

CONFIDENTIALITY & USER AGREEMENT

1. PARTIES

This Confidentiality ("Agreement") is made as of this ___ day of _____, 2018 ("Effective Date") by and between _____ ("Provider") and the Ohio Department of Commerce ("Department") and the State of Ohio Board of Pharmacy ("Board," and together with the Department, the "State") (collectively the "Parties"), with respect to provision of one or more secondary software systems ("System," as further defined below) to one or more entities licensed by the State to operate medical marijuana entities in the State of Ohio ("Licensees"). The Provider, the Department and the Board agree to the following terms and conditions.

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall not be effective or enforceable until it is approved and signed by all Parties. The State shall not be liable for the performance of any of its obligations hereunder, or be bound by any provision hereof prior to the Effective Date.

By entering into this Agreement, the State is under no obligation to appropriate funds for, or to make, any payments to Provider or any Licensee for any reason, including but not limited to the purpose of reimbursing Provider or Licensee for any payments or expenses Provider or any Licensee may make or incur, including, without limitation, any such payments or expenses made or incurred pursuant to any agreement between Provider and any Licensee. Nor shall any provision in this Agreement be construed as imposing liability on the State for any expenses Provider or Licensee may make or incur in connection with this Agreement or the performance of this Agreement. Provider expressly waives any claims asserting liability against State in connection with this Agreement or the performance of this Agreement.

3. RECITALS

A. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

B. Purpose

Licensees are required to use the marijuana inventory tracking system developed by the Department, currently known as METRC, as the primary marijuana inventory tracking system of record. Licensees are also permitted to use the System in conjunction with METRC. Licensees have requested the ability to establish an interface between such System and METRC, in order to communicate information electronically between METRC and the System. Licensee information is subject to strict confidentiality requirements. The State has agreed to permit Licensees to communicate information electronically to and from METRC through Provider's System or Services via an Application Programming Interface ("API," as further defined below), but this permission is valid only if the Provider of the System enters a Provider Agreement (as defined below) to protect the confidentiality of the information/data contained in METRC and the integrity of METRC's design and processes, and to comply with the security requirements and standards set forth below.

4. DEFINITIONS

A. API

"API" means the Application Programming Interface designed, developed, and maintained by Franwell, or any successor organization.

B. API Key

"API Key" means an alphanumeric code generated through METRC to gain programmatic access to METRC and automatic electronic communication of data and information between Provider's System and METRC. There are two kinds of API Keys:

i. Provider API Key

"Provider API Key" means an API Key that is specific to Provider and Provider's System, which must be used by every instance of Provider's System at all times, in combination with the Licensee API Key specific to Licensee(s), in order to gain authorized programmatic access to METRC and automatic communication of data and information between Provider's System and METRC pertaining to such Licensee(s).

ii. Licensee API Key

"Licensee API Key" means an API Key that is specific to a particular Licensee, which only such Licensee is able and authorized to generate and obtain or deactivate. The Licensee API Key may be deactivated by generating a new Licensee API Key. The Licensee API Key is linked directly to that Licensee's METRC account, and allows access to that Licensee's METRC data and information.

C. Confidential Information

"Confidential Information" means all information, data, records, and documentary materials which are of a sensitive nature regardless of physical form or characteristics, and includes, but is not limited to, non-public State records, sensitive State data, protected State data, personal identifying (PII) data, payment card industry (PCI) data, and other information or data concerning individuals and Licensees including financial information such as banking information and social security numbers, which has been communicated, furnished, or disclosed by the State to Provider. Confidential information includes but is not limited to any information obtained by Provider through the interface between the METRC system and the System. Confidential Information may also include any information disclosed to Provider by Licensee, either directly or indirectly, in writing, orally, or through the communication of data through the API, whenever or however disclosed, including but not limited to: (i) names, addresses, or records of consumers' personal information; (ii) consumer information or data; (iii) PII Data; (iv) PCI Data; (v) any other information that should reasonably be recognized as related to the PII Data of consumers; (vi) inventory tracking data, reports, or records related to the cultivation, manufacture, distribution, or sale of medical or retail marijuana or marijuana product, if such data, reports, or records are or are intended to be provided to the State through the METRC system or otherwise; (vii) business plans and performance related to the past, present or future activities of such party, its affiliates, subsidiaries, and affiliated companies; (viii) all types of Licensee data, including but not limited to, names and lists of other license holders, service providers, or affiliates; (ix) business policies, practices, and procedures; (x) names of employees; (xi) and any other information that should reasonably be recognized as related to business conducted by Licensee.

