

DATA USE AND INTERCONNECTION AGREEMENT

OREGON PDMP PARTICIPATION AND GATEWAY SERVICE

This Oregon PDMP Participation and Gateway Service Agreement (Agreement) is entered into between participating approved entity _____[name], a ____ [state] corporation (the “Approved Entity”) and the State of Oregon, acting by and through the Oregon Health Authority (the “Authority”).

PURPOSE

1. The Authority operates the Oregon Prescription Drug Monitoring Program (PDMP), under its authority granted by Oregon Revised Statutes (ORS) 431A.855. Key operational processes for the PDMP are in Oregon Administrative Rules (OAR) Chapter 333, Division 23.
2. The Authority allows approved entities to access PDMP data through a health information technology system, like an electronic health record (EHR). See ORS 431A.865.
3. Approved Entity has been approved to access PDMP Data through its health information technology system. This Agreement sets out the terms and conditions for PDMP Data and the connection between Approved Entity’s health information technology system to the PDMP System through the Gateway Service.

AGREEMENT

The Authority and the Approved Entity agree as follows:

1. TERM

This Agreement is effective upon the last signature of both parties and remains in effect for a period of 24 months, subject to review at least annually by the Authority, unless terminated earlier in accordance with this Agreement.

2. DEFINITIONS

Capitalized terms used not defined in this Agreement are defined in applicable law and rule, including ORS 431A.850 and OAR 333-023-0805. Without limiting the applicability of terms defined in law and rule, the following terms also apply to this Agreement:

Affiliate means an entity directly or indirectly controlling, controlled by or under common control with Approved Entity and whose employees, agents, and contractors will access PDMP Data through Approved Entity’s Gateway Service connection. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another entity, whether through the ownership of voting securities, by contract or otherwise.

Approved Entity has the meaning given in OAR 333-023-0805, and refers to the Approved Entity that is party to this Agreement.

Authorized User(s) means Approved Entity’s employees, agents, contractors, and Affiliates who are person(s) authorized to access PDMP Data and the PDMP System in accordance with ORS 431A.865.

Gateway Service means a data communication service, including but not limited to an application programming interface (API), that facilitates the transmission of requests for and retrieval of PDMP Data between the PDMP System and Authorized Entity’s health information technology system.

PDMP means the Oregon Prescription Drug Monitoring Program (PDMP) sponsored by the Authority.

PDMP Data means prescription history information reported and accessed through the PDMP, including through the PDMP System.

PDMP System means the third party system that enables the PDMP.

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, including as amended from time to time.

3. **PRIVACY AND SECURITY**

3.1 **Compliance with Laws, Regulations, and Policies.** The Approved Entity shall comply, and cause its employees, agents, contractors, and Affiliates who access the PDMP through the Approved Entity’s health information technology system to comply, with all applicable state and federal laws and regulations, and State of Oregon policies governing use of the Gateway Service and access to the PDMP, including as those laws, regulations, and policies may be updated from time to time. Applicable laws, regulations, and policies include but are not limited to:

- 3.1.1. Applicable laws established or modified from time to time by the State of Oregon, including but not limited to laws concerning PDMP access or permitted uses of PDMP Data;
- 3.1.2. Applicable laws established or modified from time to time by the federal government;
- 3.1.3. Applicable administrative rules issued by Oregon or the federal government, including as updated from time to time; and
- 3.1.4. Other requirements as issued by the Gateway Service provider related to the Gateway Service.

3.2 The Approved Entity is responsible for the compliance with this Agreement of its employees, agents, contractors, and Affiliates who access the PDMP System through the

Approved Entity's health information technology system, and with third party licenses to which PDMP System access is subject, including its agreement(s) with the Gateway Service vendor and the Approved Entity's health information technology system vendor. The Approved Entity shall comply, and shall cause its contractors and Affiliates to comply, with any requirements for identifying and addressing a privacy or security incident or breach, including reporting requirements under OAR 333-023-0820.

