agreement is entered into between (name of medical group/hospital/prescriber/pharmacy/pharmacist) ("**Health Care Entity**"), and **the NJPMP**.

The Health Care Entity's EMR/PMS software company/companies is/are (name of software company/companies). The NJPMP is aware of the Gateway Agreement(s)/Reseller Agreement(s)/End User License Agreement(s) ("EULA(s)") signed by the (Health Care Entity and/or software company/companies) and Appriss. Copies of which are attached.

In addition to the provisions of the Gateway Agreement(s), Reseller Agreement(s) and/or EULA(s) that may be applicable to the actions of the Health Care Entity's software company/companies and the State's software provider, Appriss, and in exchange for the NJPMP providing the Health Care Entity with access to the NJPMP

data, the Health Care Entity shall establish and monitor compliance with policies and procedures to ensure the following:

1. Every pharmacist, prescriber or delegate of the prescriber within the Health Care Entity who accesses the NJPMP through the EMR/PMS software must be registered and comply with all registration requirements. The NJPMP recognizes that out of state prescribers and pharmacists may not qualify for direct registration with the NJPMP but there are data sharing agreements between the NJPMP and approved state prescription monitoring programs which authorize access to NJPMP information;
2. Every pharmacist, prescriber or delegate of a prescriber within the Health Care Entity who accesses the NJPMP must certify that they are doing so for health care decision making relating to a specific patient of the Health Care Entity in accordance with applicable law;
3. The Health Care Entity has adopted safeguards that are commercially reasonable to ensure the security of the NJPMP information. The Health Care Entity will provide to the NJPMP, upon request, a copy of any and all written safeguards that they have implemented to ensure the security of the NJPMP information;
4. The Health Care Entity regularly audits those employees and affiliates who access the NJPMP under the terms of this Agreement to determine that such access is consistent with all local, State, and federal laws applicable to prescription monitoring information, personal identifiable information and personal health information ("PHI") including, but not limited to confidentiality, security, and registration;
5. The Health Care Entity agrees to maintain the confidentiality of the prescription monitoring information contained within the NJPMP by not receiving, disseminating, creating, using or disclosing the NJPMP information except as allowed under the New Jersey State and federal Law, including the Health Insurance Portability and Accountability Act of 1996 and the federal health privacy rules set forth at 45 C.F.R. Parts 160 and 164;

6. The Health Care Entity agrees to provide timely notice to the NJPMP of any known inappropriate activity pertaining to prescription monitoring information, personal identifiable information or personal health information, whether made by internal or external individual(s) or source(s), irrespective of whether the activity was successful or not. This may include possible breaches of the NJPMP system, possible inappropriate access, possible inappropriate review of NJPMP information, and/or any violations of the NJPMP statute, N.J.S.A. 45:1-44 et. seq., and the rules established pursuant thereto. Notice shall be provided to the NJPMP as soon as reasonably possible but within three (3) business days and must be in writing to the Administrator of the NJPMP. Notice shall be provided irrespective of whether the Health Care Entity is still investigating the possible inappropriate NJPMP activity. The initial report shall contain the following:

- a. What data elements were involved, the extent of the data involved in the incident, and the identification of affected individuals, if applicable;
- b. 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; and
- c. A description of where the PHI is believed to have been improperly transmitted, sent, or utilized, if applicable.

The Health Care Entity shall subsequently provide a follow-up report in writing to the Administrator of the NJPMP within thirty (30) business days of the initial notification and contain the following:

- d. A description of the probable causes of the incident or the circumstances that allowed the breach or inappropriate activity to occur;

- e. A description of the proposed plan for preventing similar future incidents, including an ongoing risk remediation plan; and
- f. Whether the Health Care Entity believes any federal or state laws requiring notifications to affected individuals are triggered.