D. Franwell

"Franwell" means Franwell, Inc., the company engaged by the State to design, develop, provide, host, and maintain the State's METRC system, and also includes any successor organization.

E. Incident

"Incident" means an accidental or deliberate event that results in or poses a threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of communication and information

resources of the State. Incidents include, but are not limited to: (i) successful attempts to gain unauthorized access to the METRC system or Confidential Information regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of METRC for the processing or storage of data; (iv) any unauthorized access by any person to Confidential Information, or (v) changes to the State's system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.

F. METRC

"METRC" or "METRC system" means the marijuana inventory tracking system developed by Franwell to enable the State to track all legally grown cannabis from seed to sale, and also includes any successor marijuana inventory tracking system that the State permits or requires Licensees to utilize.

G. Payment Card Information (PCI) Data

"Payment Card Information (PCI) Data" means any data related to card holders' names, credit card numbers, or other credit card or financial information as may be protected by State and/or federal law.

H. Personally Identifiable Information (PII) Data

"Personally Identifiable Information (PII) Data" means information about an individual collected by the State or any other governmental entity that could reasonably be used to identify such individual and includes, but is not limited to, any combination of: (i) first and last name; (ii) first name or first initial and last name; (iii) residence or other physical address; (iv) electronic mail address; (v) telephone number; (vi) birth date; (vii) PCI Data; (viii) social security number; (ix) driver's license number; (x) identification card number; or (xi) any other information that identifies an individual personally.

I. Provider Agreement

"Provider Agreement" means an agreement between a Licensee and Provider entered into for the purpose of providing a System or Services to the Licensee. As used in this Agreement, Provider shall mean the Provider and its agents, employees, Subcontractors and permitted assigns.

J. Services

"Services" means the services to be performed by Provider to Licensee pursuant to the Provider Agreement in connection with the provision, operation, or maintenance of the System.

K. State

"State" means a collective reference to the Department and the Board.

L. Subcontractor

"Subcontractor" means any third party engaged by Provider to aid in performance of Provider's obligations to Licensee(s).

M. System

"System" means the secondary software system provided by Provider for use by Licensee. Such Systems may be used to collect information to be used by the Licensees in operating their businesses, including, but not limited to, secondary inventory tracking and point of sale systems.

5. AUTHORIZATION

The State hereby authorizes Franwell to provide a Provider API Key to Provider, which, when used in combination with a Licensee's API Key which the Licensee may furnish to Provider, permits Provider's

System to access the API for the purposes of communicating information to the METRC system, and retrieving such information from the METRC system, for use by Licensee(s) in operating the business of such Licensee(s). Provider must successfully complete METRC training and competency testing and Provider's authorization is limited to the specific functionality of METRC for which Provider has successfully completed training and competency testing. This Agreement, and Provider's rights and obligations hereunder, shall not be assigned without the prior written consent of the State, which may be approved or denied in the State's sole discretion.

The Provider API Key shall permit Provider's System with access to the API only if the Provider API Key is used in combination with the Licensee API Key. Any Licensee that contracts with Provider for use of Provider's System may furnish Provider with its Licensee API Key to grant access to the API. A Licensee shall have the right to block a Provider's access to Licensee's METRC data by deactivating such Licensee's API Key and generating, or having Franwell generate a new Licensee API Key through METRC.

Provider agrees that notwithstanding any contrary provision in a Provider Agreement, and in keeping with the State's obligation to maintain the confidentiality of Licensee(s) data and information, Provider expressly waives and shall not be entitled to seek or obtain injunctive, equitable, or other relief against the State or Franwell to compel the furnishing of any Licensee's API Key to Provider. Licensee shall maintain at all times the right to terminate the Provider Agreement or otherwise discontinue use of Provider's System and Services. The Provider further agrees to operate in good faith and with fair dealing at all times when providing a System or Services that interface with the METRC system.

The State, in its sole discretion, retains the right to revoke or withdraw a Provider API Key at any time.

Any Provider signing this Agreement is subject to the same rules and regulations defining the integrity and accuracy of data entered into METRC. Information entered into the system inaccurately or in violation of the State's rules or regulations could result in the State's revocation of a Provider API Key.

Misrepresentation or knowingly entering false information into the System or METRC could result in the revocation of the Provider API Key by the State.