- 3.3 The Approved Entity shall immediately notify the Authority when an Authorized User, group of Authorized Users, an Affiliate, or the Approved Entity no longer requires access under this Agreement whether due to changes in duties or due to changes in programs related to this Agreement.
- 3.4 The Approved Entity is responsible for ensuring information provided by its Authorized Users is accurate, complete, and up to date.
- 3.5 The Approved Entity shall not sell, make available, or provide PDMP Data in any form to any other persons or organizations, and shall not use the PDMP Data for any purposes other than as allowed under this Agreement and applicable law.
- 3.6 Prohibition on Data Mining. The Approved Entity shall not capture, maintain, scan, index, share or use information on the Gateway Service, or otherwise use any data-mining technology, for any non- authorized activity, and shall not permit its agents or subcontractors to do so. For purposes of this requirement, "non-authorized activity" means data mining or processing of data, stored or transmitted by the Gateway Service, for any purpose other than security analysis that is not explicitly authorized in this Agreement or under applicable law.
- 3.7 The Approved Entity shall participate in periodic audit activities with the Authority, so the Authority can review for compliance with governing law, rules, and this Agreement. Such audits will take place during normal business hours and at mutually agreeable times, and be limited to the records, personnel and other resources of the Approved Entity as are necessary to comply with applicable state or federal requirements or to determine proper use of the PDMP System or compliance with this Agreement. Each part will bear its own expenses relating to audits under this Agreement. The Authority will conduct its audit activities in a manner designed to reasonably minimize interference with the Approved Entity's day-to-day operations.
- 3.8 The Approved Entity shall maintain reasonable operational, administrative, technical, and physical safeguards to ensure the confidentiality, integrity, and availability of PHI is protected, and to prevent unauthorized or inappropriate access, use, or disclosure of PHI. The Approved Entity shall provide periodic privacy and security training to Authorized Users (including Delegates) of its health information technology system(s) that connect with the PDMP System.
- 3.9 The Authority is not acting as a Covered Entity under the Health Insurance Portability and Accountability Act (HIPAA) under this Agreement, and no activities of the Authority under this Agreement create a Business Associate relationship between the Authority and Approved Entity or its Affiliates, the PDMP System contractor, or the Gateway

Service contractor. The Approved Entity, its Affiliates, and their Authorized Users are responsible for determining the HIPAA status of their respective uses of the PDMP System, and for establishing and maintaining any appropriate Business Associate Agreement(s).

4. LICENSE GRANT AND RESTRICTIONS

- 4.1 **Grant of Right to Use.** Subject to the Approved Entity's compliance with this Agreement, the Authority hereby grants to the Approved Entity and its Affiliates a nonexclusive, nontransferable, non-assignable, non-sub-licensable, and limited right to have access to and use the Gateway Services and PDMP System in accordance with this Agreement and applicable law and rule. Nothing in these terms is intended to transfer or assign any ownership interest or rights to the Approved Entity or Authorized Users. The Approved Entity may use the PDMP System to send, receive, find, and use PDMP Data only for the purposes set forth in this Agreement and applicable law and rules. This license does not grant any rights to obtaining future upgrades, updates, enhancements, or supplements of the Gateway Service or the PDMP System. If upgrades, updates, enhancements, or supplements of the PDMP System are obtained, however, the use of such upgrades or updates is governed by this Agreement and any amendments to it unless other terms accompany the upgrades, updates or supplements, in which case those terms apply.
- 4.2 **Additional Restrictions.** The Approved Entity acknowledges and agrees that the PDMP System and Gateway Service constitute the trade secrets and confidential information of the Authority or its third party contractor. The Approved Entity further acknowledges that the PDMP System and Gateway Service may be protected by copyright law and international treaty provisions. The Approved Entity shall not permit any person under the control of the Approved Entity other than Authorized Users to access or use the PDMP System. The Approved Entity shall not nor may it permit any attempted or actual duplication, modification, adaptation, translation, reverse engineering, decompilation, disassembling or creation of a derivative work based on the PDMP System or Gateway Service except as specifically provided for under this Agreement.

5. CONNECTION REQUIREMENTS

- 5.1 Health Information Technology System.
- 5.1.1. The Approved Entity will provide access to its health information technology system for its Authorized Users.
- 5.1.2. A unique health information technology system user account is required for each Authorized User with a user name and password to login.
- 5.1.3. The Approved Entity certifies that to the best of its knowledge and belief, its health information technology system complies with state and federal privacy and security regulations, including the federal Health Insurance Portability and Accountability Act (HIPAA).
- 5.2 Connection to Gateway Service.

The Approved Entity is responsible for working with its health information technology system vendor and the Gateway Service vendor (Appriss Health) to develop, establish and maintain the technical interface necessary for connection to Gateway Service. Approved Entity may contact Appriss Health to initiate connection to Gateway Service: <https://info.apprisshealth.com/ehrequest>

5.3 Costs.

- 5.3.1. All costs related to PDMP access and the Gateway Service connection charged by its health information technology system vendor are the responsibility of the Approved Entity.
- 5.3.2. All user fees for access to Gateway Service charged by the Gateway Service provider are the responsibility of Approved Entity.
- 5.3.3. The Approved Entity will bear its own costs related to the acquisition of all equipment, software, data lines or connections necessary for access, including compatible hardware, equipment, software, and network connections.