In the event the investigation is not completed within thirty (30) business days of the initial notification, the Health Care Entity shall continue to submit a report to the Administrator of the NJPMP every thirty (30) business days until the investigation is complete;

- 7. The Health Care Entity will coordinate with the NJPMP to determine additional, specific actions that will be required for mitigation of the breach, which may include notification to the affected individuals, entities or other authorities. Notifications, if any, will be made at the direction of the NJPMP or as otherwise required by law;
- 8. The Health Care Entity agrees to mitigate, to the extent practicable, any harmful effect that is known to the Health Care Entity of a use or disclosure of PHI by the Health Care Entity in violation of the requirements of this Agreement, and report its mitigation activity to the NJPMP. The Health Care Entity shall preserve evidence and cooperate with any investigation undertaken by the NJPMP;
- 9. The Health Care Entity shall bear all costs associated with the incident involving PHI under its care, custody, or control that arise 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 affected individuals, including services such as a standard level of credit-monitoring;

10. Subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., and appropriations and the availability of funding, the NJPMP shall be responsible, at its own expense, to defend itself against, and hereby releases the Health Care Entity for any and all suits, claims, losses, demands, expenses, or damages of whatsoever kind or nature, arising out of or in connection with any act or omission by the NJPMP, its employees, representatives, agents, independent contractors or invitees, related to this Agreement;
11. The Health Care Entity shall be responsible, at its own expense, to defend itself against, and hereby releases NJPMP for any and all suits, claims losses, demands, expenses, or damages of whatsoever kind or nature, arising out of or in connection with any act or omission of the Health Care Entity, its employees, representatives, agents, independent contractors or invitees, related to this Agreement;
12. The Health Care Entity understands and acknowledges that this Agreement only permits access, via EMR/PMS, to NJPMP data inputted by New Jersey licensed pharmacies. Prescribers and pharmacists will not be able to access prescription monitoring information maintained by another state or jurisdiction, via the EMR/PMS software, unless the other state or jurisdiction allows access to its PMP information via the EMR/PMS software. The other state or jurisdiction may require additional agreements or impose other requirements than that of the NJPMP in order to access its State's PMP information via the EMR/PMS software;
13. This Agreement shall be effective upon the signature of both parties and shall expire one year after its effective date. This Agreement and any successor agreement will be automatically renewed upon its expiration unless thirty (30) days prior to the expiration date, either party, provides notice in writing, that it will not seek an automatic renewal of this Agreement;

14. Notwithstanding Paragraph 13:
 - a. Either party may terminate this Agreement without cause upon thirty (30) days' written notice to the other party.
 - b. The NJPMP may terminate this Agreement if at any time it determines that the Health Care Entity has violated a material term of this Agreement. In the alternative, the NJPMP may, at its sole discretion, take any action provided in this Agreement, may suspend this Agreement, or may allow the Health Care Entity a reasonable period of time to cure before termination, when such action is determined to be in the NJPMP's best interest.
15. Upon termination or expiration of this Agreement, use of the Gateway Service will immediately cease. The Health Care Entity understands that it will no longer be permitted to access the PMP Gateway on or after the date of termination or expiration;
16. The obligations to safeguard the confidentiality, privacy and security of PHI imposed herein shall survive the termination of this Agreement;
17. All terms as used herein shall have the same meaning as in N.J.S.A. 45:1-44 et seq. and the rules established pursuant thereto. In the context of this Agreement, prescription monitoring information is defined as information from pharmacies regarding prescriptions issued for controlled dangerous substances and other substances that has been submitted to the Division of Consumer Affairs in the Department of Law and Public Safety.
18. The provisions of this Agreement are for the sole benefit of the parties, and they will not be construed as conferring any rights to any third party (including any third party beneficiary rights).

The Terms and Conditions have been read and understood by the persons whose signatures appear below, and shall become effective upon execution by all parties.

NEW JERSEY DEPARTMENT OF LAW AND PUBLIC SAFETY

Division of Consumer Affairs

Jeffrey D. Laszczyk, Jr.
Administrator, NJPMP

Date

Name of Health Care Entity

Representative Name and Title

Date

Signature