API Keys are non-transferable and cannot be shared with any entity other than the Provider or Licensee(s) that has been assigned such API Key. Sharing an API Key with any entity that has not been assigned such API Key, without the expressed written consent of the State, can result in the deactivation of the API Key by the State.

"Transactional" data is required to be entered into METRC via the user interface, API, or any other means on a "real-time" or as close as possible to real-time.

6. CONFIDENTIALITY

Provider shall comply with and shall cause each of its agents, employees, Subcontractors, permitted assigns, and any other individual or entity assisting with Provider's provision of a System or Services to Licensee, to comply with the provisions of this § 6. Such obligations shall survive the termination of this Agreement.

A. Confidentiality

Provider shall keep all Confidential Information confidential at all times to ensure compliance with all laws and regulations concerning confidentiality of Confidential Information. Any request or demand,

including subpoenas, by a third party for Confidential Information in the possession or control of Provider shall be immediately forwarded to the State's principal representative by the recipient of the request. The State shall have the right to move to quash any subpoena received from a third party seeking Confidential Information in the possession or control of Provider, whether the subpoena is directed to Provider or the State. Provider agrees to cooperate with the State, if requested, in proceedings related to any motion to quash a subpoena, at no expense to the State.

B. Notification

Provider shall provide its agents, employees, Subcontractors, and permitted assigns who will or may have access to Confidential Information with a written explanation of the confidentiality requirements herein to which they are subject, prior to permitting any such individual to access such Confidential Information.

C. Protection

Provider is responsible for the protection and security of all Confidential Information provided to it by the State or which is accessible using the API Key. If Provider provides physical or logical storage, processing or transmission of, or retains, stores, or is given, Confidential Information, Provider shall, (i) provide physical and logical protection for all related hardware, software, applications, and data that meet or exceed industry standards and requirements as set forth in this Agreement; (ii) maintain network, system, and application security, which includes, but is not limited to, network firewalls, intrusion detection (host and network), and annual security testing; (iii) comply with State and/or federal regulations and guidelines related to overall security, confidentiality, integrity, availability, and auditing; (iv) ensure that security is not compromised by unauthorized access to computers, program, software, databases, or other electronic environments; and (v) report all Incidents immediately, and all attempted Incidents on an annual basis, to the Department and the Board. Provider shall provide the State with access, subject to Provider's reasonable access security requirements, seven (7) days a week, twenty-four (24) hours a day, for the purpose of inspecting and monitoring access and use of Confidential Information and evaluating physical and logical security control effectiveness. As set forth in § 2 of this Agreement, the State shall not be responsible for any expenses incurred in connection with this Agreement, including, but not limited to, Provider's expenses related to compliance with this section.

D. Use, Information Security Compliance, and Retention

Provider expressly agrees to be bound by and to comply with all rules, policies, standards, and guidelines promulgated pursuant to Chapter 3796 of the Ohio Revised Code and any subsequent amendments. Provider shall review such statutes, rules, policies, standards, and guidelines on a semi-annual basis.

Provider shall cooperate, and shall cause its Subcontractors to cooperate, with the performance of security audit and penetration tests by the Department, the Board or an entity designated by the Department or Board.

Confidential Information of any kind shall be stored, processed, or transferred only in or to facilities located within the United States, and shall not be distributed or sold to any third party, retained in any files or otherwise, or used by Provider, except as authorized by this Agreement, by law, or approved in writing by the State. Provider shall provide and maintain a secure environment that ensures confidentiality of all Confidential Information wherever located. Provider shall not have any rights to use or access any data or information of the Department or the Board or any other state of Ohio

agency, except with the prior written approval of the State. The State will own all right, title, and interest in its data that is related to the services provided by this Agreement and Provider will make available to the State such data in its native format if requested by the State within one business day of receiving said request.

The dissemination of any Confidential Information by Provider for any purpose other than as permitted under this Agreement constitutes a breach of this Agreement, entitling the State to damages set forth in this Agreement and/or as permitted by law.

E. Incident Notice

If Provider becomes aware of an Incident involving any Confidential Information, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any. Unless Provider establishes that it was not the cause or source of the Incident, Provider shall be responsible for the cost of notifying each person whose Confidential Information may have been compromised by the Incident.

In any case where an issue with the Provider's System is found to cause a problem where data integrity, accuracy, or ability to report data via the API is identified, the Provider shall notify all potentially affected Licensees and the Department and the Board as quickly as feasible to prevent State Licensees from reporting inaccurate or false information.