6. PDMP SYSTEM AUTHORIZED USERS

- 6.1 The Approved Entity is responsible for recruiting and notifying eligible PDMP System users about PDMP System account registration.
- 6.2 Only individuals authorized by the Authority, and who are authorized by the Approved Entity to access the PDMP through its systems and network(s), may receive results from the PDMP System using a health information technology system.
- 6.3 Authorized Users must:
 - 6.3.1. Have a valid license;
 - 6.3.2. Be authorized by the Authority to access PDMP Data in accordance with applicable law;
 - 6.3.3. Only access or use PDMP Data as allowed under ORS 431A.865; and
 - 6.3.4. Properly authenticate to the PDMP System as required, when seeking to query patients.
- 6.4 The Approved Entity shall ensure that its Authorized Users (including those of its Affiliated Entities) meet the requirements of HIPAA and other state and federal privacy and security laws.
- 6.5 The Approved Entity shall ensure that each Authorized User (including its Affiliated Entities' Users') complies with the Account Use Agreement, which must be substantially in the form attached as Exhibit A. Exhibit A is incorporated by this reference. The Authority may update the Account Use Agreement from time to time to maintain compliance with applicable law and administrative rules. The Authority will provide notice of the update to the Approved Entity at least thirty (30) calendar days prior to the

effective date of the update, unless, in the Authority's sole discretion, a shorter time is required to comply with applicable law. The Authority will provide a courtesy notice to Authorized Users. Any update will also be on the PDMP portal, and Authorized Users will be required to agree to the updated terms to continue to use the PDMP System. Continued use of the PDMP System after the effective date of the update constitutes acceptance of the updated terms.

7. PERMITTED PURPOSES FOR ACCESSING PDMP DATA

- 7.1 The Approved Entity may use the Gateway Service to retrieve PDMP Data only for the purposes of individual patient treatment and for Practitioners and Pharmacists to monitor the dispensing of prescriptions under their DEA licensure. As between the Authority and the Approved Entity, the Approved Entity, its Affiliates, and their Authorized Users are solely responsible for all decisions and actions taken or not taken involving patient care and monitoring resulting from, or in any way related to, the use of the PDMP System or PDMP Data. The Authority and its PDMP System contractor do not assume any role in the care of any patient.
- 7.2 The Approved Entity may not receive, create, use or disclose PHI or other PDMP information except as follows:
 - 7.2.1. To facilitate the transmission of PHI from the PDMP to the Approved Entity in accordance with ORS 431A.855-431A.900.
 - 7.2.2. If necessary for the proper management and administration of the Approved Entity or to carry out legal responsibilities of the Approved Entity if such use or disclosure is in compliance with privacy and security laws, and ORS 431A.855 - 431A.900 and OAR 333- 023-0805 through OAR 333-023-0830.

8. RETENTION OF PDMP DATA

- 8.1 The Approved Entity may not retain patient prescription monitoring information in the health information technology system or other places except for the purpose of audits and the maintenance of patient records.
- 8.2 For the purpose of audits, patient prescription monitoring information retrieved by the health information technology system may be retained in static form only, and not retained in formats that may be accessible for future inquiry unrelated to audit purposes.
- 8.3 For the maintenance of patient records, Authorized Users accessing patient prescription records through health information technology systems may capture and record patient prescription monitoring information in the patient record.

9. OREGON HEALTH AUTHORITY ACTIVITIES

The Authority will:

- 9.1 Provide and maintain a data connection between the PDMP System and PMP Interconnect to allow for the provision of Gateway Services.
- 9.2 Process completed PDMP System user account registrations. This includes notifying the Approved Entity of the approval or denial of its request for each Authorized User for whom an account has been requested, and providing any unique log-on identifier.
- 9.3 Periodically audit use of the PDMP System, as referenced in OAR Chapter 333 and this Agreement, for compliance with governing law, rules, and this Agreement.