F. Incident Remediation

Provider, at its sole cost, shall be responsible for determining the cause of an Incident, and for producing a remediation plan to reduce the risk of a similar Incident in the future. Provider shall present its analysis and remediation plan to the State within ten (10) days of notifying the State of an Incident. The State reserves the right to adjust this plan, in its sole discretion. If Provider cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Provider shall timely reimburse the State for the costs thereof.

In any case where the Provider has an issue with the Provider System providing information to METRC via the API, the Provider will provide a written plan to the State within 48 hours showing the affected Licensees with a remediation plan addressing how the issue will be resolved and information corrected.

G. Incident Liability

Disclosure of Confidential Information by Provider for any reason may be cause for legal action by third parties (including Licensee(s)) against Provider, the State, or their respective agents. Provider shall indemnify, save, and hold harmless the State, its employees, and agents against any and all claims, damages, liability, and court awards including costs, expenses, and attorney fees incurred as a result of any act or omission by Provider. Notwithstanding any other provision of this Agreement, Provider shall be liable to the State for all direct, consequential, and incidental damages arising from an Incident caused by Provider.

The State will notify Provider, in writing, if indemnification is sought; however, failure to do so will not relieve Provider, except to the extent that Provider is materially prejudiced. Provider must, to the satisfaction of the State, demonstrate its financial ability to carry out these obligations. The State is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense, at its own expense, if the State

deems necessary. Provider will not, without the State's prior written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding.

H. End-of-Agreement Data Handling

Upon request by the State made before or within thirty (30) days after the effective date of termination of this Agreement, Provider will make available to the State a complete and secure download file of all data, including, but not limited to, all Confidential Information, schema and transformation definitions, or delimited text files with documented, detailed schema definitions along with attachments in their native format. All such data shall be encrypted and appropriately authenticated. The Parties agree that on the termination of the provision of Services, Provider shall, at the choice of the State, return all Confidential Information in the possession or control of the Provider, and the copies thereof, to the State, or Provider shall destroy all such Confidential Information and certify to the State that it has done so. If legislation imposed upon Provider prevents it from returning or destroying all or part of the Confidential Information in the possession or control of Provider or obtained through the API, Provider warrants that it will guarantee the confidentiality of all Confidential Information in the possession or control of Provider or obtained through the API and will cease any activity that processes or otherwise utilizes such data.

I. Disposition of Data

The State retains the right to use the System to access and retrieve Confidential Information stored on Provider's infrastructure at the State's sole discretion. Provider warrants and shall cause each Subcontractor to warrant that upon request of the State, Provider, or such Subcontractor shall submit its data processing facilities for an audit of its compliance with §6, including but not limited to the measures referred to in §6.D. The State reserves its rights, title, and interest, including all intellectual property and proprietary rights, in and to METRC, METRC system data, Confidential Information, and all related data and content.

J. Safeguarding PII Data

If Provider will or may receive PII Data under this Agreement, Provider shall provide for the security of such PII Data, in a form acceptable to the State, including, without limitation, nondisclosure, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits.

Provider shall take full responsibility for the security of all PII Data in its possession, and shall hold the State harmless for any damages or liabilities resulting from the unauthorized disclosure or loss thereof.

K. Safeguarding PCI Data

If Provider will or may receive PCI Data under this Agreement, Provider shall provide for the security of the PCI Data, in accordance with PCI Data Security Standard (DSS) 1.1. Security safeguards shall include, without limitation, supervision by responsible employees, approval of Subcontractors as required by State and/or federal law, non-disclosure of information other than as necessary in the performance of Provider's or Subcontractor's obligations under this Agreement, non-disclosure protections, proper accounting and storage of information, civil and criminal penalties for non-compliance as provided by law, certifications, and inspections.

7. BREACH

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of Provider to perform any of its material obligations hereunder in whole or in part, or in a timely and satisfactory manner, as determined by the State, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Provider, or the appointment of a receiver or similar officer for Provider or any of its property, which is not vacated or fully stayed within twenty (20) days after the institution or occurrence thereof, shall also constitute a breach. Breach also shall occur upon Provider's unauthorized use, disclosure, or retention of Confidential Information or if the Provider violates any law or regulation in performing its obligations under this Agreement. It shall be a breach for Provider to enter information into the System or METRC inaccurately or in violation of the State's rules or regulations. Provider shall, within 24 hours, provide the State with written notice of the institution of proceedings under any bankruptcy, insolvency, reorganization, or similar law, by or against Provider, or the appointment of a receiver or similar officer for Provider or any of its property.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved party to the other party by hand-delivery with receipt required or sent by certified or registered mail to such party's principal representative at the address set forth below. If sent by certified or registered mail, notice shall be deemed received two business days after the date of mailing as reflected on the postmark. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, as set forth below. Any Party may, from time to time, designate by written notice, substitute addresses or persons to whom such notices shall be sent.