10. SUSPENSION AND TERMINATION

- 10.1 The Approved Entity's access may be terminated at any time by written agreement of the parties.
- 10.2 The Approved Entity's access may be terminated by either party upon thirty (30) calendar days' written notice to the other party.
- 10.3 The Authority may immediately suspend or terminate Approved Entity's access for its failure to comply with this Agreement. The Authority may, to the extent it determines it is reasonable and able to do so, provide advance notice of termination to Approved Entity to cure any deficiency or breach.
- 10.4 The Authority may terminate or modify access immediately if there are changes or revised interpretations in federal or state laws, rules, or regulations, or if either party has changes in policies that require such termination or modification.
- 10.5 Effect of Termination

Upon termination or expiration of this Agreement, use of the Gateway Service will immediately cease. The termination of this Agreement has no effect on Approved Entity's obligations to safeguard the confidentiality, privacy and security of PHI.

11. GENERAL TERMS.

- 11.1 **Warranties.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, AUTHORITY DISCLAIMS ALL EXPRESSED AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATIONS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.
- 11.2 LIMITATION OF LIABILITY.
 - 11.2.1. THE STATE OF OREGON HAS NO LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST REVENUES, LOST DATA, DATA BEING RENDERED INACCURATELY, OR LOSSES SUSTAINED BY LICENSEE OR THIRD PARTIES), ARISING FROM THE DELIVERY, PERFORMANCE, OR USE OF THE GATEWAY SERVICE OR PDMP SYSTEM, INCLUDING FAILURE OF SOFTWARE TO OPERATE WITH ANY HARDWARE, EQUIPMENT, OR OTHER SOFTWARE PRODUCT(S) OR ERRORS

RELATED TO DEFICIENCIES IN THE DATA OR DOCUMENTATION, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANYWAY OUT OF THIS AGREEMENT OR THE EXERCISE OF ANY RIGHTS GRANTED HEREUNDER, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11.2.2. Notwithstanding the foregoing, the parties acknowledge Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300 apply to any claims arising from or related to this Agreement.

- 11.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the Approved Entity and the Authority with respect to the subject matter hereof, and supersedes other communications between the parties with respect to the subject matter. The headings of sections of this Agreement are for convenience of reference only and do not affect the meaning or interpretation of this Agreement in any way.
- 11.4 **Amendment.** The terms and conditions of this Agreement may not be amended or modified, except in writing signed by the Approved Entity and the Authority.
- 11.5 **No Waiver.** No failure or delay of either party to exercise any rights or remedies under this Agreement will operate as a waiver thereof.
- 11.6 **Interpretation.** Any ambiguity in this Agreement will be resolved to permit the State of Oregon to comply with any applicable privacy and security laws and the state's policies interpreting those laws.
- 11.7 **Basis of Bargain.** The limited warranty, and limited liability set forth above are fundamental elements of the basis of the agreement between the Authority and the Authorized Entity. Such limitations are factored into the Authority's provision of the PDMP System and Gateway Service.
- 11.8 **Choice of Law and Venue.** This Agreement is to be construed and enforced in accordance with the laws of the State of Oregon, without giving effect to its conflict of law principles, and applicable federal law. Any action or suit brought by the parties relating to this Agreement must be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon in Salem, Oregon; provided, however, if a claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. APPROVED ENTITY HEREBY CONSENTS TO THE PERSONAL JURISDICTION OF THIS COURT, WAIVES ANY OBJECTION TO VENUE IN THESE COURT, AND WAIVES ANY CLAIM THAT THIS COURT IS AN INCONVENIENT FORUM. In no way may this section or any other term of this Agreement be construed as (i) a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, or (ii) consent by the State of Oregon to the jurisdiction of any court.
- 11.9 **Attorneys' Fees, Costs.** Neither party to this Agreement is entitled to obtain judgment from the other party for attorneys' fees or costs incurred in any litigation between the parties, or incurred in the defense of any claim asserted by a third party.

- 11.10 **No Third Party Beneficiaries.** The Approved Entity and the Authority are the only parties to this Agreement and are the only parties entitled to enforce its terms.
- 11.11 **Severability.** In the event that a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable in any circumstances, the remainder of this Agreement, and the application of such provision in any other circumstances, shall not be affected thereby.
- 11.12 **Independent Contractors.** The parties' relationship is that of independent contractors. This Agreement does not create any employment, agency, franchise, joint venture, partnership or other similar legal relationship between the Approved Entity, the Authority or any of their employees, independent contractors or Affiliates.
- 11.13 **Execution.** This Agreement may be executed in one or more counterparts,, collectively which constitute one and the same instrument.
- 11.14 **Survival.** The parties' respective rights and obligations with respect to the provisions of this Agreement relating to compliance with law, audits, retention of data, limitation of liability, interpretation, choice of law and venue, attorneys' fees and costs, third party beneficiaries, and any other provision necessary to interpret the rights and obligations of the parties in connection with the termination of this Agreement do so survive.
- 11.15 **Notices.** Except as otherwise expressly provided in this Agreement or applicable law or rule, any communications between the parties or notices to be given under this Agreement must be given in writing to the Approved Entity and to the Authority at the address or number set forth on the signature page, or to such other addresses or numbers as either party may hereafter indicate.
- 11.15.1. Any communication or notice delivered by United States Postal Service, first class mail postage prepaid, will be deemed given five (5) calendar days after mailing.
- 11.15.2. Any communication or notice delivered by facsimile will be deemed given when the transmitting machine generates receipt of the transmission. To be effective against the Authority, such facsimile transmission must be confirmed by telephone notice to the Authority notice contact.
- 11.15.3. Any communication or notice delivered by email will be deemed given when the recipient responds with a receipt, which may be auto-generated. To be effective against the Authority such email transmission must be confirmed by telephone notice to the Authority notice contact.
- 11.15.4. Any communication or notice by personal delivery will be deemed given when actually received by the appropriate notice contact.

THE APPROVED ENTITY, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT THE APPROVED ENTITY HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

Approved Entity:

Signature & Date _____
Printed Name and Title _____
Organization Name _____

Approved Entity Notices to:

Printed Name and Title _____
Organization Name _____
Mailing Address _____
Physical Address _____
Telephone _____
Email _____

State of Oregon acting by and through its Oregon Health Authority

Signature & Date _____
Printed Name and Title _____
Organization Name _____

Authority Notices to:

Printed Name and Title Drew Simpson, Program Coordinator
Organization Name Oregon Health Authority
Mailing Address 800 NE Oregon St. ste 730, Portland, OR 97232
Physical Address _____
Telephone 971-673-0741 Fax 971-673-0990
Email PDMP.health@state.or.us

EXHIBIT A

Oregon Prescription Drug Monitoring Program

Account Use Agreement

The PDMP System (described below) is a service accessible and usable by persons authorized to access the PDMP System by the Oregon Health Authority (the Authority), each an “Authorized User.” All references to “Authorized User” mean both Authorized User and each individual acting on behalf of Authorized User in using the PDMP System and the data it contains.

The terms and conditions of this Account Use Agreement (Agreement) govern use of the PDMP System and PDMP Data. By accessing and using the PDMP System, Authorized User is accepting, without modification, the terms, conditions, and notices contained in this Agreement or provided through the PDMP Portal. If Authorized User does not accept the terms and conditions of this Agreement, Authorized User must discontinue use of the PDMP System. Notice of any updates to this Agreement will be sent as a courtesy to Authorized Users at least thirty (30) calendar days prior to the effective date of the update, unless, in the Authority’s sole discretion, a shorter time is required to comply with applicable law. Any update will also be on the PDMP portal, and Authorized Users will be required to agree to the updated terms to continue to use the PDMP System. Continued use of the PDMP System after the effective date of the update constitutes acceptance of the updated terms.

1. **STATUTORY AUTHORITY:**

The Authority has authority under ORS 431A.855 to establish and maintain a prescription monitoring program with an electronic system for monitoring and reporting prescription drugs dispensed by pharmacies licensed with the Oregon Board of Pharmacy that are classified in Schedules II-IV as Controlled Substances.

2. **DEFINITIONS:**

Capitalized terms used in this Agreement, but not otherwise defined, defined in applicable law and rule, including ORS 431A.850 and OAR 333-023-0805. Without limiting the applicability of terms defined in law and rule, the following terms also apply to this Agreement:

Affiliate means an entity directly or indirectly controlling, controlled by or under common control with Approved Entity and whose employees, agents, and contractors will access PDMP Data through Approved Entity’s Gateway Service connection. For purposes of this definition, “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another entity, whether through the ownership of voting securities, by contract or otherwise.

Approved Entity has the meaning given in OAR 333-023-0805, and refers to the Approved Entity that is party to the Oregon PDMP Participation and Gateway Service Agreement to which this Account Use Agreement is an exhibit.

Authorized User(s) means a person authorized to access PDMP Data and the PDMP System in accordance with ORS 431A.865.

Gateway Service means a data communication service, including but not limited to an application programming interface (API), that facilitates the transmission of requests for and retrieval of PDMP Data between the PDMP System and Authorized Entity's health information technology system.

PDMP means the Oregon Prescription Drug Monitoring Program (PDMP) sponsored by the Authority.

PDMP Data means prescription history information reported and accessed through the PDMP, including through the PDMP System.

PDMP System means the third party system that enables the PDMP.

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, including as amended from time to time.