- i. Department
Name and title of person: _____
Address: _____
Email address: _____

- ii. Board
Name and title of person: _____
Address: _____
Email address: _____

- iii. Provider
Name and title of person: _____
Company Name: _____
Address: _____
Email address: _____

If such breach is capable of cure, as determined by the State, and is not cured within thirty (30) days of receipt of written notice, or if a cure cannot be completed within thirty (30) days, or if cure of the breach has not begun within thirty (30) days and pursued with due diligence, the State may exercise any of the remedies set forth in §8. Notwithstanding any provision to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately deactivate Provider's Provider API Key if the State determines such action is warranted to maintain the confidentiality of Confidential Information.

8. REMEDIES

If Provider is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §8.A in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §7.B. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination and/or Breach

The State may terminate this entire Agreement or any part of this Agreement. The notice of termination will be effective as soon as the Provider receives written notice by the State. Exercise by the State of this right shall not be a breach of its obligations hereunder. Provider shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Provider shall take timely, reasonable, and necessary action to protect and preserve Confidential Information in the possession or control of the Provider. All Confidential Information in the possession or control of Provider shall be immediately returned to the State as specified in this Agreement and Provider shall certify that no copies of Confidential Information remain in the possession or control of Provider.

ii. Provider API Key Deactivation

Irrespective of any period set forth in §7.B, immediately upon any breach of this Agreement, the State may deactivate Provider's API Key. Provider agrees that the Provider API Key does not constitute a license and expressly waives any rights associated with the provision of a license. Provider specifically agrees it has no right to a hearing or other legal or administrative process regarding the deactivation of the Provider API Key.

iii. Damages

Notwithstanding any other remedial action by the State, Provider shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by Provider.

B. Early Termination in the Public Interest

If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may deactivate Provider's API Key and terminate this Agreement. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder.

i. Obligations and Rights

Upon receipt of notice of breach, Provider shall be subject to and comply with the same obligations and rights set forth in §8.A.i.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Removal

Notwithstanding any other provision herein, the State may demand immediate removal of any of Provider's employees, agents, Subcontractors, or permitted assigns whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued

relation to this Agreement is deemed to be contrary to the public interest or the State's best interest.

ii. Intellectual Property

If Provider infringes on a patent, copyright, trademark, trade secret, or other intellectual property right while performing the Services or providing the System, Provider shall, at the State's option: (a) obtain the right to use such products and Services; (b) replace any goods, Services, or product involved with non-infringing goods, Services, or products or modify such goods, Services, or products so that they become non-infringing; or (c) if neither of the foregoing alternatives are reasonably available, remove any infringing goods, Services, or products.

iv. Equitable Relief

Provider acknowledges and agrees that (a) a breach or threatened breach of any of its obligations under this Agreement may give rise to irreparable harm to the State for which monetary damages would not be an adequate remedy and (b) in the event of a breach or a threatened breach by Provider of any such obligations, the State is, in addition to any and all other rights and remedies that may be available to the State at law, at equity, or otherwise in respect of such breach, entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction, without any requirement to post a bond or other security, and without any requirement to prove actual damages or that monetary damages will not afford an adequate remedy.

9. OTHER PROVISIONS

A. Indemnification

The Provider will indemnify the State for any and all claims, damages, law suits, costs, judgments, expenses, and any other liabilities resulting from bodily injury to any person (including injury resulting in death) or damage to property that may arise out of or are related to Provider's performance under this Agreement, providing such bodily injury or property damage is due to the negligence of the Provider.

The Provider will also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property rights based on the State's proper use of any Deliverable under this Agreement. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement, is based on the modification or misuse. The State agrees to give the Provider notice of any such claim as soon as reasonably practicable and to give the Provider the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the State Attorney General. If a successful claim of infringement is made, or if the Provider reasonably believes that an infringement claim that is pending may actually succeed, the Provider will take one (1) of the following four (4) actions:

1. Modify the Deliverable so that is no longer infringing.
2. Replace the Deliverable with an equivalent or better item.
3. Acquire the right for the State to use the infringing Deliverable as it was intended for the State to use under this Agreement.
4. Remove the Deliverable and refund the fee the State paid for the Deliverable and the fee for any other Deliverable that required the availability of the infringing Deliverable for it to be useful to the State.