3. LICENSE GRANT AND RESTRICTIONS:

3.1 **Grant of Right to Use.** Subject to Authorized User's compliance with this Agreement, the Authority hereby grants to Authorized User a nonexclusive, nontransferable, non-assignable, non-sub-licensable, and limited right to have access to and use the PDMP System and PDMP Data in accordance with this Agreement and applicable law and rule. Nothing in these terms is intended to transfer or assign any ownership interest or rights to Authorized Users. Authorized User may use the PDMP System to send, receive, find, and use PDMP Data only for the purposes set forth in this Agreement and applicable law and rules. This license does not grant any rights to obtaining future upgrades, updates, enhancements, or supplements of the PDMP System. If upgrades, updates, enhancements, or supplements of the PDMP System are obtained, however, the use of such upgrades or updates is governed by this Agreement and any amendments to it unless other terms accompany the upgrades, updates or supplements, in which case those terms apply.

3.2 **Additional Restrictions.** Authorized User acknowledges and agrees that the PDMP System contains the trade secrets and confidential information of the Authority or its third party contractor. Authorized User further acknowledges that the PDMP System may be protected by copyright law and international treaty provisions. Authorized User shall not permit any person under the control of the Authorized User other than Authorized Users who are Delegates to access or use the PDMP System. Authorized User shall not nor may it permit any attempted or actual duplication, modification, adaptation, translation, reverse engineering, decompilation, disassembling or creation

of a derivative work based on the PDMP System or PDMP Data except as specifically provided for under this Agreement.

4. ACCESS TO INFORMATION:

- 4.1 Account access to information in the PDMP System is granted to individuals only - not to clinics, hospitals, pharmacies or any other healthcare facility.
- 4.2 Access is available to a Practitioner licensed by an Oregon health professional regulatory board or to an individual licensed in California, Idaho, or Washington for the purpose of evaluating the need for or providing medical treatment. The information is a resource to inform patient clinical interviews and assessments. A Practitioner may also access a list of all Controlled Substances dispensed under the provider's DEA number for a given time frame.
- 4.3 Access to information from the PDMP System is available to a Pharmacist for the purpose of providing pharmaceutical treatment for a patient for whom the Pharmacist has received a valid prescription to dispense a Schedule II, III or IV Controlled Substance.
- 4.4 A Practitioner or Pharmacist may authorize a member of staff as a Delegate to access information from the PDMP System to assist in evaluating the need for or providing medical treatment.
- 4.5 Access to information from the PDMP System is available to the State Medical Examiner or designees of the State Medical Examiner for the purpose of conducting a medicolegal investigation or autopsy.
- 4.6 The PDMP grants account access to the system to Practitioners and Pharmacists so that they may look up information on their own patients directly via password access. Practitioners and Pharmacists are not required to obtain information about patients from the PDMP System. In addition Pharmacists are prohibited from refusing to dispense Controlled Substances to patients because the PDMP System is offline or otherwise unavailable.
- 4.7 In accordance with ORS 192.553 to 192.581 and federal privacy regulations, any person authorized to prescribe or dispense a Prescription Drug and who is entitled to access a patient's prescription monitoring information may discuss or release the information to other Practitioners involved with the patient's care, in order to provide safe and appropriate care coordination unless otherwise prohibited by law.
- 4.8 Patients have the right to obtain a free copy of their information from the PDMP. A Patient can request a copy of their information that contains a list of who has accessed the patient's record.
- 4.9 Practitioners and Pharmacists are prohibited by law to access information of individuals who are not patients under their care. The PDMP will conduct auditing activities to monitor for unusual or potentially unauthorized use of the PDMP System.

5. OUT-OF-STATE PROVIDER ACCOUNTS

Access to out-of-state Practitioners will be limited to individuals licensed in California, Idaho, and Washington with similar licensure requirements. The Authority's determination of similar licensure is based upon scope of practice and formulary.

6. DELEGATE ACCOUNTS

- 6.1 A Delegate is a member of staff of a Practitioner or Pharmacist who is authorized by the provider or Pharmacist to access the PDMP System on his or her behalf. To access the PDMP System Delegates must be authorized by a Practitioner or Pharmacist with an active system account. Each time a Delegate conducts a patient query, the Delegate must indicate the authorizing Practitioner or Pharmacist for whom he or she is conducting the query.
- 6.2 A Practitioner or Pharmacist who authorizes a Delegate is responsible for the use or misuse of the information by the Delegate. Authorized Users with Delegates must conduct monthly audits of Delegate use to monitor for potential misuse of the PDMP System. When a Practitioner or Pharmacist learns of any potential unauthorized use of the PDMP System or PDMP Data by a Delegate, the individual must revoke the delegation and notify the Authority.
- 6.3 When a Delegate is no longer authorized by a Practitioner or Pharmacist to access the PDMP System on his or her behalf, the Practitioner or Pharmacist must revoke the delegation and notify the Authority.
- 6.4 When Delegate accounts are inactive for more than six months, the Authority will deactivate the account; to reactivate the account the Delegate must contact the Authority.

7. MEDICAL EXAMINER ACCOUNTS

- 7.1 The State Medical Examiner and her or his designees must apply for a PDMP System account and indicate the license type as Medical Examiner. When conducting a patient query as a Medical Examiner, the State Medical Examiner or designee is certifying that the query is for the purpose of conducting a specific medicolegal investigation or autopsy where there is reason to believe that Controlled Substances contributed to the death.
- 7.2 When PDMP System access of a designee of the State Medical Examiner must be revoked or if the State Medical Examiner learns of any potential unauthorized use of the PDMP System or PDMP Data, the State Medical Examiner must notify the Authority.

8. INFORMATION ERRORS

The information accessed from the PDMP System may contain errors and omissions and should not be used as a sole resource in determining treatment options. The records in the PDMP System are based on information submitted by pharmacies. Authorized Users should discuss information from the PDMP System with their patients.

9. USERNAME LOGIN AND PASSWORD:

- 9.1 PDMP System username logins and passwords are provided to those individuals approved for PDMP System access by the PDMP.
- 9.2 Authorized Users shall not sharing access information (username and password) with any other individual or entity including medical assistants, staff, co-workers, Practitioners and Pharmacists. Should any violations of username login and password security be identified, the PDMP will revoke the user’s access to the PDMP System.
- 9.3 When the PDMP learns that a Practitioner or Pharmacist’s license or DEA registration has been limited or revoked, access will be terminated.

10. UNLAWFUL DISCLOSURE:

- 10.1 Any person who intentionally makes an unauthorized disclosure of information contained in or obtained from the PDMP System will be subject to disciplinary action by their respective board and appropriate civil and criminal penalties.
- 10.2 PDMP Data is PHI, and must be treated as confidential. Knowingly disclosing PDMP Data in violation of state or federal laws relating to the privacy of healthcare data is grounds for disciplinary action by the appropriate health-related licensing board and/or employer, and may be subject to civil and criminal penalties.
- 10.3 Approved Entities and Authorized Users must implement and maintain appropriate administrative, physical, and technical safeguards to reasonably ensure the privacy and security of PHI, including Controlled Substance prescription information pertaining to their patients.

11. PDMP CONTACT INFORMATION

pdmp.health@state.or.us or 971-673-0741

12. AUTHORIZED USER CERTIFICATIONS:

- 12.1 Authorized User hereby certifies:
 - 12.1.1. I understand that my access to PDMP Data via the PDMP System is granted only with the authority and rights allowed under ORS 431A.866.
 - 12.1.2. I am responsible for all use of my username login and password, and I will not share my access information with any other individual or entity including medical assistants, staff, co-workers, Practitioners and Pharmacists.
 - 12.1.3. I, and my Delegate(s) if applicable, will only request information from the PDMP System to evaluate the need for or provide medical or pharmaceutical treatment for a patient in my care [ORS 431A.865(2)(a)(A)]. Access to information of individuals who are not patients under my care is not permitted by law.