The State has no obligation to provide legal counsel or defense to the Provider or its Subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Agreement against the Provider or its Subcontractors as a result of or relating to the Provider's obligations under this Agreement.

The State has no obligation for the payment of any judgments or the settlement of any claims against the Provider or its Subcontractors as a result of or relating to the Provider's obligations under this Agreement.

The Provider shall immediately notify the State of any claim or suit made or filed against the Provider or its Subcontractors regarding any matter resulting from or relating to the Provider's obligations under this Agreement, and will cooperate, assist, and consult with the State in the defense or investigation of any claim, suit, or action made or filed by a third party against the State as a result of or relating to the Provider's performance under this Agreement.

The Provider shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to the State's data under this Agreement, or which in any way might reasonably require access to the data of the State, unless prohibited by law from providing such notice. The Provider shall not respond to subpoenas, service of process, and other legal requests related to the State without first notifying the State, unless prohibited by law from providing such notice.

B. INSURANCE

Provider shall provide the following insurance coverage at its own expense throughout the term of this Agreement:

- i. Commercial General Liability insurance coverage for bodily injury, personal injury, wrongful death, property damage. The defense cost shall be outside of the policy limits. Such policy shall designate the State of Ohio as an additional insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation. At a minimum, the limits of the insurance shall be:
 - a. \$2,000,000 General Aggregate
 - b. \$2,000,000 Products/Completed Operations Aggregate
 - c. \$1,000,000 Per Occurrence Limit
 - d. \$1,000,000 Personal and Advertising Injury Limit
 - e. \$100,000 Fire Legal Liability
 - f. \$10,000 Medical Payments

The policy shall also be endorsed to provide the State with 30-day prior written notice of cancellation or material change to the policy. It is agreed upon that the Provider's Commercial General Liability shall be primary over any other insurance coverage.

- ii. Cyber Liability Insurance of not less than \$5,000,000 per occurrence and \$10,000,000 aggregate for liabilities for financial loss resulting or arising from acts, errors, or omissions, in connection with the Work performed under this Agreement such as:
 - a. Breaches of security or privacy;

- b. Data theft, damage, destruction, or corruption, including without limitation, unauthorized access, unauthorized use, identity theft, theft of personally identifiable information, transmission of a computer virus or other type of malicious code;
- c. Participation in a denial of service attack on a third party;
- d. Violation or infringement of any right to privacy, breach of federal, state, or foreign security and/or privacy laws and regulations;
- e. Intellectual property infringement arising out of software and/or content (excluding patent infringement and misappropriation of trade secrets);
- f. Technology errors and omissions;
- g. Business Interruption;
- h. Cyber extortion;
- i. Investigation, notification and related credit monitoring costs from any of the above.

C. Choice of Law

This Agreement shall be construed, interpreted, and enforced according to the laws of the State of Ohio. Ohio law, rules, and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent of capable execution.

D. Binding Arbitration Prohibited

The State does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

E. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Ohio, County of Franklin.

F. DISCLAIMER OF DAMAGES AND LIMITATION OF LIABILITY

THE STATE WILL NOT BE LIABLE, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR BY STATUTE OR OTHERWISE, FOR ANY CLAIM RELATED TO OR ARISING UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY CLAIM FOR DIRECT, CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES.

G. Employee Financial Interest/Conflict of Interest

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the System or Services described in this Agreement. Provider has no interests and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Provider's Services and Provider shall not employ any person having such known interests.

H. Entire Understanding

This Agreement represents the complete integration of all understandings between the parties and all prior representations and understandings, oral or written, are merged herein. Prior or

contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

This Agreement may be executed in one or more counterparts, each counterpart to be considered an original portion of this Agreement, and all of which together shall constitute a single instrument. Facsimile and Portable Document Format ("PDF") copies of the Parties' signatures shall be treated as originals.

The Parties have caused their duly authorized representatives to execute this Agreement as of the date set forth above.

Provider: _____

Print Name: _____

Title: _____

Signature: _____

Date: _____

Department of Commerce:

Print Name: _____

Title: _____

Signature: _____

Date: _____

State of Ohio Board of Pharmacy:

Print Name: _____

Title: _____

Signature: _____

Date: _____