- 12.1.4. I understand that patients are allowed by law to obtain a free copy of their own information from the Authority via the PDMP and that this information will include a list of any and all PDMP System users who have accessed a patient's record [ORS 431A.865(2)(c), ORS 431A.865(3)(a)]. I further understand that patients may question my authority to access their information.
- 12.1.5. I understand that the PDMP will conduct auditing activities to monitor for unusual or potentially unauthorized use of the PDMP System [ORS 431A.855(2)].
- 12.1.6. I understand that a Pharmacist may not refuse to fill a valid Controlled Substance prescription because the PDMP System is offline or patient information is otherwise unavailable [ORS 431A.870],
- 12.1.7. I will treat any information accessed through the PDMP System as confidential and will reasonably ensure the privacy and security of the Controlled Substance prescription information pertaining to patients to protect against any improper disclosure.
- 12.1.8. I will report to the PDMP any actual or suspected breach of the PDMP System or unauthorized access within 24 hours [OAR 333-023-0820(5)].
- 12.1.9. I understand that inappropriate access or disclosure of information received from the PDMP System is a violation of ORS 431A.865 and may result in criminal, civil, or administrative sanctions, including disciplinary action by the appropriate licensing board and/or my employer, as well as revocation of PDMP System access privileges.
- 12.1.10. I understand that if I violate ORS 431A.865, 431A.860, or 431A.870, a person injured by the violation may bring a civil action against me and may recover damages in the amount of \$1,000 or actual damages, whichever is greater. I understand that I am immune from civil liability for these violations unless I act with malice, criminal intent, gross negligence, recklessness or willful intent [ORS 431A.865(6)(b)].
- 12.1.11. I understand that in addition to any other penalty provided by law, the Attorney General may impose a civil penalty not to exceed \$10,000 for each violation of ORS 431A.865, 431A.860, or 431A.870. I also understand that each improper release of information from the prescription monitoring program in violation of ORS 431A.865 is considered a separate violation.
- 12.1.12. I understand the PDMP System is not intended to provide any advice regarding diagnosis and treatment, and that I remain responsible for patient care and treatment decisions. I further understand that a Practitioner or Pharmacist is not required to obtain information about patients from the PDMP System and may not be held liable for damages in any civil action on the basis that the provider or Pharmacist did not request or obtain information from the PDMP System [ORS 431A.865(7)].

- 12.1.13. I understand that the information I access from the PDMP System may contain errors and omissions and is simply a resource to inform patient clinical interviews and assessments. Additionally I understand that PDMP Data should be verified with patients before any clinical decisions are made or actions are taken.
- 12.1.14. I may be asked and will provide additional information related to my account in order to gain or retain access to the PDMP System, and will notify the PDMP of any changes to my contact information.
- 12.1.15. I will notify the PDMP when: my license or DEA registration has been limited, revoked, or voluntarily retired; I change employment or my employment has been terminated; or I no longer need access to the PDMP System [OAR 333-023-0820(13)].
- 12.1.16. I may be asked for and will provide personal information to verify my identity when contacting the PDMP or the Help Desk.
- 12.1.17. I agree to follow this Agreement. I understand that if I violate the terms and conditions of this Agreement, I am subject to sanctions and my access to the PDMP System will be revoked.
- 12.1.18. I will comply with applicable laws, regulations, and policies, including but not limited to:
 - 12.1.18.1 Applicable laws established or modified from time to time by the State of Oregon, including but not limited to laws concerning PDMP System access or permitted uses of PDMP Data;
 - 12.1.18.2 Applicable laws established or modified from time to time by the federal government; and
 - 12.1.18.3 Applicable administrative rules issued by Oregon or the federal government, including as updated from time to time.

13. If Authorized User is a Practitioner or Pharmacist who authorizes Delegate access, Authorized User further certifies:

I have and will maintain an active account in order to delegate access to a member of my staff [OAR 333-023-0820(3)]. I am responsible for the use or misuse of the information accessed by my Delegates [ORS 431A.865(2)(a)(A)].

I will conduct monthly audits of Delegate use to monitor for potential misuse of the PDMP System and that when I learn of any potential unauthorized use of the system or system data by a Delegate, I must revoke the delegation and notify the Authority [OAR 333-023-0820 (21-22)].

When a Delegate for any reason is no longer authorized to access the PDMP System on my behalf, I must revoke the delegation and notify the Authority [OAR 333-023-0820 (15)].

14. If Authorized User is a Delegate, Authorized User further certify:

14.1 Each time I conduct a patient query I must indicate the authorizing Practitioner or Pharmacist on whose behalf I am conducting the query [OAR 333-023-0820(20)].

14.2 I understand that if my account is inactive for more than six months, the Authority will deactivate my account [OAR 333-023-0820(16)].

15. If Authorized User is a Medical Examiner, Authorized User further certify:

15.1 I will indicate my license type as Medical Examiner when I apply for a PDMP account to access the PDMP System as the State Medical Examiner or designee [OAR 333-023-0820 (9)].

15.2 Each time I conduct a patient query as a Medical Examiner I am certifying that the query is for the purpose of conducting a specific medicolegal investigation or autopsy where there is reason to believe Controlled Substances contributed to the death [OAR 333-023-0820 (19)].

16. Authorized User is the State Medical Examiner, Authorized User further certifies:

16.1 When for any reason access of a designee must be revoked, I will notify the Authority [OAR 333-023-0820 (17)].

16.2 When I learn of any potential unauthorized use of the PDMP System or PDMP Data by a designee, I will notify the Authority [OAR 333-023-0820 (23)].